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March 18, 2025

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 507, 508, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls
Docket No. A-2022-3033138**

Dear Secretary Chiavetta:

Attached for filing on behalf of Aqua Pennsylvania Wastewater, Inc. ("Aqua PA"), is the Main Brief and associated Appendices A (Proposed Findings of Fact), B (Proposed Conclusions of Law), and C (Proposed Ordering Paragraphs).

Aqua PA notes that **HIGHLY CONFIDENTIAL** and Public copies of the Main Brief are being submitted. The **HIGHLY CONFIDENTIAL** version will only be served upon counsel who have executed and returned and appropriate Stipulated Protective Agreement and/or an appropriate Protective Order entered in this proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Michael W. Hassell

MWH/dmc

Rosemary Chiavetta, Secretary
March 18, 2025
Page 2

cc: The Honorable F. Joseph Brady (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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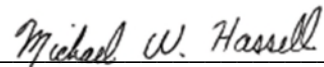
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Date: March 18, 2025



Michael W. Hassell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania Wastewater, Inc. : Docket No.
(hereinafter referred to as “Aqua”) pursuant to Sections : A-2022-3033138
1102 and 1329 of the Public Utility Code for: :

(1) approval of the acquisition by Aqua of the wastewater :
system assets of the City of Beaver Falls (“Beaver Falls” or :
“City”) situated within the City of Beaver Falls Eastvale :
Borough, and West Mayfield Borough, Beaver County, :
Pennsylvania; :

(2) approval of the right of Aqua to begin to offer, render, :
furnish and supply wastewater service to the public in the :
City of Beaver Falls, Beaver County, Pennsylvania; and :

(3) an order approving the acquisition that includes the :
ratemaking rate base of the City of Beaver Falls wastewater :
system assets pursuant to Section 1329(c)(2) of the Public :
Utility Code. :

Request for Approval of Contracts, between Aqua and the :
City of Beaver Falls, Pursuant to Section 507 of the Public :
Utility Code :

MAIN BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

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Dated: March 18, 2025

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TABLE OF CONTENTS

I. STATEMENT OF THE CASE.....1

 A. PROCEDURAL HISTORY.....1

 B. OVERVIEW OF THE PROPOSED TRANSACTION.....5

II. BURDEN OF PROOF7

III. STATEMENT OF THE QUESTIONS INVOLVED.....8

IV. SUMMARY OF ARGUMENT9

 A. SECTIONS 1102 AND 1103 AND CERTIFICATES OF PUBLIC
 CONVENIENCE9

 B. SECTION 1329 AND RATEMAKING RATE BASE10

V. ARGUMENT.....11

 A. SECTIONS 1102 AND 1103.....11

 1. Legal Standards.....11

 2. Fitness13

 3. The Acquisition Will Create Substantial Affirmative Public Benefits.....14

 a. Aqua has a proven record of acquiring, integrating and
 improving municipally-owned wastewater systems.16

 b. Aqua will provided enhanced and improved service to the
 City.....18

 c. The City and its residents will experience substantial financial
 benefits from the transaction.....25

 d. Aqua’s existing customers will benefit from the transaction.....26

 e. The transaction supports the Commonwealth’s policy
 endorsing and encouraging regionalization and consolidation.27

 4. Any Potential Rate Impact To Customers Is Hypothetical, Not A
 Harm In And Of Itself, And Such Impact Is Outweighed By The Net
 Benefits Of The Acquisition28

 5. The Reasonableness Review Ratio Is Not a Basis to Reject The
 Transaction.....30

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

6. Conclusion31

B. SECTION 1329.....32

1. Legal Standards.....32

2. Aqua’s Application33

3. OCA’s And OSBA’s Challenges To The UVE Appraisals Do Not Support A Reduction To The Proposed Ratemaking Rate Base Of The System.....39

4. OCA’s Proposed Adjustment To Gannett Fleming’s Cost Approach Should be Rejected40

5. OCA’s Proposed Adjustments To The UVEs’ Market Approach Results Are Improper41

6. OCA’s Criticisms of the UVEs’ Income Approaches Are Without Merit.....44

7. OCA’s Weighting Of Cost, Market And Income Results Should Not be Adopted47

8. OSBA’s Ratemaking Rate Base Proposal Is Contrary To Section 1329 ...48

9. Conclusion48

C. RECOMMENDED CONDITIONS TO THE APPROVAL OF THE ACQUISITION AND SETTING OF A RATEMAKING RATE BASE.....49

1. Missing Easements.....49

2. Separate Cost Of Service Study (“COSS”).....51

3. Long-Term Infrastructure Improvement Plan (“LTIIIP”) And Distribution System Improvement Charge (“DSIC”).....52

4. Closing Cost Recommendations53

5. Tracking Capital Improvements As Necessary Improvements And Integration54

6. Customer Assistance And Low-Income Customer Programs54

7. Customer Notices Of Rate Impact From Transaction.....55

8. Conclusion57

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

D. SECTION 507 APPROVALS57

E. OTHER APPROVALS, CERTIFICATES, REGISTRATIONS, AND
RELIEF, IF ANY, UNDER THE PUBLIC UTILITY CODE58

VI. CONCLUSION.....59

Appendix A – Proposed Findings of Fact

Appendix B – Proposed Conclusions of Law

Appendix C – Proposed Ordering Paragraphs

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

	Page(s)
<u>Pennsylvania Court Cases</u>	
<i>Allied Mechanical and Elec., Inc. v. Pennsylvania Prevailing Wage Appeals Board</i> , 923 A.2d 1220(Pa. Cmwlth. 2007)	8
<i>Borough of E. McKeesport v. Special/Temporary Civil Service Commission</i> , 942 A.2d 274, 281 (Pa. Cmwlth. 2008)	7
<i>Cicero v. Pa. PUC</i> , 300 A.3d 1106 (Pa. Cmwlth. 2023), <i>reargument denied</i> (Sept. 26, 2023), <i>appeal granted</i> , 568 MAL 2023 (Pa. June 14, 2024)	7, 8, 12, 15
<i>District of Columbia’s Appeal</i> , 343 Pa. 65, 21 A.2d 883 (Pa. 1941)	8
<i>In Re Byerly</i> , 270 A. 2d 186 (Pa. 1970)	13
<i>Kyu Son Yi v. State Board of Veterinarian Medicine</i> , 960 A.2d 864, 874 (Pa. Cmwlth. 2008)	8
<i>McCloskey v. Pa. PUC</i> , 195 A.3d 1055 (Pa. Cmwlth. 2018), <i>petition for allowance of appeal denied</i> , No. 703 MAL 2018 (April 23, 2019).....	<i>passim</i>
<i>McDonald v. Pennsylvania Railroad Co.</i> , 348 Pa. 558, 36 A.2d 492 (Pa. 1940)	8
<i>Met-Ed Indus. Users Group v. Pa. PUC</i> , 960 A.2d 189 (Pa. Cmwlth. 2008)	7
<i>Popowsky v. Pa. PUC</i> , 937 A.2d 1040 (Pa. 2007)	7, 11, 12, 15
<i>Samuel J. Lansberry, Inc. v. Pa. PUC</i> , 578 A.2d 600 (Pa. Cmwlth. 1990)	7
<i>Seaboard Tank Lines v. Pa. PUC</i> , 502 A.2d 762 (Pa. Cmwlth. 1985)	13
<i>Warminster Township Mun. Auth. v. Pa. PUC</i> , 138 A.2d 240 (Pa. Super. 1958).....	13

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

York v. Pa. PUC,
295 A.2d 825 (Pa. 1972)8, 11, 15, 32

Pennsylvania Administrative Agency Decisions

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. Request for Approval of Contracts, including Assignment of Contracts, between Aqua and the GSA, Pursuant to Section 507 of the Public Utility Code, Docket No. A-2023-3041695 (Order Entered Dec. 20, 2024).....50, 51

Application of Aqua Pennsylvania Wastewater, Inc. – East Whiteland Township, Docket No. A-2021-3026132 (Opinion and Order entered July 29, 2022)45, 46

Application of Pennsylvania Power & Light Co., Docket Nos. A-110500F0196, et al.; 1994 Pa. PUC LEXIS 65 (Oct. 21, 1994)8

Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193, Final Supplemental Implementation Order, (Order entered Feb. 28, 2019).....29, 56

Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193, Final Supplemental Implementation Order (Order entered July 2, 2024)30, 31, 48

Pa. PUC et. al. v. Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., Docket Nos. R-2024-3047822 and R-2024-3047823 (Order entered Feb. 7, 2025)25

Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926 (Order entered Aug. 17, 2006).....28

Re Pennsylvania-American Water Company, 85 Pa. P.U.C. 548 (1995)13

Pennsylvania Statutes

2 Pa. C.S. § 704.....7

66 Pa. C.S. § 332(a)7

66 Pa. C.S. § 507..... *passim*

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

66 Pa. C.S. § 1102(a)(1).....11
66 Pa. C.S. § 1102(a)(3).....11
66 Pa. C.S. § 1103(a)11
66 Pa. C.S. § 1329..... *passim*
66 Pa. C.S. § 1329(c)(2)..... *passim*

Pennsylvania Codes and Regulations

52 Pa. Code § 53.4556

I. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed the above-captioned Application on February 17, 2023, with the Pennsylvania Public Utility Commission (“Commission”). The Application requested: (1) approval for Aqua to acquire the wastewater system assets (“System”) of the City of Beaver Falls (the “City” or “Beaver Falls”); (2) approval for Aqua to begin to offer, render, furnish and supply wastewater service to the public in the City; (3) that the Commission include in its order approving the acquisition, the ratemaking rate base of the City wastewater system assets as determined under Section 1329(c)(2) of the Public Utility Code (“Code”), 66 Pa. C.S. § 1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, for certain municipal contracts that Aqua included in the Application (to the extent necessary), including new service agreements that Aqua would negotiate and enter into with Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough (the “Contributing Municipalities”) prior to Closing and which will replace any prior agreements; and (5) that the Commission allow certain existing agreements between Aqua and the Contributing Municipalities to be modified because the agreements contain a rate formula that is inconsistent with the rates charged by the City to the Contributing Municipalities.

Since the filing of the initial Application, Aqua has filed responses to certain data requests issued by the Commission’s Bureau of Technical Utility Services (“TUS”). In addition, Aqua has also filed several requests to extend the Commission’s review period in this matter, each of which has been granted by the Commission.

On March 17, 2023, the Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance, as well as a Notice of Intervention & Protest, Public Statement, and Verification.

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On March 20, 2023, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance.

On April 5, 2023, West Mayfield Borough, Patterson Heights Borough, Patterson Township, and White Township (collectively, “Municipal Protestants”)¹ filed Protests. The Municipal Protestants asserted that they had jointly filed a Complaint with the Beaver County Court of Common Pleas against the City and Aqua, claiming, inter alia, that Municipal Protestants had ownership rights to the System and seeking to enjoin the sale of the System to Aqua. The Municipal Protestants also filed a Joint Verified Letter Request to Reject Aqua’s Application as Incomplete or Hold in Abeyance and Request for Expedited Response on April 5, 2023.

On April 11, 2023, Aqua filed a Letter Response to the Joint Verified Letter Request of the Municipal Protestants.

On April 27, 2023, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement.

On June 28, 2023, the Commission conditionally accepted the Application.

On February 13, 2024, the Municipal Protestants filed Notices of Withdrawal of Protest and Letters of Consent to Sale of the System to Aqua.

On March 28, 2024, Aqua filed an Amended Application. In the Amended Application, Aqua explained that the Municipal Protestants, the City and Aqua had negotiated a settlement of the civil complaint proceeding. In that settlement, the Municipal Protestants agreed to withdraw their suit, agreed to withdraw their protests to this Application, and agreed to enter into a wastewater service agreement. The new wastewater service agreements and settlement were included in the Amended Application. The Amended Application also included certain new,

¹ The Municipal Protestants are four of the seven Contributing Municipalities.

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revised and/or supplemental exhibits (and supplemental direct testimony), to update certain facts regarding the System since the initial Application was filed.

On April 4, 2024, the Commission issued a Secretarial Letter withdrawing the Commission's conditional acceptance of the Application. Thereafter, Aqua filed two letters requesting that the Commission extend its review period of the Amended Application, each of which was granted by the Commission.

On June 27, 2024, the Commission issued a Secretarial Letter conditionally accepting the Amended Application, directing service of copies of the Amended Application upon certain entities and directing that individualized notice of the Amended Application be provided to Aqua's customers and to water customers of Aqua Pennsylvania, Inc. ("Aqua PA").²

On August 21, 2024, Aqua filed a letter advising the Commission of its provision of individualized notice of the proposed acquisition to its water and wastewater customers. The letter also noted the City was concurrently providing individualized notice of the proposed acquisition to its wastewater customers.

On or around September 23, 2024, Chris Perkins filed a Protest.

On or around October 11, 2024, Keith Gabage filed a Protest.

On December 23, 2024, Aqua filed a Letter and Certificate of Service verifying service of the Amended Application upon the designated entities, the completion of individualized notice and a proof of publication. Also on December 23, 2024, Aqua filed additional direct testimony in support of the Amended Application.

On December 30, 2024, the Commission issued an Initial Telephonic Prehearing Conference Notice, scheduling a call-in telephonic prehearing conference for January 29, 2025,

² Aqua PA is the parent company of Aqua.

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

before the ALJ. Also on December 30, 2024, the Commission issued a Secretarial Letter accepting Aqua's filing of the Application as amended.

On January 14, 2025, the ALJ issued a Prehearing Conference Order.

On January 17, 2025, the City filed a Petition to Intervene.

On January 29, 2025, a Prehearing Conference was held as scheduled.

On January 30, 2025, a Motion for Protective Order was filed.

The ALJ issued a Prehearing Order on February 3, 2025, which established a litigation schedule, among other things. The ALJ also issued a Protective Order on February 4, 2025.

On February 14, 2025, I&E, OCA and OSBA served direct testimony.

On February 20, 2025, Telephonic Public Input Hearings were held at 1:00 p.m. and 6:00 p.m. No members of the public participated or provided testimony.

On February 24, 2025, Aqua served rebuttal testimony.

On February 26, 2025, In-Person Public Input Hearings were held in Beaver Falls at 1:00 p.m. and 6:00 p.m. No members of the public participated or provided testimony.

On March 4, 2025, I&E, OCA and OSBA served surrebuttal testimony.

On March 7, 2025, Aqua served its rejoinder testimony.

On March 7, 2025, counsel for Aqua advised the ALJ via e-mail that the parties had agreed to mutual waivers of cross examination of all witnesses, requested that all witnesses be excused from the evidentiary hearing, and requested that all evidence be permitted to be entered into the record by stipulation and verification. By further e-mail, the ALJ granted these requests.

On March 10, 2025, the scheduled Telephonic Evidentiary Hearing was cancelled.

On March 14, 2025, Aqua, I&E, OCA and OSBA filed a Joint Stipulation for Admission of Evidence.

B. OVERVIEW OF THE PROPOSED TRANSACTION

Aqua is a regulated public wastewater utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua furnishes wastewater service to approximately 60,000 customers. Aqua's existing service territories cover various Counties throughout the state, including wastewater operations in Venango County and water operations under Aqua PA in Lawrence County, both nearby to Beaver Falls.

Beaver Falls is a duly organized and validly existing city under a Home Rule Charter. The City owns the sanitary wastewater collection and treatment System which provides sanitary wastewater service to customers in the City and provides transmission and treatment service for the Contributing Municipalities. Beaver Falls provides wastewater service to approximately 3,197 customers, which includes 2,879 residential, 276 commercial, 7 industrial, 17 public, 7 Contributing Municipalities, and 1 bulk pumping and hauling customer. The System has one wastewater treatment plant, approximately 36 miles of gravity sewer collection mains, in diameters ranging from 8 to 24 inches, and approximately 1,400 lineal feet ("LF") of 8 inch force mains.

Beaver Falls bills customers inside the City a quarterly base fee of \$43.64 (\$14.54 monthly) which includes an allowance of 3,000 gallons and a consumption charge of \$8.71 per 1,000 gallons based on water usage. A copy of the City's currently effective Rate Ordinance is provided as **Exhibit H** to the Amended Application.

Wastewater treatment is provided by the City at its Wastewater Treatment Plant ("WWTP") located in Beaver Falls. The Beaver Falls WWTP has a permitted capacity of 4.8 million gallons per day ("MGD"). Beaver Falls accepts wastewater flow into its collection system from the Contributing Municipalities, which is treated at the Beaver Falls WWTP.³

³ The Contributing Municipalities collect wastewater from their customers through facilities owned by the Contributing Municipalities. Once flow enters the City from the Contributing Municipalities, it is conveyed by gravity

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

Aqua will acquire Beaver Falls’ wastewater collection and treatment system assets (the “Acquired Assets”) as defined in the *Asset Purchase Agreement*, dated as of October 20, 2021, and attached to the Amended Application as **Exhibit B** (the “APA” or “Agreement”). All of the Acquired Assets are located in the City except for the Eastvale Pump Station, which is located in Eastvale Borough, the force main that connects the Eastvale Pump Station to the City collection system, and a flow meter located in West Mayfield Borough.

The Acquired Assets also include four contracts identified on Schedule 4.15 of the Agreement to which City is a party (the “Assigned Contracts”), included as **Exhibits F1, F2, F3 and F4** to the Amended Application. While these agreements are listed as part of the Acquired Assets, the Company has submitted new Wastewater Service Agreements with each of the Contributing Municipalities. The new agreements will terminate and replace all prior agreements for the conveyance and treatment of wastewater (“New Wastewater Service Agreements”). The New Wastewater Service Agreements were included in the Amended Application as **Exhibit F9, Exhibit F10, Exhibit F11, Exhibit F12, Exhibit F13, Exhibit F14, and Exhibit F15**. The City also disclosed an April 8, 2014, Capital Lease Agreement, which is attached as **Exhibit F5**.⁴ Additionally, included as **Exhibit F16** was an agreement between Aqua and the City for certain charitable contributions. The Company also submitted a pro-forma meter reading agreement between Aqua and Beaver Falls Municipal Authority (“BFMA”)⁵ for the provision of water meter read data for billing purposes post-closing. The meter read agreement was included as **Exhibit F17** to the Amended Application. Finally, the Company also submitted the settlement agreement

to the WWTP, except for flow coming from Eastvale Borough and North Sewickley Township which is conveyed to the Eastvale Pump Station and pumped into the City. The Eastvale Pump Station has a design capacity of 610 gallons per minute (“gpm”). Aqua Exhibit 2, Amended Application, ¶ 16.

⁴ The Capital Lease Agreement expired on December 31, 2024, and otherwise would be superseded by the New Wastewater Service Agreements. Aqua St. No. 1-R, p.17.

⁵ BFMA provides water service in the requested service territory. Aqua Exhibit 2, Amended Application, ¶ 18.

(“Settlement”) that settled the civil action by the Municipal Protestants as **Exhibit F18**.

The Acquired Assets also include all Authorizations and Permits of or held by Beaver Falls (to the extent lawfully transferrable), listed or described on Schedule 4.14 of the Agreement.

II. BURDEN OF PROOF

Section 332(a) of the Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth of Pennsylvania v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). Under the preponderance of the evidence standard, “the Commission is ‘not required to ensure beyond all doubt that the noted public benefits would accrue.’” *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1055 n.18 (Pa. 2007) (“*Popowsky*”). Rather, this standard “means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.” *Cicero v. Pa. PUC*, 300 A.3d 1106, 1118 (Pa. Cmwlth. 2023), *reargument denied* (Sept. 26, 2023), *appeal granted*, 568 MAL 2023 (Pa. June 14, 2024) (“*Cicero*”) (internal citation and quotations omitted).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Substantial evidence must be “more than a scintilla and must do more than create a

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), and the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pennsylvania Prevailing Wage Appeals Board*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

If the applicant sets forth a *prima facie* case, then the burden shifts to the opponent. *McDonald v. Pennsylvania Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (Pa. 1940). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof. *District of Columbia’s Appeal*, 343 Pa. 65, 21 A.2d 883 (Pa. 1941). *See, e.g., Application of Pennsylvania Power & Light Co.*, Docket Nos. A-110500F0196, *et al.*; 1994 Pa. PUC LEXIS 65 (Oct. 21, 1994).

In Section 1329 cases, the Applicant need show that “the affirmative public benefits that arise from and are specific to a transaction outweigh the harms of the transaction such that approval of the transaction will ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’” *Cicero*, 300 A.3d at 1120 (quoting *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (“*City of York*”)).

Aqua has satisfied its burden of proof in this matter, for the reasons explained herein.

III. STATEMENT OF THE QUESTIONS INVOLVED

Question No. 1: Is Aqua’s acquisition of the wastewater system assets of the City of Beaver Falls necessary or proper for the service, accommodation, convenience or safety of the public?

Suggested Answer: Yes.

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Question No. 2: Pursuant to 66 Pa. C.S. § 1329, what is the ratemaking rate base of the wastewater system assets of the City of Beaver Falls?

Suggested Answer: The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$41,250,000, being the lesser of the purchase price of \$41,250,000 negotiated by Aqua and Beaver Falls and the Fair Market Value (“FMV”), which is \$42,245,674—determined by averaging the \$40,199,348 presented in the appraisal of ScottMadden and the \$44,292,000 presented in the appraisal of Gannett Fleming.

Question No. 3: Pursuant to Section 507 of the Code, are the contracts offered in this proceeding, including the Agreement between Aqua and the City, the New Wastewater Service Agreements entered into by Aqua, the City and the Contributing Municipalities, the charitable contribution agreement between Aqua and the City, the pro forma meter read agreement between Aqua and the BFMA, and the Settlement Agreement entered into by Aqua, the City and certain municipalities pursuant to Section 507 of the Code reasonable, legal, and valid?

Suggested Answer: Yes.

IV. SUMMARY OF ARGUMENT

A. SECTIONS 1102 AND 1103 AND CERTIFICATES OF PUBLIC CONVENIENCE

Aqua seeks a Certificate of Public Convenience (“CPC”) for a public utility to expand its service territory to acquire the System from the City. Aqua has demonstrated that approval of the acquisition is “necessary or proper for the service, accommodation, convenience, or safety of the public” as required under Section 1103 of the Code and will provide substantial public benefits. The evidence demonstrates that the System is troubled in a number of ways. Those deficiencies risk the health and safety of both City residents and the millions of people who rely upon the Beaver and Ohio River valleys. Aqua’s acquisition will correct the System’s deficiencies in a

prompt and proactive manner. The evidence further demonstrates that the City is financially troubled, and has neither the technical nor financial ability to correct the System's deficiencies. Although the acquisition will likely result in increased rates to customers of the System, the City demonstrated that the financial benefits to it and its residents exceed the detriment of potential wastewater rate increases. Aqua further demonstrates that the large number of low-income customers served by the System will have access to assistance programs, not currently offered by the City, that will result in lower rates under Aqua than they currently pay to the City. Aqua's current customers will also benefit from the transaction through a lower cost per customer served, as a result of economies of scale. These many benefits support approval of the transaction.

B. SECTION 1329 AND RATEMAKING RATE BASE

Section 1329 of the Code addresses the valuation of municipal assets in connection with a sale of those assets to an investor-owned public utility subject to regulation by the Commission. Pursuant to Section 1329, Aqua and the City each engaged the services of qualified Utility Valuation Experts ("UVE") to provide fair market value appraisals of the System. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$41,250,000, being the lesser of the negotiated purchase price of \$41,250,000 and \$42,245,674, which is the average of the two UVE appraisals. OCA and OSBA both challenged the ratemaking rate base amount. However, Aqua demonstrated that the proposed adjustments to the ratemaking rate base amount are improper and should be rejected.

V. ARGUMENT

A. SECTIONS 1102 AND 1103

1. Legal Standards

Section 1102(a)(1) of the Code requires a public utility to obtain a CPC from the Commission to “begin to offer, render, furnish or supply within this Commonwealth service . . . to a different territory than that authorized.” 66 Pa. C.S. § 1102(a)(1). Section 1102(a)(3) requires a CPC for a public utility to acquire “tangible or intangible property used or useful in the public service.” *Id.* § 1102(a)(3). Relatedly, Section 1103(a) of the Code provides that a CPC will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” *Id.* § 1103(a).

In order to approve an acquisition, the Commission must find that the acquisition will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York*, 295 A.2d at 828. The “substantial public interest” standard can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky*, 937 A.2d at 1057. In *Popowsky*, the Supreme Court of Pennsylvania explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make fact-based determinations (which may include predictive determinations informed by the Commission’s expert judgment) to determine whether public benefits will result from a transaction. *Id.* Further, the substantial public benefit test does not require that every customer receive a benefit from the Transaction. *Id.* at 1061. Moreover, it is well recognized that the Commission can impose conditions that it deems just and reasonable under Section 1103. 66 Pa. C.S. § 1103(a).

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With specific respect to Section 1329 acquisitions, the Commonwealth Court recently held that the substantial public benefits standard was met through Commission findings that: (i) Aqua, as the owner of numerous water and wastewater systems, has sufficient operational expertise and ability to raise capital to support system operations; and (ii) the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities. *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied*, No. 703 MAL 2018 (April 23, 2019) (“*McCloskey*”). Specifically, the Court noted, “[a]s 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. Although *McCloskey* also explained that the Commission, in a “general fashion,” must consider rate impacts when deciding whether there is substantial public benefit for a Section 1329 acquisition, it further recognized that rate impact is not dispositive of the Commission’s affirmative benefits determination. *Id.* at 1067. Indeed, “the Commission is charged with deciding whether the impact of rates . . . is outweighed by . . . other positive factors that . . . served [as] a substantial public benefit.” *Id.*

The Commonwealth Court later acknowledged in *Cicero* that:

[w]hile Pennsylvania courts have recognized that the Commission is not required to obtain legally binding commitments from acquiring utilities and that ‘aspirational statements’ are substantial evidence of an affirmative public benefit, under the preponderance of the evidence standard, that recognition must be considered in the context of those cases.

Cicero, 300 A.3d at 1119 (citations omitted). The court in *Cicero* went on to hold that:

in every Section 1329 case, it must be shown that the affirmative public benefits that arise from and are specific to a transaction outweigh the harms of the transaction, such that approval of the transaction will ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’

Id. at 1120.

Finally, the acquiring party (Aqua) must demonstrate that, as the party to whom the assets and service obligations are being transferred, it is technically, legally and financially fit. *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

2. Fitness

An existing provider of public utility service is presumed fit. *See McCloskey*, 195 A.3d at 1058. The burden of proof to rebut this presumption is on the parties challenging the acquisition. *In Re Byerly*, 270 A. 2d 186 (Pa. 1970). Aqua is presumed fit to own and operate the System because it is a certificated provider of wastewater public utility service. *See McCloskey*, 195 A.3d at 1058; *see also Re Pennsylvania-American Water Company*, 85 Pa. P.U.C. 548 (1995). No party to this proceeding has challenged Aqua's fitness. Nevertheless, Aqua presented substantial evidence that it is legally, financially, and technically fit to acquire the System.

Aqua is legally fit to acquire the system. Aqua is a public utility operating under the Code and the Commission's regulations, and Aqua obeys the same.⁶ There are no pending legal proceedings before a court or administrative body challenging Aqua's ability to provide adequate, safe, and reliable wastewater service.⁷

Aqua is also financially fit because it has sufficient financial resources to provide wastewater service over the System. Aqua is a wastewater utility with total net utility plant assets of approximately \$490 million and annual revenues of approximately \$70 million, as of December 31, 2021.⁸ In addition, Aqua is a direct subsidiary of Aqua PA, which is a Class A water utility with total net utility plant assets of \$4.1 billion and annual revenues of \$495 million, as of 2021.⁹

⁶ Aqua St. No. 1, p. 8.

⁷ Aqua St. No. 1, p. 8.

⁸ Aqua St. No. 1, p. 9.

⁹ Aqua St. No. 1, p. 9.

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As a direct subsidiary of Aqua PA (which had an A rating from Standard and Poor’s Rating Service at the time of filing), Aqua has access to Aqua PA’s financing capabilities, as well as access to equity capital as a subsidiary of Essential Utilities, Inc. (“Essential”).¹⁰

Aqua will use existing short-term credit lines to fund the acquisition. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The transaction is not expected to have any effect on Aqua PA’s corporate credit rating.¹¹

Finally, Aqua is technically fit. It has sufficient staff, facilities, and operating skills to provide service over the System.¹² Aqua will provide management, customer service, regulatory compliance, engineering, financial and ancillary services, seamlessly, from its Western Area office in Sharon, Pennsylvania, with management support from Aqua’s headquarters in Southeastern Pennsylvania.¹³ The transaction will easily fold into Aqua’s existing wastewater operations.¹⁴

3. The Acquisition Will Create Substantial Affirmative Public Benefits

Substantial evidence of affirmative public benefits to an Aqua Section 1329 acquisition were upheld in *McCloskey* because: (a) Aqua, based on its longstanding ownership of water and wastewater systems, can provide operational expertise and the ability to raise capital to support the system’s operations and infrastructure; and (b) the Commission has a policy of consolidation/regionalization of wastewater systems that allows for improvements to municipally-owned sewer and water facilities. *See McCloskey*, 195 A.3d at 1065. These same benefits exist in this proceeding, which fully support a conclusion that there are substantial affirmative public benefits to Aqua’s acquisition of the System. However, these are not the only benefits. There are

¹⁰ Aqua St. No. 1, p. 9.

¹¹ Aqua St. No. 1, p. 10.

¹² Aqua St. No. 3, pp. 4-8.

¹³ Aqua St. No. 3, pp. 4-8.

¹⁴ Aqua St. No. 3, p. 4.

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many other affirmative public benefits of this transaction, which are described in detail below.

Further support for the existence of substantial affirmative public benefits is the General Assembly's determination that the public interest will be furthered by the purchase/sale of municipal systems at fair market value to capable public utilities. This intent is evident through the enactment of Section 1329 of the Code.

Recently, in *Cicero*, the Commonwealth Court reversed the Commission's approval of Aqua's acquisition of a wastewater system under Section 1329 under the particular facts of that case. *Cicero* remains pending on appeal before the Supreme Court of Pennsylvania. The Commonwealth Court stated in *Cicero*:

Holding that a transaction will result in substantial affirmative public benefits because it will provide the same services as already being provided is not a benefit, let alone a substantial affirmative public one as required by statute and our caselaw. Nor is it a benefit to provide for upgrades that Township is equally capable of providing. Holding that these services and upgrades that are the result of the acquiring utility's size and fitness are substantial affirmative public benefits is not consistent with *City of York* and its progeny. This is particularly true when the existing system is already operating safely and reliably. As our Supreme Court described in *Popowsky*, the affirmative public benefit test is a 'net benefits assessment.' 937 A.2d at 1056 (emphasis added). Where, as here, there are no benefits that differ substantially from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the CPC under Section 1103(a).

Cicero, 300 A.3d at 1119 (emphasis added). Of particular emphasis in *Cicero*, was the factual determination that the selling municipality was "equally capable" of providing for upgrades to a system that "is already operating safely and reliably."

In this case, the facts demonstrate that: (a) the City does not desire to continue operating the System, (b) the System faces substantial short-, mid- and long-term operation and investment challenges, (c) the City lacks the expertise and resources to address these challenges, (d) the City

does not have the financial ability to obtain the expertise and resources to address these challenges, and (e) the City has no plan in place to address these challenges. If it is able to address them at all, it will only be able to do so in a reactive manner once adverse impacts to service have occurred.¹⁵ Aqua's acquisition of the System will enable these challenges to be proactively addressed by an experienced operator with the necessary technical and financial resources. Moreover, Aqua's acquisition of the System will provide the City with a desperately needed financial infusion that will benefit the City and its residents on multiple fronts.

Moreover, outside of rate increase matters identified by witnesses of other parties (which are discussed in Section V.A.4., *infra*), no party has alleged that the transaction will result in public harms.

In summary, and as explained in detail below, the acquisition will improve the System's operations and infrastructure, improve the service provided to the residents of Beaver Falls, improve the finances of the City, and reduce the costs of wastewater service for Aqua's existing customers over the long term. The acquisition will produce substantial affirmative public benefits and should be approved.

a. Aqua has a proven record of acquiring, integrating and improving municipally-owned wastewater systems.

Aqua has substantial experience with successfully acquiring, integrating, and improving municipally-owned wastewater systems. Aqua currently provides wastewater service to over 60,000 customer accounts, and its fitness to own and operate the System is unquestionable.

The System is located nearby Aqua's Western Division office, and its operation as a standalone system will be managed from this office in Sharon, PA.¹⁶ Aqua's Western Division

¹⁵ Aqua St. No. 4 Supp, p. 3. See Section V.A.3.b.i., *infra*.

¹⁶ Aqua St. No. 3, pp. 3-4.

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currently oversees nine water and four wastewater systems serving 30,031 customers in 34 municipalities in Western Pennsylvania.¹⁷ The integration of the System into Aqua’s operations will provide the System with access to beneficial support services that it currently does not have today.¹⁸ Importantly, “Aqua will immediately incorporate the equipment and facilities acquired from the City into the established asset management programs to include preventative maintenance programs and corrective maintenance management.”¹⁹ Aqua has substantial experience integrating wastewater systems into its Western Division, regardless of the current condition of the System’s operations and infrastructure.²⁰

As described by Aqua Witness Packer, “Aqua has acquired 14 wastewater systems over the past 10 years. Many of these systems required significant investment to correct service and environmental issues. Other systems did not need substantial capital investment.”²¹ Each of these acquisitions diversified the systems, which provided increased stability to customers by allowing for capital improvements to be made to each system at different times, thereby spreading the financial impacts of improving each system over the long-term operations of the utility.²²

Importantly, no party disputed that Aqua will be able to successfully integrate the System into its operations, and no party disputed that Aqua’s integration will result in the System being operated at a higher standard than it is today. Therefore, it is clear that Aqua will be able to historically integrate the System into its overall operations—as it has with numerous other wastewater systems over the years—and that this integration will elevate the operations and service provided by the System over its existing levels.

¹⁷ Aqua St. No. 3, p. 3.

¹⁸ Aqua St. No. 3, pp. 5-6.

¹⁹ Aqua St. No. 3, p. 8.

²⁰ Aqua St. No. 3, pp. 7-8.

²¹ Aqua St. No. 1, p. 13.

²² Aqua St. No. 1, p. 13.

- b. Aqua will provided enhanced and improved service to the City.**
 - i. Aqua will proactively resolve substantial short-, mid-, and long-term challenges facing the infrastructure and operations of the System that the City cannot address.**

The System faces substantial challenges which are beyond the capability of the City to manage. These challenges present current and future risks of harm to City residents, as well as to the residents of surrounding communities who rely upon the Beaver River and the downstream Ohio River. Downstream of the WWTP are several public water systems that serve an estimated 54 million people in the Ohio Valley.²³

In the years immediately preceding execution of the APA, the City received several Notices of Violation (“NOV”) from the Pennsylvania Department of Environmental Protection (“DEP”) for various effluent violations.²⁴ The City also experienced a secondary bypass incident due to high levels of rainfall.²⁵ The City is currently operating under a Corrective Action Plan, believed to be a result of basement flooding experienced by a number of City customers due to surcharged sewers during rain events.²⁶ Aqua’s review of flow and billing data indicates there is likely Inflow and Infiltration (“I&I”) affecting the System.²⁷ I&I can cause flow to exceed treatment capability.

In the opinion of Mr. Zach Martin, the Western Pennsylvania Area Manager for Aqua,²⁸ the WWTP, which is over 80 years, is troubled, distressed and needs significant attention. In the words of Mr. Martin: “I did not feel safe, and we would not allow Aqua employees to work at the WWTP under the current conditions.”²⁹

²³ Aqua St. No. 3, p. 12.

²⁴ Aqua St. No. 2, p. 10.

²⁵ Aqua St. No. 2, p. 11.

²⁶ Aqua St. No. 2, p. 11. The System is not a combined system conveying both sanitary and stormwater flow. The City installed backflow preventers to address this problem.

²⁷ Aqua St. No. 2, p. 12.

²⁸ Mr. Martin has over 19 years experience operating water and wastewater systems. Aqua St. No. 3, pp. 1-2.

²⁹ This statement was based upon approximately 10 visits that Mr. Martin took to visit the System over various seasons. Aqua St. No. 3 Supp, p. 11.

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Mr. Martin described, in substantial detail, a number of inadequate and unsafe conditions at the WWTP. In summary, these included:

- Lack of Licensed Operators, Access to Training, and Redundancy of Operators;
- Limited or Lacking Process Control Testing;
- Inadequate Laboratory Sample System Management;
- Permit Compliance Issues;
- Lack of Emergency Preparedness Planning;
- Lack of Safety & Security Equipment & Training;
- Hazardous Chemical Storage, Labeling, and Safety Concerns;
- Compliance with Federal EPA Risk Management Program regulations for extremely hazardous chemicals;
- WWTP Ventilation Issues creating health and safety risk for employees;
- WWTP physical safety measures;
- WWTP Security deficiencies;
- Inadequate SCADA and operator alarm systems;
- Use of homemade patchwork of physical assets;
- Insufficient emergency/standby power generation; and
- Lack of Asset Management or Compliance Management Software Systems.³⁰

While space limitations prevent detailed descriptions of each of these concerns in this brief, Aqua will describe some of the major concerns. Process controls and Standard Operating Procedures were lacking at the WWTP, creating various environmental concerns, as described by Mr. Martin:

Many of the processes were well beyond normal acceptable operating conditions, possibly leading to future violations. For example, the primary clarifiers had floating trash in/on them, and the skimmers were not operating at all. The primary clarifiers were black in color indicating septic conditions. See Appendix A, Section 1.³¹ This creates odor issues and more significantly prevents the naturally occurring processes from happening in an efficient manner. While all the tanks were on-line, flow coming out of the tanks was only at 50% of design capacity which suggests something very wrong and a clear operational inefficiency. The extra on-line tankage creates long hydraulic retention times coupled with lower than ideal sludge wasting and black, odorous septic conditions. It also creates additional costs because the WWTP is powering more equipment than necessary.

³⁰ Aqua St. No. 3 Supp, pp. 12-39.

³¹ Included with Mr. Martin's Supplemental Direct Testimony was Appendix A, which provided photographic evidence of various portions of the WWTP.

Also of significant concern is that there were no air blowers online to supply aeration and/or mixing to any process tanks. These tanks can contain hydrogen sulfide and other gases that displace oxygen that are very hazardous. Proper aeration and mixing is vital for safety reasons. The trickling filter facility at a wastewater treatment plant consistently moves wastewater and pushes it to the bottom of the facility. Upon review the trickling filter facility had excessive biomass growth reducing its effectiveness.

There are floating solids atop the secondary clarification tanks. This accumulation was also on the surface of the chlorine contact tank where disinfection of the process stream should have been occurring. See Appendix A, Section 3. This is not where floating solids should appear. All tanks were extremely turbid (dense, murky) and it was difficult to see more than a couple inches into the water column. This is not a good sign for a tank, especially near final treatment. Most protrusions from the tanks, channels, launderers, and flumes were coated with excessive solids accumulation. Again, not a good sign. Sludge wasting, which is an important tool in the normal operational process, seemed to be limited to periodic and nonspecific volume instances.³²

Problems with the treatment process present a clear health risk to downstream public water system and users of the Beaver and Ohio Rivers. The System has experienced more recent violations, such as total suspended solids (“TSS”) effluent violations in December 2022, and February March 2023, and a fecal coliform violation in June 2023.³³ The System also did not submit discharge monitoring reports (“DMR”). Also in 2024, the DEP issued a NOV to the City for violations of its NPDES permit including TSS violations in October and November 2023 and April and May 2024, fecal coliform violation in April 2024, and pH violation in January 2024.³⁴

Another matter of substantial concern involves hazardous gases. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]

³² Aqua St. No. 3 Supp, pp. 14-15.

³³ Aqua St. No. 2-R, p. 4.

³⁴ Aqua St. No. 2-R, pp. 4-5.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ■ [END HIGHLY CONFIDENTIAL]

Under Aqua’s ownership, with its highly experienced staff and its financial resources, each of these concerns will be proactively addressed and corrected. Aqua has already drawn up initial plans to spend approximately \$10.2 million to make needed improvements to the System.⁴² Some of the initial work includes upgrades to the WWTP, including improvements to filter tower No. 1 and sludge collectors, along with electrical work associated with the Supervisory Control and Data Acquisition (“SCADA”) systems to provide greater assurance of continued process control and compliance. Aqua also plans to complete headworks upgrades and gas to liquid chlorine conversion to improve safety. Gravity collection system pipe rehabilitation and replacement will occur based on an assessment of pipe age and condition. Aqua will work with the City and DEP to address I&I and sanitary sewer overflows (“SSOs”) within the System.⁴³ Aqua’s Information Technology systems will also provide advanced cybersecurity protection, to protect customer information and defend against cyber intrusions into operating systems.⁴⁴

These numerous concerns cannot be addressed by the City. The City Manager, Mr. Charles Jones, explained:

Q. Does the City have a plan to address the issues raised in Mr. Martin’s Supplemental Direct Testimony?

⁴⁰ Aqua St. No. 3-RJ, p. 7.
⁴¹ Aqua St. No. 3-R, p. 22.
⁴² Aqua St. No. 2, p. 8.
⁴³ Aqua St. No. 2, p. 8.
⁴⁴ Aqua St. No. 3, p. 9.

A. No, it does not at this time. The City will do its best to alleviate any serious and dangerous conditions but does not have the expertise or the financial resources to support the adequate operations of the System long-term.

Q. Does the City have a capital plan for the System?

A. The City does not have a long-term capital plan for the System as a result of the City's financial condition. The City attempts to fix problems with the System as they arise but does not have the ability to do more than that.⁴⁵

The financial situation facing the City is dire, and there are not available resources to make capital improvements; even day to day operations can be difficult, as the City's Chief Financial Officer Ms. Sandra Wilkins explained:

There has not been any significant work done on the System in years. The City does not have money to do any capital projects at this time nor does it anticipate having any money to do any projects in the future without a dramatic and unforeseen change in the finances of the City. In the past, the City financed capital projects for the System through the use of bond proceeds. Those bonds are still outstanding and the City is barely able to make the debt payments on those bonds. The City is operating on a month-to-month basis financially and owes money to many vendors. If this sale is not approved and the City does not receive the sale proceeds, even if the City raises rates significantly, it will be unable to pay all of its bills, let alone take on new capital projects for the System. As I already testified, the City had to use the \$2,000,000 deposit monies from Aqua as provided under the APA to balance our budget. Without those monies we would not have been able to even make payroll.⁴⁶

The System is troubled, and Aqua will correct the many deficiencies identified. This is a substantial public benefit to the residents of the City, and to residents in downstream communities.

ii. Aqua will enhance customer service for City customers.

Aqua's ownership of the System will bring additional benefits to the customers of the System through enhanced customer service. Customers of the City will have access to expanded customer service provided by the Aqua-owned customer service call centers. City customers will have access to customer service centers during normal business hours and can report emergencies

⁴⁵ Aqua St. No. 4-R, p. 2.

⁴⁶ Aqua St. No. 8-R, p. 2.

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24/7. Customers will be able to confirm their account status, pay bills, report outages and other facility issues. Aqua can then respond in a prompt manner to make any necessary repairs.⁴⁷

Other aspects of Aqua's customer service capabilities are a clear improvement over current services available from the City. There are no payment plan options available from the City. With Aqua's ownership, Beaver Falls' customers with payment issues will have the option to enter into a deferred payment arrangement to help pay off unpaid balances, and for those that meet eligibility requirements, they may participate in Aqua's low-income programs as described in the following section of this brief.⁴⁸ Customers will receive text notifications when awaiting a service call. Customers will also have access to a new and improved customer ePortal and Aqua App for mobile devices. In addition to payment through Aqua App, Aqua customers also have the benefit of expanded bill payment options including auto-payment and pay by text. For customers using an ACH payment method, all of these options are free. In addition to offering bill payment, Aqua's ePortal also provides electronic billing and the ability to view prior bills.⁴⁹ These are further public benefits from the transaction.

iii. Low-income City customers will have access to customer assistance programs if the acquisition is approved.

The City is a predominantly low income, minority community. The average annual incomes of the City's residents are significantly lower than the U.S. average and the City's average unemployment rate has been higher than the state and national rates.⁵⁰

Another benefit of the transaction is that the City's low-income customers will be eligible for Aqua's low-income programs. The City has a substantial low-income population. The

⁴⁷ Aqua St. No. 3, p. 5.

⁴⁸ Aqua St. No. 3-R, p. 17.

⁴⁹ Aqua St. No. 3-R, pp. 16-23.

⁵⁰ Aqua St. No. 7, p. 3.

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majority of 2 to 4 person households in the City fall under 200% of the federal poverty level guidelines (“FPL”), and thus could qualify for Aqua’s Customer Assistance Program (“CAP”).⁵¹

OCA Witness DeMarco questioned whether many low-income City customers would benefit from Aqua’s CAP, compared to the rates charged by the City.⁵² Aqua Witness Ms. Rita Black explained that Aqua’s CAP had recently been enhanced as a result of Aqua’s 2024 base rate case.⁵³ As a result, all City customers below 100% of FPL will be paying much less under Aqua’s CAP than they pay under current rates of the City, and all customers under 150% of FPL enrolled in CAP would pay less than projected City rates. In addition, when a customer enrolls in CAP, any balance owed at the time of enrollment is frozen. Customers earn a \$40 credit towards that frozen balance each time they pay their monthly bill, allowing them to eliminate the debt through arrearage forgiveness over time.⁵⁴ This is a further substantial benefit for low-income customers that would result from the transaction.

Low-income City customers would also be eligible for further benefits under Aqua’s low-income programs. Aqua offers its Aqua Aid hardship fund to customers with incomes at or below 200% of the FPL to assist income-eligible households that find themselves in arrears. Aqua also can provide conservation kits to low-income households that are interested in reducing their water usage, which ultimately benefits their wastewater bills as well.⁵⁵ These are additional benefits from the transaction that are not available to City customers today.

c. The City and its residents will experience substantial financial benefits from the transaction.

The City is in very poor financial condition. As Aqua Witness Jones explained:

⁵¹ Aqua St. No. 4 Supp, pp. 4-5.

⁵² OCA St. No. 1, pp. 11-13.

⁵³ *Pa. PUC et. al. v. Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047822 and R-2024-3047823 (Order entered Feb. 7, 2025).

⁵⁴ Aqua St. No. 9-R, p. 3.

⁵⁵ Aqua St. No. 9-R, p. 4.

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Because of the financial condition of the City, the City likely will not be able to keep up with the growing capital needs of the aging System. If the City sells the System to Aqua, the capital needs will be met and the proceeds from the sale of the System will help prevent the City from being named by the Commonwealth Department of Community and Economic Development a distressed community or Act 47 status, which indicates severe financial difficulties and could lead to the City being placed in receivership.⁵⁶

Not only will the transaction provide substantial operational benefits, as explained above, but it will also provide substantial financial benefits to the City, which will benefit the residents of the City. The City undertook a financial public benefit analysis of the proposed transaction. The analysis concluded that the sale would generate annual financial benefits of over \$4.56 million. This was compared to the estimated increase to City customers' rates of approximately \$4.2 million, producing a net annual public benefit of \$362,037.⁵⁷

The ways in which the net proceeds will be used by the City will make a difference to this financially distressed community. First, the City will be able to repay general obligation debt of \$5.5 million. The City will also have \$2 million in cash to immediately address unmet community needs. The remainder will be invested, to provide for ongoing needs. Further benefits include pay increases for City employees and property tax reductions.⁵⁸ The City will be able to invest in community resources, such as business development, new public safety vehicles and improved roads.⁵⁹ These are important benefits that can only be achieved through the sale.

d. Aqua's existing customers will benefit from the transaction.

The acquisition of the System will increase Aqua's customer base by about 5%. This increase means that future infrastructure investments across the state will be shared more widely, resulting in a lower incremental cost per customer for all of Aqua's customers. Aqua Witness

⁵⁶ Aqua St. No. 4 Supp, p. 4.

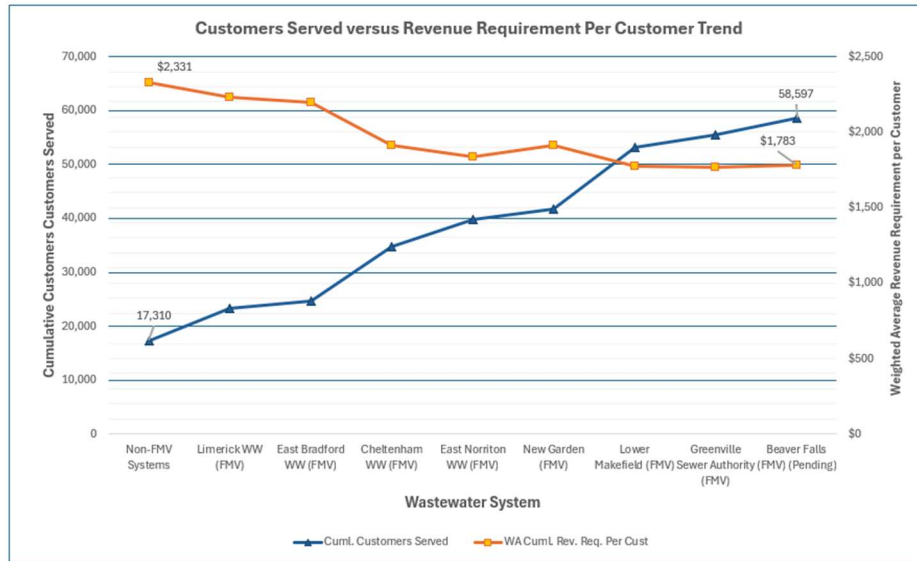
⁵⁷ Aqua St. No. 8, p. 6 and Appendix A.

⁵⁸ Aqua St. No. 8, pp. 6-7 and Appendix A.

⁵⁹ Aqua St. No. 7, pp. 4-5.

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Packer prepared a graph, reproduced below,⁶⁰ to demonstrate that there has been a declining cost per customer as Aqua has acquired various wastewater systems since the passage of Section 1329:



The graph demonstrates that the Company is providing wastewater service to more customers as a lower consolidated cost. This shows that the acquisitions produce economies of scale that benefit Aqua’s existing customers.⁶¹

e. The transaction supports the Commonwealth’s policy endorsing and encouraging regionalization and consolidation.

The Commonwealth and the Commission have historically supported the consolidation/regionalization of water and wastewater systems.⁶² Consolidation/regionalization provides the utility industry with a greater chance to realize improvements to customer service, environmental protection, and economics, by providing smaller utilities with access to better management and economies of scale from larger utility system operators.⁶³

Indeed, the Commission has previously stated that “acquisitions of smaller systems by

⁶⁰ Aqua St. No. 1-R, p. 11.

⁶¹ Aqua St. No. 1-R, p. 6.

⁶² Aqua St. No. 1, p. 12.

⁶³ Aqua St. No. 1, p. 12.

larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry.”⁶⁴ Moreover, the Commission has recognized that “these types of acquisitions will also enhance the quality of ratepayers’ daily lives, promote community economic development, and provide environmental enhancements.”⁶⁵ These benefits flow to both the acquired customers and the existing customers of the acquiring utility, as all receive the benefit of a larger customer base.⁶⁶ The proposed acquisition of the System is no exception to the principles noted in the aforementioned Policy Statement, and Aqua PA and Aqua have successfully acquired numerous water/wastewater utilities in over approximately 135 years of operation.”⁶⁷

4. Any Potential Rate Impact To Customers Is Hypothetical, Not A Harm In And Of Itself, And Such Impact Is Outweighed By The Net Benefits Of The Acquisition

In *McCloskey*, the Commonwealth Court concluded that the Commission must address rate impact “in a general fashion” when deciding whether there is a substantial public benefit from a transaction. As part of his direct testimony, Aqua Witness Packer provided a calculation of the potential average bill increase that City customers could experience in the first Aqua case following closing on the transaction. Those calculations show the average bill could increase to approximately \$265.96 per quarter or a 165.61% increase, which assumes that one hundred percent of the revenue requirement deficiency would be charged to the acquired City customers.⁶⁸

However, this is a hypothetical, and unlikely outcome. As the Commission has noted:

[T]he Section 1329 valuation could have a highly unlikely rate effect of \$0. Equally unlikely is the full allocation of all costs – acquisition and perhaps others – to a rate division consisting of only the customers of the acquired

⁶⁴ Pennsylvania Public Utility Commission, *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order, at p. 18 (Order entered Aug. 17, 2006).

⁶⁵ *Id.*

⁶⁶ Aqua St. No. 1, pp. 12 and 19.

⁶⁷ Aqua St. No. 1, p. 12.

⁶⁸ Aqua St. No. 1 Supp., Appendix A.

municipal system. The more likely *outcome* is indeterminate; it will be found somewhere between possible extremes.⁶⁹

What that rate impact is, will be determined in a future rate proceeding, and is substantially within the Commission's discretion.

It is also important to place this potential rate increase into perspective. Currently, the City's average bill is **\$33.38 per month**. This is substantially lower than tariffed rates for major wastewater utilities in Pennsylvania.⁷⁰ In applying the estimated increase on a stand alone basis to the City's existing average bill, results in an **average monthly bill of \$88.65**. This average bill is less than major wastewater providers regulated by the Commission. Moreover, rate increases under continued City ownership would be inevitable.⁷¹

OCA offers inappropriate comparisons in an effort to contend that the adverse rate impacts outweigh the other substantial public benefits from this transaction. For example, OCA Witness DeMarco points to the negotiated purchase price in comparison to net book value of the assets to be acquired to claim a "rate harm" of 820%.⁷² Aqua Witness Packer debunked this attempted comparison, stating:

[Mr. DeMarco's] comparison of the sale of a public sewer utility to a car sale is completely off base. Here, we are talking about long lived assets, most at the time of acquisition are often 50, 75, 100, or greater years old. A more relevant comparison of purchase price, economic value, and market value would be in real estate. One would understand that the value of real estate in 2025 is vastly greater than the same real estate in say 1930 or 1950. This is simply an attempt to get "820%" into the record to achieve a "shock and awe" effect that in reality, is not credible.⁷³

OCA's focus on rate impacts also ignores the significant financial benefits to the City and its

⁶⁹ See *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order, at p. 32 (Order entered Feb. 28, 2019) (emphasis in original).

⁷⁰ Aqua St. No. 1-R, p. 5.

⁷¹ Aqua St. No. 4, p. 10; Aqua St. No. 8-R, p. 3.

⁷² OCA St. No. 1, p. 25.

⁷³ Aqua St. No. 1-R, p. 10.

customers resulting from the proceeds of the sale, which as explained previously produce a net annual public benefit of \$362,037. OCA does not challenge that net financial benefit.⁷⁴

Rate impacts are just one part of a net benefits analysis, and have never been recognized by the Commission as a superseding factor over all other benefits. In *McCloskey*, the Commonwealth Court confirmed that rate impacts are not dispositive in a net benefits analysis.⁷⁵ The Commission has approved multiple 1329 transactions for Aqua, even though the differences in costs incurred by investor-owned utilities vs. municipal systems were present in every acquisition previously completed, even when investor-owned utilities were limited to depreciated original cost.⁷⁶ In this case, Aqua has demonstrated that the rate impacts are offset by financial benefits to the City, as well as by substantial operational and investment benefits that are needed to upgrade and operate a currently-troubled system.

5. The Reasonableness Review Ratio Is Not a Basis to Reject The Transaction

OCA and OSBA both reference the Reasonableness Review Ratio (“RRR”) that was adopted by the Commission as part of its 2024 Final Supplemental Implementation Order (“2024 FSIO”) to set further Section 1329 guidelines and processes.⁷⁷ OCA acknowledges that the RRR “may not be a binding standard,”⁷⁸ but offers a calculation of the RRR of \$8,454,113 as part of its opposition to the acquisition.⁷⁹ OSBA goes further, relying solely upon the RRR as its basis to oppose the acquisition as not being “reasonable.”⁸⁰ The RRR should not be applied in this proceeding to deny the acquisition.

⁷⁴ OCA St. No. 1, p. 27.

⁷⁵ *McCloskey*, 195 A. 3d at 1067.

⁷⁶ Aqua St. No. 1-R, p. 5.

⁷⁷ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order, at p. 32 (Order entered July 2, 2024).

⁷⁸ OCA St. No. 1, p. 20.

⁷⁹ Mr. DeMarco updated his calculation of the RRR to \$10,797,806 in his surrebuttal. OCA St. No. 1SR, p. 8.

⁸⁰ OSBA St. No. 1, pp. 1-2.

The Application was filed February 17, 2023. As such, the 2024 FSIO, and the RRR set forth therein, should not apply. The Commission specifically acknowledged that the provisions of the 2024 FISO were not intended to be retroactive and for those applications where an APA was executed or for where the application has already been filed, the Commission would take into account the dates on which the APAs were executed and applications filed.⁸¹ The Commission further noted that “in considering the RRR in a particular proceeding, we will look at the RRR that was in place at the time the selling utility and acquiring utility executed an APA. If no RRR was in place at that time, we will give due consideration to that fact.”⁸² Obviously, no RRR was in place at the time Aqua and the City executed the APA.

Furthermore, the Commission was clear in the 2024 FSIO that the RRR is not determinative of whether an acquisition is in the public interest:

Regarding the nature of the RRR, we clarify, as PAWC suggests, that the RRR is not intended to redefine the FMV under Section 1329. Additionally, as Aqua suggests, we clarify that the RRR does not impact purchase price. Also, we agree with the OCA that the RRR is not a test of presumptive reasonableness or a determination that an acquisition is in the public interest, but rather one factor among many. Lastly, we agree with the OSBA that the RRR should not be presumed to be the floor for acquisition cost, but rather a benchmark for evaluating it. In sum, it should be understood that the RRR does not replace the Commission’s current analysis in Section 1329 proceedings.

Likewise, the RRR is not binding, but is an additional factor and point of reference that the Commission may consider in Section 1329 proceedings. We reiterate that the 2024 FSIO should not be construed to create binding norms.⁸³

The RRR should not be applied in these proceedings.

6. Conclusion

For the foregoing reasons, Aqua’s acquisition of the System will result in substantial,

⁸¹ 2024 FSIO, p. 114.

⁸² *Id.*

⁸³ 2024 FSIO, p. 106.

affirmative public benefits. For the City and its residents, Aqua's acquisition of the System will provide a desperately needed infusion of funds, which can be used to pay of the City's existing debts and allow the City to invest in vital community resources and programs. For the residents of the City, the acquisition will provide them with a financially sound, highly experienced wastewater service provider that will address short-, mid-, and long-term needs of the System. For Aqua's existing customers, economies of scale will result in reduced revenue requirement per customer served. And, for the public generally, the acquisition will allow Aqua to make substantial improvements to the System, in particular the WWTP, that will decrease risks to the public and will further the Commonwealth's interest in regionalization of wastewater systems. Aqua has met its burden to show not only that there are net affirmative benefits that will result from this transaction, but that this transaction "affirmatively promotes the service, accommodation, convenience [and] safety of the public in [a] substantial way." *City of York*, 295 A.2d at 828.

B. SECTION 1329

1. Legal Standards

Section 1329 of the Code addresses the ratemaking rate base valuation of the assets of municipally owned wastewater systems that are acquired by investor-owned water and wastewater utilities. The valuation is the lesser of the fair market value, as defined by the average of two independently conducted appraisals, or the negotiated purchase price.

If the parties elect to use the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of pre-qualified experts maintained by the Commission. The two UVE's separately prepare FMV appraisals of the system being sold.

With respect to Aqua's acquisition of the System, the negotiated purchase price is

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\$41,250,000.⁸⁴ The average of the two FMV appraisals is \$42,245,674.⁸⁵ Therefore, in accordance with Section 1329, the ratemaking rate base is \$41,250,000, being the lesser of the two amounts.

2. Aqua’s Application

As explained previously, Aqua and the City negotiated a purchase price of \$41,250,000 for the System. The price was the result of voluntary arm’s length negotiations.⁸⁶ Aqua and the City are not affiliated with each other.⁸⁷ They agreed to use the Section 1329 process to determine the FMV of the System and the ratemaking rate base.

Aqua selected Mr. Dylan W. D’Ascendis of ScottMadden to provide one of the FMV appraisals (i.e., **Exhibit Q**). The City selected Mr. Harold Walker, III of Gannett Fleming to provide the second FMV appraisal (i.e., **Exhibit R**).⁸⁸

The results of the ScottMadden analyses and calculations are as follows:⁸⁹

Valuation Approach	Indicated Value	Weight	Weighted Value
Cost	\$11,446,928	10%	\$1,144,693
Market	\$46,817,319	45%	\$21,067,793
Income	\$39,970,803	45%	\$17,986,861
Conclusion		100%	\$40,199,347

The results of the Gannett Fleming analyses and calculations are as follows:⁹⁰

Valuation Approach	Indicated Value	Weight	Weighted Value
Cost	\$32,994,154	25%	\$8,248,539
Market	\$50,664,671	37.5%	\$18,999,252
Income	\$45,450,675	37.5%	\$17,044,003
Conclusion		100%	\$44,292,000

⁸⁴ Aqua Exhibit 2, Amended Application, ¶ 21.

⁸⁵ Aqua Exhibit 2, Amended Application, ¶ 56.

⁸⁶ Aqua Exhibit 2, Amended Application, ¶ 22.

⁸⁷ Aqua Exhibit 2, Amended Application, ¶ 22.

⁸⁸ Aqua St. No. 5, pp. 4-5; Aqua St. No. 6, pp. 4-6. In accordance with Section 1329, both UVEs performed separate appraisals in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), employing the cost, market and income approaches. Both firms were selected from the Commission’s list of qualified appraisers. Both firms have extensive experience with the valuation and appraisal of utility assets.

⁸⁹ Aqua St. No. 5, p. 13.

⁹⁰ Aqua St. No. 6, p. 13.

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In accordance with Section 1329(a)(4), an Engineer’s Assessment of the System’s assets was prepared by Gannett Fleming. The report included an inventory of assets and a determination of original cost of installation as of 2021.⁹¹ Where records of original cost were available, the Engineer’s Assessment provided that information. However, in many instances, and particularly with respect to pre-1996 installations, original cost records were not available.⁹² In those instances, a Replacement Value Today was calculated by Gannett Fleming, which was then trended back to the year of installation to derive an estimated original cost.⁹³

ScottMadden Appraisal

ScottMadden used a trended original cost method to determine reproduction cost new, less depreciation (“RCNLD”) to determine indicated value of the System under the cost method.⁹⁴ The result is an indicated value of \$11,446,928.

ScottMadden employed two approaches to derive its market value result.⁹⁵ The first, market value of invested capital to net plant approach, applies a market value of invested capital to net plant ratio of a comparable risk group to the original cost less depreciation (“OCLD”) of the subject company to derive an indicated market value.⁹⁶ The range of ratios derived by ScottMadden indicated a value range from \$6,866,665 to \$12,479,523, with an average of \$9,496,121.⁹⁷ The second market value approach used by ScottMadden is the comparable sales method. This approach looked at all transactions involving companies that acquired 100% of a

⁹¹ Exhibit D, p. 3, Appendix A.

⁹² Exhibit D, Appendix A.

⁹³ Exhibit D, p. 7.

⁹⁴ ScottMadden began with the original cost of the assets provided by the Engineer’s Assessment. The Handy-Whitman Index was applied to that data as appropriate to determine current reproduction value. ScottMadden then derived a depreciation reserve for each asset, by determining the useful life for each asset, and depreciating the asset each year until the asset was either fully depreciated or through 2021. Aqua St. No. 5, p. 15.

⁹⁵ The market value method considers comparable transactions of similar utilities in the same general timeframe and other market-based data to establish an FMV. Exhibit Q, p. 2.

⁹⁶ Aqua St. No. 5, p. 17. The comparable risk group includes seven water utilities. Exhibit Q, p. 373.

⁹⁷ Aqua St. No. 5, p. 17.

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water or sewer interest since 2016. ScottMadden examined the transaction value per equivalent dwelling unit (“EDU”) to derive ratios of transaction price per EDU. The nationwide average purchase price to EDU was approximately 4.22x, while the Pennsylvania ratio is 6.63x.⁹⁸ Applying these ratios to the 9,392 EDUs served by the System produced a range of values from \$39,667,839 to \$62,260,398, resulting in an average of \$50,964,118.⁹⁹ ScottMadden applied a 90% weighting to the average comparable sales approach result and 10% to the market value of invested capital to net plant approach result to derive its market value method result of \$46,817,319.¹⁰⁰

ScottMadden’s third method to derive its appraisal is the income method.¹⁰¹ To determine future cash flows, ScottMadden applied yearly increases of 10% through 2027, in recognition of the need to recover increased rates to cover the needed capital outlays identified by Aqua.¹⁰² Thereafter, ScottMadden applied 3% rate increases for City and Contributing Municipalities’ customers, consistent with the current municipal ordinance.¹⁰³ City expenses were projected to increase at the long-term Consumer Price Index (“CPI”) projection of 2.25% per year.¹⁰⁴ ScottMadden’s model reflected cash flows over 29 years (2022-2050).¹⁰⁵

The resulting net cash flows were then discounted at the investor-required rate of return on the System assets. The discount rate relates to the traditional method of financing for publicly traded water companies, using a 50%/50% mix of debt and equity capital. ScottMadden used three

⁹⁸ Aqua St. No. 5, p. 18 (Multiple is in Thousands).

⁹⁹ Aqua St. No. 5, p. 18.

¹⁰⁰ Aqua St. No. 5, p. 18. ScottMadden applied substantially greater weight to the comparable sales approach because of the unique situation of the System. Specifically, the invested capital to net plant understates the value of the System because it understates expected cash flows of the System, given that roughly half of the revenue comes from the Contributing Municipalities, which are not served by the System.

¹⁰¹ The income method discounts future cash flows of a company to a present value. Exhibit Q, p. 3.

¹⁰² The Aqua capital improvements were used because the City does not have a capital improvement plan. Only projects that addressed safety, compliance and equipment failure were included. Aqua St. No. 5, p. 20.

¹⁰³ Aqua St. No. 5, p. 19.

¹⁰⁴ Aqua St. No. 5, p. 19.

¹⁰⁵ Aqua St. No. 5, p. 22.

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common methods to derive the common equity cost rate: Discounted Cash Flow (“DCF”), Risk Premium (“RPM”) and Capital Asset Pricing Models (“CAPM”). Based upon the results of these models, ScottMadden derived a common equity cost rate of 10.19%.¹⁰⁶ For the debt cost rate, ScottMadden used a 30-day average A2 public utility bond rate of 3.04%.¹⁰⁷ The resulting Weighted Average Cost of Capital (“WACC”) is 6.62%, as shown below:

<u>Type of Capital</u>	<u>Cost Rate</u>	<u>Ratio</u>	<u>Weighted Cost</u>
Long-Term Debt	3.04%	50%	1.52%
Common Equity	10.19%	50%	5.10%
Conclusion		100%	6.62% ¹⁰⁸

The resulting FMV using the income approach is \$39,970,803.¹⁰⁹

ScottMadden applied a 10% weight to the results of its cost method, and 45% each to the results of its market and income approaches. Lesser weighting was applied to the cost approach because it fails to reflect the substantial revenues from the Contributing Municipalities, which contribute over 50% of historical and expected revenues.¹¹⁰

Gannett Fleming Appraisal

Gannett Fleming’s cost approach used the original cost method to calculate the Trended Original Cost (“TOC”) method. The original cost method determined original cost of assets based on the information provided in the Engineer’s Assessment, net of calculated accrued depreciation to develop Original Cost New Less Depreciation (“OCNLD”) of \$7.9 Million.¹¹¹ Gannett Fleming then trended the OCN asset values to derive Replacement Cost New, and calculated accrued depreciation to determine RCNLD of \$32,994,154.¹¹² Gannett Fleming concluded that the

¹⁰⁶ Aqua St. No. 5, p. 21; Exhibit Q, Appendix H.

¹⁰⁷ Aqua St. No. 5, p. 21.

¹⁰⁸ Aqua St. No. 5, p. 21.

¹⁰⁹ Aqua St. No. 5, p. 22.

¹¹⁰ Aqua St. No. 5, p. 12.

¹¹¹ Exhibit R, p. 31.

¹¹² Exhibit R, p. 36.

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OCNLD result was substantially understated, based upon a comparison to benchmark metrics derived from a Comparable Group of eight water/wastewater utilities.¹¹³ Therefore, Gannett Fleming relied upon the RCNLD of \$32,994,154 to form the basis for its Cost result.

Gannett Fleming employed two approaches to derive its Market Value result. The first is the Market Multiples Method. This method uses the Comparable Group's Enterprise Value¹¹⁴ on December 31, 2021 and calculated a variety of Market Multiples.¹¹⁵ The Comparable Group's Market Multiples were applied to corresponding financial and operating statistics of the System.¹¹⁶ Application of the Market Multiples developed a range of value for the System from \$18.8 million to \$46.2 million.¹¹⁷ Gannett Fleming then weighted the various Market Multiples.¹¹⁸ As a result, Gannett Fleming determined the FMV using the Market Multiples Method to be \$39.3 million for the City's domestic customers.¹¹⁹

The second Market Value approach used by Gannett Fleming is the Selected Transactions Method. This approach looked at approximately 20 transactions in Pennsylvania involving companies that acquired water or sewer interests since 2016.¹²⁰ Gannett Fleming derived market multiples from the selected transactions. Similar to the Market Multiples Method, Gannett

¹¹³ Exhibit R, pp. 36-37.

¹¹⁴ Enterprise Value is the market value of common equity plus minority interest, preferred stock and total debt net of cash and cash equivalents. Exhibit R, p. 46.

¹¹⁵ The Market Multiples included revenue ("Revenue"); Earnings Before Interest, Taxes, depreciation and amortization ("EBITDA"); Earnings Before Interest and Taxes ("EBIT"); gross property plant and equipment ("GPPE"); net property plant and equipment ("NPPE"); investor provided capital ("ICAP"); utility customers ("Customers"); and population of the area served ("Population"). Exhibit R, p. 47.

¹¹⁶ Exhibit R, p. 47. Because the System is riskier than the Comparable Group, due to size and other differences, certain Market Multiples were adjusted. Exhibit R, pp. 47-48.

¹¹⁷ Exhibit R, p. 49.

¹¹⁸ Gannett Fleming gave no weight to the Income Statement items (Revenues, EBITA and EBIT) because the revenues of municipal systems differ substantially from revenues of investor-owned utilities, in substantial part due to income taxes. Exhibit R, p. 49. Gannett Fleming also gave Capital Items (GPPE, NPPE and ICAP) only 25% weighting because of concerns with the OCNLD results, while giving the Demographic Items (Customers and Population) 75% weighting. Exhibit R, p. 49.

¹¹⁹ Exhibit R, p. 170. The domestic customers are those served directly by the City. This excludes service to the Contributing Municipalities, who serve 3,767 customers. Exhibit R, p. 13.

¹²⁰ Aqua St. No. 6, pp. 26-28.

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Fleming weighted the various market multiples.¹²¹ The result of the Selected Transactions Method was a value of \$33.3 million for the City's domestic customers.¹²²

The average of the Market Multiples Method and the Selected Transactions Method is \$36.4 million. To this amount was added \$14.4 million, to reflect the market value of the System's treatment service to wholesale customers, producing a Market Value result of \$50.7 million.¹²³

Gannett Fleming's third method to derive its appraisal is the Income Method.¹²⁴ Gannett Fleming's Income Method has been consistently used in 19 prior Section 1329 proceedings and has never been adjusted by the Commission.¹²⁵ Gannett Fleming used two different approaches to derive its Income Method result: the Market Multiple DCF and the Capitalization DCF. For both approaches, Gannett Fleming prepared separate computations for large regional municipality buyers ("MUNI") and investor-owned utility ("IOU") buyers. To determine future cash flows, Gannett Fleming began with an estimate of the Debt Free Net Cash Flow over the next five to twenty years along with a terminal value.¹²⁶

The resulting net cash flows were then discounted. For the MUNI computation, the discount rate used is the current municipal revenue bond yield of 2.85%.¹²⁷ For the IOU computation, the discount rate is the weighted average cost of capital, which ranges from 6.59% to 8.5%.¹²⁸ The weighted average cost of capital is based on the Comparable Group's market

¹²¹ Exhibit R, p. 53.

¹²² Exhibit R, p. 53.

¹²³ Exhibit R, pp. 55-56.

¹²⁴ Aqua St. No. 6-R, p. 11.

¹²⁵ Aqua St. No. 6-R, p. 11.

¹²⁶ In each year, the Debt Free Net Cash Flow is comprised of projected EBIT, minus income taxes, plus projected depreciation and amortization, plus or minus projected changes in net cash working capital, less projected capital expenditures. Beyond the terminal year, Gannett Fleming assumes a growth rate of 0.1%. A growth rate of 0.1% was used based on the projected growth in population (0.3%), projected inflation (3.0%) and the actual growth in the Debt Free Net Cash Flow in the years prior to the terminal value year. Aqua St. No. 6, pp. 22-23.

¹²⁷ In general, a MUNI has limited equity on its books, and any equity is already invested in other assets and cannot be used to finance an acquisition. Aqua St. No. 6, p. 21.

¹²⁸ Aqua St. No. 6, p. 21.

value capital structure of 22.7% debt and 77.3% equity, a market cost of debt of 3.08% and a range of market cost of equity of 7.87% to 10.35%.¹²⁹

The average of the Capitalization DCF and the Market Multiple DCF based on the MUNI ownership scenario indicates a value of \$49.6 million and the average of the Capitalization DCF and Market Multiple DCF based on the IOU ownership scenario indicates a value of \$41.3 million. Collectively, the DCF method prepared by Gannett Fleming indicates a value of \$45.5 million (\$45,450,675 rounded) based on the Income Method.¹³⁰

Gannett Fleming applied a 25% weight to its Cost result, and 37.5% each to its Market and Income results. Lesser weighting was applied to the Cost result because it fails to reflect the substantial value from the Contributing Municipalities.¹³¹

3. OCA's And OSBA's Challenges To The UVE Appraisals Do Not Support A Reduction To The Proposed Ratemaking Rate Base Of The System

I&E does not oppose the ratemaking rate base of \$41,250,000, that is based upon the lesser of the negotiated purchase price and the average of the appraisal results of the two UVEs.¹³² OCA submitted the testimony of Mr. David Garrett in opposition to the two appraisals and to the ratemaking rate base. Mr. Garrett proposed adjustments to the Cost, Market and Income valuations prepared by the two UVEs, producing a FMV valuation of \$19,628,354.¹³³ It is to be noted that OCA Witness Garrett has never performed a FMV appraisal of other wastewater system assets, never valued utility property, and never inspected or reviewed a wastewater system.¹³⁴ This alone calls into question the validity of his proposed adjustments to the UVEs' valuations. OSBA

¹²⁹ Aqua St. No. 6, p. 21.

¹³⁰ Exhibit R, p. 46.

¹³¹ Aqua St. No. 6, p. 29; Exhibit R, pp. 36-38.

¹³² I&E St. No. 2, p. 5.

¹³³ OCA St. No. 2, p. 5.

¹³⁴ Aqua St. No. 6-R, pp. 2-3.

Witness Ms. Rebecca Forbes presented no testimony or analysis at all regarding FMV computed in compliance with Section 1329. Instead, she proposes that, if the Commission were to approve the acquisition, the ratemaking rate base should not exceed \$8,454,113, calculated using the RRR.¹³⁵ These parties' proposed adjustments are contrary to Section 1329 and should be rejected.

4. OCA's Proposed Adjustment To Gannett Fleming's Cost Approach Should be Rejected

OCA does not propose any adjustments to the ScottMadden cost result using RCNLD.¹³⁶ OCA concludes that ScottMadden's cost approach result falls within the range of Gannett Fleming's cost approach calculations and arbitrarily reduces the Gannett Fleming cost approach valuation downward by \$21.5 million, to match the ScottMadden valuation.¹³⁷

OCA's proposal to simply reject one UVE's cost approach and adopt the other UVE's cost approach is contrary to Section 1329 and is sufficient basis to reject OCA's proposed adjustment to Gannett Fleming's cost valuation. Section 1329 directs that two UVE appraisals be used to establish FMV. As Aqua Witness Mr. Walker explained, it is not unusual that two appraisers will derive different values:

I do not think the underlying results of the models employed for valuation purposes are ever the same from one appraiser to another appraiser. Further, the conclusion of value from one appraiser to another appraiser usually differs as well. I believe these are some of the reasons the results of the conclusion of value from two different UVEs are averaged under Section 1329, 66 Pa.C.S. § 1329.¹³⁸

For example, one difference between the approaches is that Gannett Fleming uses the survivor curve method to determine accrued depreciation, rather than an age/life ratio method. The age/life ratio method shortens the remaining service lives of assets, thereby reducing valuation under the

¹³⁵ OSBA St. No. 1, p. 9.

¹³⁶ OCA St. No. 2, p. 19.

¹³⁷ OCA St. No. 2, p. 19.

¹³⁸ Aqua St. No. 6, p. 30.

cost method.¹³⁹

OCA's arbitrary adjustment of the Gannett Fleming cost result to equal the ScottMadden result also fails to recognize that ScottMadden expressed concerns that its cost approach significantly understated the FMV of the System because the City derives half of its revenues from wholesale customers, whose assets are not owned by the City.¹⁴⁰ This further demonstrates the unfairness of OCA's unsupported adjustment to the Gannett Fleming Cost result.

OCA's proposed adjustment to Gannett Fleming's Cost Approach result should be rejected.

5. OCA's Proposed Adjustments To The UVEs' Market Approach Results Are Improper

OCA proposes a \$22.7 million adjustment to ScottMadden's Market result.¹⁴¹ OCA proposes a \$26,581,148 adjustment to the Gannett Fleming Market result.¹⁴² The result is identical adjusted values of \$24,083,523 for both the ScottMadden and Gannett Fleming Market results.

It is important to note initially that the \$24.1 million indicated Market valuation from OCA is based exclusively on the use of a Selected Transactions calculation that is a revised version of Gannett Fleming's Selected Transactions Method.¹⁴³ OCA rejected the results derived from Gannett Fleming's Market Multiples Method.¹⁴⁴ Furthermore, OCA Witness Garrett made no specific adjustments to either of ScottMadden's Market Methods. Instead, OCA summarily rejects the ScottMadden approaches as "inferior."¹⁴⁵

OCA made various erroneous adjustments to derive its Selected Transactions result. Most critically, in applying his ratios in the Selected Transactions approach, OCA Witness Garrett failed

¹³⁹ Aqua St. No. 6-R, pp. 4-7.

¹⁴⁰ Aqua St. No. 6-R, p. 8; Exhibit Q, p. 1.

¹⁴¹ OCA St. No. 2, p. 5.

¹⁴² OCA St. No. 2, p. 4.

¹⁴³ OCA St. No. 2, pp. 8-10.

¹⁴⁴ OCA St. No. 2, p. 16.

¹⁴⁵ OCA St. No. 2, pp. 16-17.

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to account for the value of the System's seven wholesale customers that represent approximately 3,760 EDUs. Instead, OCA only included the 3,259 domestic customers of the City in its calculation.¹⁴⁶ OCA offered no support for excluding the value of over half of the EDUs served by the System in applying the Selected Transactions ratios.

Another error concerns the transactions selected by OCA. Gannett Fleming relied primarily on integrated systems (excluding wholesale) transactions, because the System is an integrated system.¹⁴⁷ In contrast, OCA used an average of the collection/distribution assets selected transactions, the integrated systems (excluding wholesale) transactions and the integrated systems with wholesale transactions.¹⁴⁸ This selection gives greater weight to transactions involving systems that do not provide wastewater treatment, and thus are not comparable to the System.¹⁴⁹

A third error in OCA's Selected Transactions approach is that it only used ex-ante data, taken from Gannett Fleming's appraisal, whereas Gannett Fleming used both ex-ante data and ex-post data. The reliance on ex-ante data is flawed in this case as ex-ante data only exists for 50% of the transactions used by OCA.¹⁵⁰

Yet another error in OCA's Selected Transactions calculation is its weighting given to Capital Items and Demographic Items. As explained by Aqua Witness Walker:

Although averages are typically not used in appraisals, the real defect in Mr. Garrett's approach is what Mr. Garrett averaged, and what his average represents. Even though Mr. Garrett claims that he gave equal weight to Capital Items and Demographics Items, his "average" is the result of giving 60% weight to Capital Items and 40% weight to Demographics Items based on his approach. Further, since Mr. Garrett's Capital Items only includes 30 observations and his Demographics Items includes 40 observations, his "average" is the byproduct of 2% weight given to each Capital Item observation and only 1% weight given

¹⁴⁶ Aqua St. No. 6-R, p. 19; Aqua St. No. 6-RJ, p. 4.

¹⁴⁷ Exhibit, R, p. 173; Aqua St. No. 6-RJ, p. 4.

¹⁴⁸ Aqua St. No. 6-R, p. 18.

¹⁴⁹ Aqua St. No. 6-RJ, p. 4. The American Society of Appraisers has explained that an "objective search for transactions of interests in companies similar to the company being valued is required to establish the credibility of the valuation analysis." Aqua St. No. 6-R, p. 26.

¹⁵⁰ Aqua St. No. 6-R, pp. 18-19.

to each Demographics Item observation. Accordingly, Mr. Garrett's "average" does not represent "equal weighting," but rather is heavily skewed with a preponderance of weight given Capital Items (i.e., a 2-to-1 distortion).¹⁵¹

For all of these reasons, OCA's adjustments to Gannett Fleming's Selected Transactions approach are without merit and should be rejected.

OCA criticized the greater weighting (75%) applied by Gannett Fleming to Demographic Items versus Capital Items in its Market Multiples Method. OCA argues that this weighting is inappropriate because when investors attempt to value assets and stocks, they consider financial metrics and not demographics.¹⁵² However, Gannett Fleming identified the following number of concerns with the results derived from application of the Capital Items ratios to the System:

- plant accounts with 84-year old assets which reflect little to no retirements;
- measures of the Wastewater System's OCN, OCNLD, RCN and RCNLD on a per customer basis being below norm; and
- Asset Items not accounting for the intangible value of ultimate wholesale customers because the Asset Items have the same value regardless of whether or not treatment service is provided to the 3,760 ultimate wholesale customers.¹⁵³

OCA's criticisms of Gannett Fleming's Market Multiples Method are without merit, and OCA's rejection of the use of that method should be disregarded.

As explained previously, OCA disregarded ScottMadden's Market result. OCA first criticizes ScottMadden's result because one of its market valuations, which applied the Pennsylvania transaction average purchase price per EDU ratio to the 9,392 EDUs served by the System, produced a value of \$62.3 million. OCA offers no justification for rejecting the use of Pennsylvania transactions in a comparable sales approach, other than it is higher than other results.¹⁵⁴ Moreover, OCA fails to recognize that this was only one of several approaches used by

¹⁵¹ Aqua St. No. 6-RJ, p. 4.

¹⁵² OCA St. No. 2, p. 15. It is noted that Gannett Fleming's appraisal did provide alternative Market results if equal weighting was given to Asset Items and Demographic Items. Aqua St. No. 6-R, p. 24.

¹⁵³ Exhibit R, pp. 11-12, 36-38, 49, 57.

¹⁵⁴ OCA St. No. 2, p. 16.

ScottMadden to derive a Market result.¹⁵⁵

OCA also criticizes ScottMadden's Market valuation because ScottMadden did not use financial metric ratios in developing its valuation. OCA argued that price per connection is a "inferior" approach to financial metrics.¹⁵⁶ OCA's criticism is without merit. Price per connection is a valid approach when performing a comparable transaction analysis because it is a standardized metric that is available for all transactions reviewed.¹⁵⁷ Conversely, only about half of the selected transactions used by OCA and shown on Figure 7 of OCA's direct testimony had capital statistics.¹⁵⁸ Further, the use of number of customers is an accepted multiple in valuing acquired systems.¹⁵⁹ Finally, OCA's position to use metrics such as property, plant and equipment ("PP&E") in the Market valuation fails to recognize that the City derives half of its revenues from wholesale customers, whose assets are not owned by the City.¹⁶⁰ OCA's opposition to ScottMadden's Market valuation is without merit.

6. OCA's Criticisms of the UVEs' Income Approaches Are Without Merit

OCA proposes a \$16.6 million adjustment to ScottMadden's Income result.¹⁶¹ OCA proposes a \$22.1 million adjustment to the Gannett Fleming Income result.¹⁶² The adjustments result in adjusted values of \$23,354,612 for both UVEs' Income results.

OCA Witness Garrett prepared his own Income valuation, developing his own estimation of free cash flow from operations and his own discount rate. OCA derived its free cash flow from operations by using the average amount of operating revenues, EBIT, depreciation, and capital

¹⁵⁵ Aqua St. No. 5, pp. 17-18.

¹⁵⁶ OCA St. No. 2, p. 17.

¹⁵⁷ Aqua St. No. 5-R, pp. 2-4.

¹⁵⁸ OCA St. No. 2, p. 10; Aqua St. No. 5-R, p. 4.

¹⁵⁹ Aqua St. No. 5-R, p. 5.

¹⁶⁰ Aqua St. No. 6-R, p. 8; Exhibit Q, p. 1.

¹⁶¹ OCA St. No. 2, p. 5.

¹⁶² OCA St. No. 2, p. 4.

expenditures for year 2021.¹⁶³ OCA then grew this amount by a constant growth rate of 3.8%, which OCA claimed is projected long-term GDP growth.¹⁶⁴ OCA then applied a discount rate of 5.48% to derive its Income result of \$23.35 million.¹⁶⁵

OCA's capitalization of earnings method to derive projected cash flows is flawed and has been previously rejected by the Commission. The capitalization of earnings method used by OCA used cash flow capability for a single year, reflecting current ownership and operations. This does not reflect the future benefits of a buyer's ownership.¹⁶⁶ This current cash flow does not include income taxes or a fair return on investment. This is compounded by the fact that Mr. Garrett subtracted income taxes, under an assumption of future ownership by a tax-paying entity. The depreciation accrual reflected in the OCA's capitalization of earning method does not reflect the current value of assets, and thus is improper.¹⁶⁷ Additionally, the use of a single growth rate assumes the benefit stream is linear. This is an incorrect assumption in regard to the System, due to varying capital expenditures in coming years.¹⁶⁸

The Commission previously has rejected Mr. Garrett's capitalization of earning method to determine cash flows. In *Application of Aqua Pennsylvania Wastewater, Inc. – East Whiteland Township*, Docket No. A-2021-3026132 (Opinion and Order entered July 29, 2022) ("*East Whiteland*"), the Commission concluded:

We must agree with Aqua that the OCA did not establish that its proposed adjustments to the Gannett Fleming and AUS Income Approach results, based on Mr. Garrett's use of a single year cash flow utilizing an average of the Township's 2018 through 2020 financials, are appropriate in this proceeding. We agree with Aqua's reasoning that the OCA's formulation of the income from operations and the resultant value erroneously assumes that revenues and

¹⁶³ OCA St. No. 2, pp. 21, 38. The Year 2021 is referred to as Year 0 in Gannett Fleming's Income Approach model.

¹⁶⁴ OCA St. No. 2, p. 38.

¹⁶⁵ OCA St. No. 2, p. 23.

¹⁶⁶ The EBIT amount derived by OCA is equivalent to about a 1.5% return based upon Gannett Fleming's FMV and is thus clearly below a reasonable return on utility assets. Aqua St. No. 5-R, p. 12.

¹⁶⁷ Aqua St. No. 6-R, p. 12.

¹⁶⁸ Aqua St. No. 5-R, p. 7; Aqua St. No. 6-R, pp. 10-11.

expenses as reported in EWT's financials will be the operating results of the buyer. As the ownership and operation migrates to the buyer, Aqua in this case, several changes will occur; namely there will be a new rate base determined by the Commission based on their findings in this Application and the buyer, Aqua, will be allowed to earn a Commission authorized return on rate base. Operating expense, including taxes, will be incorporated along with the allowed return on rate base in determining the ongoing EWT revenue requirement. Mr. Garrett's model does not factor in these changes to the Township's operations as a rate-regulated wastewater utility.

East Whiteland, p. 71.

In addition to the flaws in OCA's calculation of future earnings, OCA's discount rate is flawed and should not be substituted for the discount rates developed by the UVEs. Mr. Walker listed the following flaws in OCA's discount rate methodology, compared to the methodology used by Mr. Walker:

- OCA's discount rate was based on methods used in rate cases before the Commission concerning fair rate of return on original cost rate base, rather than a FMV valuation;
- OCA's discount rate inconsistently applies an investor-owned discount rate, rather than a municipality's discount rate, where the cash flows used by OCA were developed based upon current operations;
- OCA used book capitalization ratios derived from investor-owned utility operations, which is inconsistent when applied to cash flows derived from municipal operations;
- OCA improperly used an embedded cost of debt of 4%, rather than the marginal cost of debt at the valuation date that is accordance with accepted valuation practice for FMV purposes;
- OCA's equity cost rate was not determined at the valuation date of December 31, 2021, but rather over a period from November 26, 2024, to January 10, 2025, which is contrary to the USPAP.¹⁶⁹

Mr. D'Ascendis also commented on OCA's discount rate, observing that ScottMadden's Income result of \$39,970,803 would be increased to \$57,819,567 if Mr. Garrett's discount rate were used.¹⁷⁰ OCA's Income Approach valuation should be rejected.

¹⁶⁹ Aqua St. No. 6-R, pp. 15-17.

¹⁷⁰ Aqua St. No. 5-R, p. 8. If ScottMadden's discount rate were revised to the indicated water utility ROE of 9.75% listed in the Commission's quarterly earnings report issued at the time ScottMadden's valuation report was prepared, the ScottMadden Income Approach result would be increased to \$42,632,858. Aqua St. No. 5-R, p. 8. Lower discount rates produce higher present value results.

7. OCA's Weighting Of Cost, Market And Income Results Should Not be Adopted

As previously explained, both UVEs applied lower weightings to their Cost results than to their Market and Income results. OCA opposes different weighting and supports the use of equal weights in this case. OCA's position should not be adopted.

OCA Witness Mr. Garrett appears to accept that there may be a "good, rational basis for deviating from equal weightings." However, he argues that he did not see "any persuasive arguments" made by the UVEs in support of different weightings. He further asserts that because the lowest weighting was applied to the lowest of the three methods, the unequal weighting appears to be "influenced by bias."¹⁷¹

OCA disregards the substantial reasons offered by both UVEs for giving less weight to their Cost results in this case. Both UVEs explained that a valuation result in this case that is based upon asset value substantially understates the value of the System to a potential buyer because over half of the EDUs served by the System, and as a result half of the revenues that can be derived from the System, are the result of treatment service provided to wholesale customers. Because the City's collection system assets are not used to serve the wholesale customers, giving equal weight to asset value will understate FMV.¹⁷² OCA offered no response to this understatement of value, other than to continue to claim "bias."¹⁷³

OCA's assertion of bias is demonstrably incorrect. In response to OCA's unsupported claims of bias, both UVEs referenced testimony they submitted in other Section 1329 proceedings where unequal weightings were applied to give greater weight to lower valuation results.¹⁷⁴ These

¹⁷¹ OCA St. No. 2, p. 39.

¹⁷² Aqua St. No. 5-R, p. 8; Aqua St. No. 6-R, p. 28.

¹⁷³ OCA St. No. 2SR, p. 4.

¹⁷⁴ In the Borough of Shenandoah Section 1329 proceeding, Mr. Walker gave the least weight to the Cost Approach result, even though that method produced the highest result. Aqua St. No. 6-R, p. 28. In the pending Delaware County

proceedings demonstrate that the UVEs do not have a bias in favor of higher valuation results, but instead reflect the application of informed judgment in determining relative weighting, consistent with their duties as unbiased appraisers.¹⁷⁵

8. OSBA’s Ratemaking Rate Base Proposal Is Contrary To Section 1329

OSBA Witness Forbes did not propose any adjustments to the UVEs’ valuation calculations, nor did she prepare her own valuation calculations using the Cost, Market and Income approaches. Instead, OSBA’s position is that if the Commission approves the acquisition, it should apply the RRR set forth in the 2024 FSIO to set the ratemaking rate base at an amount not to exceed \$8,454,113. She arrives at this amount by applying an RRR of 1.68 to a depreciated original cost rate base of \$5,032,210.¹⁷⁶

OSBA’s position is contrary to law and cannot be adopted. Under Section 1329, if the Commission approves the acquisition, the ratemaking rate base “**shall be**” at the lesser of purchase price or FMV, as determined by an average of the two UVE appraisals.¹⁷⁷ Section 1329 does not contain a cap on purchase price or FMV, and to apply one to limit ratemaking rate base would not be legal. Therefore, OSBA’s proposal to cap the ratemaking rate base must be rejected.

9. Conclusion

The lesser of purchase price and FMV, as determined by the average of the two UVE appraisals, is \$41,250,000. The Commission should approve this amount as the ratemaking rate base, in the context of approving the proposed acquisition of the System under Section 1329.

Regional Water Quality Control Authority proceeding, Mr. D’Ascendis applied a substantially lower weighting to his Market Approach result, even though that produced the highest indicated value. Aqua St. No. 5-RJ, p. 3.

¹⁷⁵ Aqua St. No. 6-R, p. 29.

¹⁷⁶ OSBA St. No. 1, p. 9. Ms. Forbes acknowledges the correct calculation of the RRR at \$10,797,806 in her surrebuttal testimony, but does not change her recommendation of \$8,454,113. OSBA St. No. 1-SR, pp. 2 and 4-5.

¹⁷⁷ See 66 Pa. C.S. § 1329(c)(2). Aqua acknowledges that adjustments may be made to UVE valuations. However, OSBA has not proposed any adjustments to the cost, market or income valuations of the UVEs.

C. RECOMMENDED CONDITIONS TO THE APPROVAL OF THE ACQUISITION AND SETTING OF A RATEMAKING RATE BASE

1. Missing Easements

In Direct Testimony, both OCA and I&E witnesses made several recommendations regarding missing easements associated with transaction. OCA witness DeMarco recommended the following three conditions:

- Closing of the transaction shall not be permitted to occur until Aqua has (1) identified all missing easements including the public rights-of-way and other property rights and (2) taken any and all necessary actions to obtain any missing easements and other property rights so they can be conveyed at closing.
- Aqua shall not be permitted to recover any rates in any costs for obtaining and conveying the missing easements and other property rights.
- Aqua shall not be permitted to include the Beaver Falls assets into its rate base until it acquires all outstanding easements.¹⁷⁸

Likewise, I&E witness Keller recommended that closing not occur until Beaver Falls:

- Identifies all missing easements;
- Takes all necessary steps to obtain the missing easements and convey them to Aqua at closing; and
- Bears all costs for obtaining and conveying the missing easements.¹⁷⁹

In addition, I&E recommends that if Beaver Falls is not able to transfer all missing easements at or before closing, that the Commission condition closing on the establishment of an escrow account to cover the post-closing transfer of the missing easements and property rights.¹⁸⁰

In response to these recommendations, Aqua Witness Packer explained that the APA protects Aqua and its customers from bearing costs associated with missing easements. Section 6.05(c) of the APA provides as follows:

If . . . Seller determines . . . that there is a Missing Easement, Seller (at its cost and expense) shall take all actions (including the use of its power of condemnation) to obtain any Missing Easements so that the same may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms

¹⁷⁸ OCA St. No. 1, p. 39.

¹⁷⁹ I&E St. No. 1, p. 5.

¹⁸⁰ I&E St. No. 1, p. 5.

and conditions of this Agreement. The Seller shall pay for all costs and expenses incurred in connection with obtaining each Missing Easement (including any consideration payable to the landowner in connection with condemnation, in lieu of condemnation or otherwise to obtain Missing Easements).¹⁸¹

Mr. Packer also explained that Section 6.05(e) of the APA includes a provision creating an escrow amount out of the purchase price for costs related to acquiring the missing easements. These conditions address OCA's and I&E's concerns.

Mr. Packer further explained that if maintenance or repair is needed for an asset when there is no easement, Aqua can enter into a temporary construction easement as needed until a permanent easement can be obtained, or can enter a property on an emergency basis as necessary.¹⁸²

Moreover, the Commission has not required closing to be delayed pending the acquisition of all easements.¹⁸³ In the *GSA Order*, the Commission stated as follows:

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.

¹⁸¹ Aqua St. No. 1-R, p. 15.

¹⁸² Aqua St. No. 1-R, p. 14.

¹⁸³ See *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. *Request for Approval of Contracts, including Assignment of Contracts, between Aqua and the GSA, Pursuant to Section 507 of the Public Utility Code*, Docket No. A-2023-3041695, Opinion and Order at p. 81 (Order Entered Dec. 20, 2024) ("*GSA Order*").

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. . .

GSA Order at 81.

OCA’s final recommendation is that Aqua not be permitted to include Beaver Falls assets in rate base until it acquires all outstanding easements.¹⁸⁴ This proposal is extremely overbroad and should be denied. This condition would preclude Aqua from recovering its costs for acquiring the System because the City has not obtained a few or even one missing easement. As noted above, Aqua has multiple provisions in the APA to protect customers from the costs of missing easements. It is unreasonable to deny cost recovery until all missing easements have been obtained.

2. Separate Cost Of Service Study (“COSS”)

Both OCA and I&E made proposals to require Aqua to submit a separate COSS for the System in Aqua’s next base rate proceeding.¹⁸⁵ I&E further proposed that the Contributing Municipalities be included as a separate rate class in the COSS.¹⁸⁶

In rebuttal testimony, Aqua Witness Packer testified that Aqua agreed to submit a separate COSS for the System, in a similar manner to what it submitted for Section 1329 systems in the Company’s 2021 and 2024 base rate proceedings.¹⁸⁷ Mr. Packer also indicated that he saw merit in a separate class for the Contributing Municipalities, but that he would reserve his final opinion as to rate design until the next base rate proceeding.¹⁸⁸

Aqua does not believe that there is any dispute among the parties as to the COSS. In surrebuttal, OCA witness DeMarco stated that Aqua agreed to OCA’s recommendations regarding

¹⁸⁴ OCA St. No. 1, p. 38.

¹⁸⁵ OCA St. No. 1, p. 39; I&E St. No. 2, pp. 10-11.

¹⁸⁶ I&E St. No. 2, pp. 10-11.

¹⁸⁷ Aqua St. No. 1-R, p. 12.

¹⁸⁸ Aqua St. No. 1-R, p. 12.

a separate COSS for the System.¹⁸⁹ In I&E’s surrebuttal, Mr. Cline appeared to misunderstand the Company’s intent with the COSS. Mr. Kline stated that “Because the Company did not explicitly agree to including the Contributing Municipalities as a separate rate class in the Beaver Falls COSS, I continue to recommend the Commission direct the Company to do so for the reasons that I described in my direct testimony.”¹⁹⁰

Mr. Packer clarified his response in his rejoinder testimony, stating as follows:

The Company agrees that the COSS that Aqua will present in the first base rate case that includes the Beaver Falls System would show the Contributing Municipalities as a separate rate class. My response to Mr. Cline in my rebuttal testimony was to indicate that while Aqua will present the Contributing Municipalities as a separate rate class in the COSS, the Company may propose something different than what the COSS indicates.¹⁹¹

For the reasons stated above, the Company believes that this issue has been resolved and that there is no dispute among the parties as to this issue.

3. Long-Term Infrastructure Improvement Plan (“LTIIIP”) And Distribution System Improvement Charge (“DSIC”)

In this proceeding, OCA and I&E also proposed certain conditions related to the Company’s LTIIIP and DSIC. OCA witness DeMarco proposed as follows:

Aqua shall file an amended LTIIIP including the Beaver Falls customers within 90 days of closing. The proposed projects reflected in the amended LTIIIP should be in addition to, and not re-prioritize, and capital improvements that Aqua has already committed to undertake for existing customers. Aqua should not include System-related investments in the DSIC until Aqua collects a DSIC from System customers.¹⁹²

I&E witness Cline proposed as follows:

I recommend that Aqua file its amended LTIIIP including Beaver Falls and apply the DSIC to the acquired Beaver Falls customers within 90 days of

¹⁸⁹ OCA St. No. 1-SR, pp. 1- 2.

¹⁹⁰ I&E St. No. 2-SR, p. 4.

¹⁹¹ Aqua St. No. 1-RJ, p. 4.

¹⁹² OCA St. No. 1, p. 39.

closing.¹⁹³

In response, Aqua Witness Martin explained that the Company is not under any obligation to update its LTIP within a certain time following closing, but agreed to submit an update within 180 days of closing (rather than 90 days as proposed by OCA and I&E). This will allow Aqua sufficient time to integrate the assets into Aqua's overall operations.¹⁹⁴ In addition, Mr. Packer confirmed that the Company will not include incremental investments in Beaver Falls in the DSIC until Beaver Falls customers are subject to the DSIC.¹⁹⁵

The Company's proposal to file an amended LTIP within 180 days is a reasonable compromise of this issue and should be accepted. There is no need to rush the amended LTIP filing, especially because the Company will not include Beaver Falls investments in the DSIC until Beaver Falls customers are subject to the DSIC.

4. Closing Cost Recommendations

OCA witness DeMarco recommended that Aqua separately identify all of its closing costs by category, including any outside legal fees, when it makes a claim for recovery in its next base rate case, and not be permitted to claim any transaction and closing costs incurred by Beaver Falls.¹⁹⁶

Mr. Packer addressed this issue in his rebuttal testimony as follows:

As a matter of normal business and accounting, the Company tracks all closing costs as a result of any acquisition application and those costs will be claimed as rate base in our next rate filing. All of which would be available to review and any opposition in that next rate case. Consistent with claims made following other acquisitions, Aqua would not be seeking recovery of costs incurred by the selling entity.¹⁹⁷

¹⁹³ I&E St. No. 2, p. 10.

¹⁹⁴ Aqua St. No. 3-R, p. 3.

¹⁹⁵ Aqua St. No. 1-R, p. 19.

¹⁹⁶ OCA St. No. 1, p. 38.

¹⁹⁷ Aqua St. No. 1-R, p. 12.

Mr. DeMarco did not further address this issue in his surrebuttal testimony. Aqua believes that Mr. Packer's explanation resolves this issue between the parties.

5. Tracking Capital Improvements As Necessary Improvements And Integration

OCA witness DeMarco requested the following with regard to tracking capital improvements for the System:

- Aqua shall track and quantify the cost of capital improvements into two categories: (1) those necessary capital improvements – defined as bringing the system into: (i) conformity with PUC standards; and (ii) environmental compliance – capital improvements; and (2) the costs associated with integrating the system into Company-wide standards.¹⁹⁸

This request is unnecessary and unreasonable and should be denied. Notably, Mr. DeMarco did not explain why it was necessary to track capital improvements by these categories. In addition, Company witness Bubel explained that there is no discernable benefit or purpose to tracking capital costs and that there is overlap between the two categories of costs. This would make tracking very subjective. Mr. Bubel also explained that the Commission has never previously required this condition.¹⁹⁹ For these reasons, OCA's recommendation regarding tracking capital costs into two separate categories should not be accepted.

6. Customer Assistance And Low-Income Customer Programs

OCA witness DeMarco made the following recommendations related to the Company's customer assistance and low-income programs:

- Aqua shall mail a welcome letter to the acquired customers within 30 days after the closing that provides information about its low-income programs, including a description of the available programs, eligibility and requirements, and Aqua's contact information. Aqua will provide the same information in a bill insert that is sent within the first 90 days after closing.
- Aqua shall make an annual contribution of \$100,000 to the hardship fund annually, for five years following the closing. These contributions should not be recovered in rates

¹⁹⁸ OCA St. No. 1, p. 39.

¹⁹⁹ Aqua St. No. 2-R, pp. 9-10.

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).²⁰⁰

In rebuttal, Company Witness Black agreed with Mr. DeMarco's proposal to provide a letter to acquired customers about Aqua's low-income programs which would include eligibility requirements, a description of benefits and information on how to apply within 30 days after closing. Ms. Black also agreed with his recommendation to include this information within bills to Beaver Falls customers within 90 days of closing.²⁰¹

As to the hardship fund contribution, Ms. Black testified that the Company would agree to funding \$30,000 per year for three years, starting where the year 1 contribution amount would be within 60 days following closing. The Company also agreed that any unused funds from this amount at the end of the program year should be rolled over and added to the budget of the hardship grant program in the following year(s).²⁰²

In surrebuttal, OCA witness DeMarco agreed to Ms. Black's proposals.²⁰³ As a result, there is no longer any dispute as to these issues.

7. Customer Notices Of Rate Impact From Transaction.

OCA made several recommendations regarding customer notice:

- Aqua shall include rate impacts at a usage level range of 5,000 gallons and 10,000 gallons used a month in its customer notices going forward.
- Aqua shall include the monthly or quarterly estimated volumetric charge, as well as the DSIC impact under Aqua ownership in its customer notices moving forward.²⁰⁴

The Company disagreed with Mr. DeMarco's notice recommendations for several reasons. Mr. Packer explained that providing rate impact calculations at different levels is not required by

²⁰⁰ OCA St. No. 1, p. 39.

²⁰¹ Aqua St. No. 9-R, p. 5.

²⁰² Aqua St. No. 9-R, p. 7.

²⁰³ OCA St. No. 1-SR, p. 2.

²⁰⁴ OCA St. No. 1, p. 38, lines 21-22, p. 39.

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

Commission regulations.²⁰⁵ OCA is effectively attempting to re-write Commission regulations that would only apply to Aqua and not to other water or wastewater utilities seeking to acquire municipal systems in the Commonwealth. It is not appropriate to use a single Section 1329 proceeding to establish future notice standards for all proceedings. If OCA believes the notice standards should be changed, it should be presented in a separate rulemaking proceeding, where all potentially affected entities will be provided notice and an opportunity to be heard.²⁰⁶

In addition, the Commission recognizes that rate notices in Section 1329 transactions are estimated and do not have binding impact:

In the Commission's judgment, providing a notice with a complex set of potential rate increase based on a variety of assumptions and scenarios, or even a range of potential outcomes, will not provide any meaningful notice to affected customers. A notice of this sort would be more confusing than informative.²⁰⁷

Further, the Commission did not adopt the OCA's proposal to provide differing consumption levels in the Commission's most recent order on the implementation of Section 1329.²⁰⁸

Mr. DeMarco's recommendation to notify customers in future acquisitions of estimated monthly or quarterly volumetric charges and DSIC impact is also unreasonable and should be denied. As explained by Mr. Packer, Mr. DeMarco is suggesting that Aqua perform a billing analysis and rate design of what a potential future rate increase would be for a subject system without the benefit of all the inputs that are found in a base rate case.²⁰⁹ Therefore, it would be virtually impossible to provide an accurate estimate of these charges which would create significant customer confusion. For these reasons, this recommendation should also not be

²⁰⁵ See 52 Pa. Code § 53.45.

²⁰⁶ Aqua St. No. 1-R, pp. 13-14.

²⁰⁷ See *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order, at p. 32 (Order entered Feb. 28, 2019).

²⁰⁸ 2024 FISO at pp. 39, 58, 67-72.

²⁰⁹ Aqua St. No. 1, p. 14.

adopted by the Commission.

8. Conclusion

As demonstrated above, Aqua has made significant concessions where reasonably possible to adopt many of the recommendations proposed by OCA and I&E in this proceeding. For the others, Aqua has explained why they are not reasonable and should not be adopted.

D. SECTION 507 APPROVALS

The Amended Application asks that the Commission approve, if necessary, the Agreement between Aqua and the City (**Exhibit B**), as well as the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities (i.e., **Exhibits F9-F15**), the charitable contribution agreement between Aqua and the City (**Exhibit F16**), the pro forma meter read agreement between Aqua and the BFMA (**Exhibit F17**), and the Settlement Agreement entered into by Aqua, the City and the Municipal Protestants (**Exhibit F18**).²¹⁰ These contracts are necessary for the operation of the System. No party opposed the issuance of certificates for these contracts. Therefore, these contracts are reasonable, legal and valid, and certificates of filing should issue under 66 Pa. C.S. § 507.

Aqua further notes that the Amended Application includes a Capital Lease Agreement, which was disclosed by the City on April 8, 2014 (**Exhibit F5**). The New Wastewater Service Agreements (**Exhibits F9-F15**) cancel all prior agreements concerning wastewater service between the parties, and, therefore, the Capital Lease Agreement will terminate if it was a valid agreement. Moreover, by its terms, the Capital Lease Agreement expired December 31, 2024. As such, Aqua is not seeking Section 507 approvals with respect to this agreement.

²¹⁰ See Aqua St. No. 1, at pp. 22-24; Aqua St. No. 1 Supp., at p. 4; see also Aqua Exhibit 2, Amended Application, ¶¶ 5, 25, 69-70.

E. OTHER APPROVALS, CERTIFICATES, REGISTRATIONS, AND RELIEF, IF ANY, UNDER THE PUBLIC UTILITY CODE

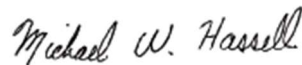
Aqua asks that the Commission acknowledge, in its Opinion and Order, the issuance of all other approvals, certificates, registrations and relief, if any, under the Code as may be appropriate.

VI. CONCLUSION

WHEREFORE, for all the foregoing reasons, Aqua Pennsylvania Wastewater, Inc., respectfully requests that the Administrative Law F. Joseph Brady and the Pennsylvania Public Utility Commission approve the above-captioned Application and:

1. Issue all certificates of public convenience under 66 Pa. C.S. §§ 1102 and 1103 necessary to authorize Aqua to acquire, by purchase, the wastewater system assets of the City of Beaver Falls, and begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory set forth in the Application;
2. Authorize Aqua to file tariff revisions, effective upon one day's notice to include within its service territory all the Requested Territory set forth in the Application, and adopt and apply the rates of the City of Beaver Falls as set forth in Revised Exhibit G to the Application as Aqua's base rates, and apply Aqua's Rules and Regulations as set forth in its tariff within the Requested Territory;
3. Enter an order approving the Application and Aqua's acquisition of the System and, as a part of the Order, include the ratemaking rate base of the wastewater system assets of the City of Beaver Falls as \$41,250,000 pursuant to 66 Pa. C.S. § 1329(c)(2);
4. Approve Contracts, including the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities, the charitable contribution agreement between Aqua and the City, the pro forma meter read agreement between Aqua and BFMA, and the Settlement Agreement entered into by Aqua, the City and the Plaintiff Municipalities pursuant to Section 507 of the Public Utility Code; and
5. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the wastewater system assets of the City of Beaver Falls.

Respectfully submitted,



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Dated: March 18, 2025

*Counsel for Aqua Pennsylvania Wastewater,
Inc.*

APPENDIX A
AQUA PROPOSED FINDINGS OF FACT

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) proposes the following findings of fact:

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

2. Aqua furnishes wastewater service to approximately 60,000 customers. Aqua's existing service territories cover various Counties throughout the state, including wastewater operations in Venango County and water operations under Aqua PA in Lawrence County, both nearby to Beaver Falls.²

3. Aqua is a direct subsidiary of Aqua PA (which had an A rating from Standard and Poor’s Rating Service at the time of filing), Aqua has access to Aqua PA’s financing capabilities, as well as access to equity capital as a subsidiary of Essential Utilities, Inc. (“Essential”).³

4. Beaver Falls is a duly organized and validly existing city under a Home Rule Charter.⁴

5. The City owns the sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 3,197 customers, which includes 2,879 residential, 276 commercial, 7 industrial, 17 public, 7 Contributing Municipalities, and 1 bulk pumping and hauling customer.⁵

¹ Aqua Exhibit 2, Amended Application, ¶ 7.

² Aqua Exhibit 2, Amended Application, ¶ 7.

³ Aqua St. No. 1, p. 9.

⁴ Aqua Exhibit 2, Amended Application, ¶ 8.

⁵ Aqua Exhibit 2, Amended Application, ¶¶ 8, 30.

6. The System has one wastewater treatment plant, approximately 36 miles of gravity sewer collection mains, in diameters ranging from 8 to 24 inches, and approximately 1,400 lineal feet (“LF”) of 8 inch force mains.⁶

7. Wastewater treatment is provided by the City at its Wastewater Treatment Plant (“WWTP”) located in Beaver Falls.⁷

8. The Beaver Falls WWTP has a permitted capacity of 4.8 million gallons per day (“MGD”).⁸

9. Beaver Falls accepts wastewater flow into its collection system from the Contributing Municipalities, which is treated at the Beaver Falls WWTP.⁹

10. The Contributing Municipalities collect wastewater from their customers through facilities owned by the Contributing Municipalities. Once flow enters the City from the Contributing Municipalities, it is conveyed by gravity to the WWTP, except for flow coming from Eastvale Borough and North Sewickley Township which is conveyed to the Eastvale Pump Station and pumped into the City. The Eastvale Pump Station has a design capacity of 610 gallons per minute (“gpm”).¹⁰

11. Aqua and Beaver Falls are parties to an *Asset Purchase Agreement* (“APA”), dated October 20, 2021.¹¹

12. Under the APA, Aqua will acquire Beaver Falls’ wastewater collection and treatment system assets (the “Acquired Assets”) as defined in the APA.¹²

⁶ Aqua Exhibit 2, Amended Application, ¶ 12.

⁷ Aqua Exhibit 2, Amended Application, ¶ 15.

⁸ Aqua Exhibit 2, Amended Application, ¶ 15.

⁹ Aqua Exhibit 2, Amended Application, at ¶ 16.

¹⁰ Aqua Exhibit 2, Amended Application, at ¶ 16.

¹¹ Exhibit B.

¹² Aqua Exhibit 2, Amended Application, ¶ 21; Exhibit B.

13. The purchase price of \$41,250,000.00 is based on arm's length negotiations.¹³
14. Aqua and the City are not affiliated with each other.¹⁴
15. Aqua will use short term debt initially for the purchase of the Acquired Assets with the expectation that the short-term debt will be converted to long-term debt and equity capital at a later date.¹⁵
16. All of the Acquired Assets are located in the City except for the Eastvale Pump Station, which is located in Eastvale Borough, the force main that connects the Eastvale Pump Station to the City collection system, and a flow meter located in West Mayfield Borough.¹⁶
17. The Acquired Assets also include four contracts identified on Schedule 4.15 of the APA to which City is a party (the "Assigned Contracts").¹⁷
18. While these agreements are listed as part of the Acquired Assets, the Company has submitted new Wastewater Service Agreements with each of the Contributing Municipalities.¹⁸ The new agreements will terminate and replace all prior agreements for the conveyance and treatment of wastewater ("New Wastewater Service Agreements").¹⁹
19. The City also disclosed an April 8, 2014, Capital Lease Agreement.²⁰
20. Aqua and the City also entered into an agreement for certain charitable contributions.²¹

¹³ Aqua Exhibit 2, Amended Application, ¶¶ 21-22.

¹⁴ Aqua Exhibit 2, Amended Application, ¶ 22.

¹⁵ Aqua Exhibit 2, Amended Application, ¶ 23.

¹⁶ Aqua Exhibit 2, Amended Application, ¶ 22.

¹⁷ Exhibit B, Schedule 4.15; *see also* Exhibits F1, F2, F3, and F4.

¹⁸ Aqua Exhibit 2, Amended Application, ¶ 25.

¹⁹ Aqua Exhibit 2, Amended Application, ¶ 25; *see also* Exhibits F9, F10, F11, F12, F13, F14, and F15.

²⁰ Exhibit F5. The Capital Lease Agreement expired on December 31, 2024, and otherwise would be superseded by the New Wastewater Service Agreements. Aqua St. No. 1-R, p.17.

²¹ Exhibit F16.

21. The Company also submitted a pro-forma meter reading agreement between Aqua and Beaver Falls Municipal Authority (“BFMA”)²² for the provision of water meter read data for billing purposes post-closing.²³

22. Finally, the Company also submitted the settlement agreement (“Settlement”) that settled the civil action by the Municipal Protestants.²⁴

23. The Acquired Assets also include all Authorizations and Permits of or held by Beaver Falls (to the extent lawfully transferrable), listed or described on Schedule 4.14 of the APA.²⁵

24. After Closing, Aqua will implement Beaver Falls’ sanitary wastewater rates in effect at closing.²⁶ The City presently bills on a quarterly and monthly basis. Aqua will continue to bill Beaver Falls customers on a quarterly basis and monthly basis.

25. Beaver Falls bills customers inside the City of Beaver Falls a quarterly base fee of \$43.64 (\$14.54 monthly) which includes an allowance of 3,000 gallons and a consumption charge of \$8.71 per 1,000 gallons based on water usage.²⁷

26. Pursuant to the Settlement, the rate to the Contributing Municipalities at Closing will be \$3.66 per 1,000 gallons based on water usage.²⁸ The Contributing Municipalities will be charged in accordance with the New Wastewater Service Agreements after closing.²⁹

27. Dalton Service Company, LLC is billed \$4.68 per 1,000 gallons based on water usage.³⁰

²² BFMA provides water service in the requested service territory. Aqua Exhibit 2, Amended Application, ¶ 18.

²³ Exhibit F17.

²⁴ Exhibit F18.

²⁵ Aqua Exhibit 2, Amended Application, ¶ 26.

²⁶ Aqua Exhibit 2, Amended Application, ¶ 33; Revised Exhibit G.

²⁷ Aqua Exhibit 2, Amended Application, ¶ 34; Exhibit H.

²⁸ Aqua Exhibit 2, Amended Application, ¶ 34; Exhibit F18.

²⁹ Aqua Exhibit 2, Amended Application, ¶ 33.

³⁰ Aqua Exhibit 2, Amended Application, ¶ 34; Exhibit H.

28. Aqua will implement its Rules and Regulations to govern the provision of wastewater service in the Requested Territory.³¹

29. Aqua projects annual revenue of \$2,534,808 from the City's customers based on City's current rate schedule.³²

30. Aqua estimates annual operating and maintenance expenses of \$1,462,000 based on Beaver Falls' operating expenses presented in the 2021 financial statements, adjusted by the Company.³³

31. Aqua will operate and manage the Beaver Falls wastewater system as a standalone collection system, but within Aqua's footprint, from its Western Division Office in Sharon, Pennsylvania with operations and management support from Aqua's Southeastern Division Office in Bryn Mawr, Pennsylvania.³⁴

32. The system is approximately 32 miles from the Company's Western Division Office.³⁵

33. Mr. Joseph Durish will be the assigned Certified Wastewater Operator for the system. Mr. Durish's currently effective Wastewater Operator's License was provided as Exhibit L to the Amended Application.³⁶

34. Aqua is a Class A utility. It is in good standing with DEP and in general compliance with DEP with regard to the provision of wastewater service.³⁷

³¹ Aqua Exhibit 2, Amended Application, ¶ 35.

³² Aqua Exhibit 2, Amended Application, ¶ 40.

³³ Aqua Exhibit 2, Amended Application, ¶ 41.

³⁴ Aqua Exhibit 2, Amended Application, ¶ 42; Aqua St. No. 3, pp. 3-4.

³⁵ Aqua Exhibit 2, Amended Application, ¶ 42.

³⁶ Aqua Exhibit 2, Amended Application, ¶ 42; Exhibit L.

³⁷ Aqua Exhibit 2, Amended Application, ¶ 45.

35. The Water Quality Management (“WQM”) Permit for the Beaver Falls WWTP issued in 1996 is attached to the Amended Application as Exhibit M1.³⁸

36. Other WQM permits related to the WWTP and the System are included in Exhibit M1 to the Amended Application, in reverse chronological order.³⁹

37. The WQM permit for the Eastvale Pump Station is attached to the Amended Application as Exhibit M2.⁴⁰

38. The National Pollution Discharge Elimination System (“NPDES”) Permit for the Beaver Falls WWTP is attached to the Amended Application as Exhibit N1.⁴¹

39. Copies of Discharge Monitoring Reports (“DMR”) for the Beaver Falls WWTP from 2017 through November 2022, are attached to the Amended Application as Exhibit N2.⁴²

40. Notices of Violation (“NOVs”) issued to Beaver Falls are attached to the Amended Application as Exhibit O1. Beaver Falls’ response to the NOVs is also included as Exhibit O1 to the Amended Application.⁴³

41. Beaver Falls entered into a Consent Assessment of Civil Penalty (“CACP”) with DEP on September 26, 2019, in relation to violations of effluent limitations between December 2016 and June 2019. The CACP is attached to the Amended Application as Exhibit O2.⁴⁴

42. Beaver Falls and the Contributing Municipalities have entered into Corrective Action Plans submitted to DEP and attached to the Amended Application as Exhibit O3 (Beaver

³⁸ Aqua Exhibit 2, Amended Application, ¶ 43.

³⁹ Aqua Exhibit 2, Amended Application, ¶ 43.

⁴⁰ Aqua Exhibit 2, Amended Application, ¶ 43.

⁴¹ Aqua Exhibit 2, Amended Application, ¶ 43.

⁴² Aqua Exhibit 2, Amended Application, ¶ 43.

⁴³ Aqua Exhibit 2, Amended Application, ¶ 44.

⁴⁴ Aqua Exhibit 2, Amended Application, ¶ 44.

Falls), Exhibit O4 (Big Beaver Municipal Authority), Exhibit O5 (North Sewickley), Exhibit O6 (Patterson), and Exhibit O7 (White), respectively.⁴⁵

43. Eastvale Borough, Patterson Heights Borough, and West Mayfield Borough have not submitted Corrective Action Plans to DEP.⁴⁶

44. Beaver Falls employed Gannet Fleming, Inc. (“Gannett”) to perform a limited hazardous materials assessment at the WWTP in 2021, and Gannett reported through a technical memo that there were suspected asbestos containing materials at the WWTP. Gannett then performed a Phase I Environmental Site Assessment of the WWTP in July 2021. Beaver Falls informed the bidders that it would be engaging professionals to safely remove the material as of July 19, 2021. Attached to the Amended Application as Exhibit O11 is the Gannett Technical Memorandum, the Phase I Environmental Site Assessment, and Beaver Falls’ memo to bidders. As stated in Schedule 4.12 to the APA (see Exhibit B) the City removed asbestos in 2021.⁴⁷

45. The service area comprising the Requested Territory is consistent with Beaver Falls’ sewage planning and in compliance with DEP approved Act 537 Plans.⁴⁸

46. Aqua has planned capital improvement projects for the System totaling \$10.2 million for the first ten years of operation.⁴⁹

47. The capital improvement work includes upgrades to the treatment plant, and gravity collection systems based on facility conditions observed, facility age, and safety.⁵⁰

48. Replacement and upgrade of facilities will continue beyond Aqua’s 10-year capital plan based on facility age and expected facility life span.⁵¹

⁴⁵ Aqua Exhibit 2, Amended Application, ¶ 44.

⁴⁶ Aqua Exhibit 2, Amended Application, ¶ 44.

⁴⁷ Aqua Exhibit 2, Amended Application, ¶ 44.

⁴⁸ Aqua Exhibit 2, Amended Application, ¶ 46; Exhibit P1.

⁴⁹ Aqua St. No. 2, p. 8.

⁵⁰ Aqua St. No. 2, p. 8.

⁵¹ Aqua St. No. 2, p. 8.

49. Aqua is legally fit to acquire the system. Aqua is a public utility operating under the Code and the Commission's regulations, and Aqua obeys the same.⁵² There are no pending legal proceedings before a court or administrative body challenging Aqua's ability to provide adequate, safe, and reliable wastewater service.⁵³

50. Aqua is financially fit to acquire the System. Aqua is a wastewater utility with total net utility plant assets of approximately \$490 million and annual revenues of approximately \$70 million, as of December 31, 2021.⁵⁴ In addition, Aqua is a direct subsidiary of Aqua PA, which is a Class A water utility with total net utility plant assets of \$4.1 billion and annual revenues of \$495 million, as of 2021.⁵⁵ As a direct subsidiary of Aqua PA (which had an A rating from Standard and Poor's Rating Service at the time of filing), Aqua has access to Aqua PA's financing capabilities, as well as access to equity capital as a subsidiary of Essential.⁵⁶

51. Aqua is technically fit. Aqua has sufficient staff, facilities, and operating skills to provide service over the System.⁵⁷

52. Aqua will provide management, customer service, regulatory compliance, engineering, financial and ancillary services, seamlessly, from its Western Area office in Sharon, Pennsylvania, with management support from Aqua's headquarters in Southeastern Pennsylvania.⁵⁸

53. The transaction will easily fold into Aqua's existing wastewater operations.⁵⁹

⁵² Aqua St. No. 1, p. 8.

⁵³ Aqua St. No. 1, p. 8.

⁵⁴ Aqua St. No. 1, p. 9.

⁵⁵ Aqua St. No. 1, p. 9.

⁵⁶ Aqua St. No. 1, p. 9.

⁵⁷ Aqua St. No. 3, pp. 4-8.

⁵⁸ Aqua St. No. 3, pp. 4-8.

⁵⁹ Aqua St. No. 3, p. 4.

54. The integration of the System into Aqua's operations will provide the System with access to beneficial support services that it currently does not have today.⁶⁰

55. Aqua will immediately incorporate the equipment and facilities acquired from the City into the established asset management programs to include preventative maintenance programs and corrective maintenance management.⁶¹

56. Aqua has substantial experience integrating wastewater systems into its Western Division, regardless of the current condition of the System's operations and infrastructure.⁶²

57. Aqua has acquired 14 wastewater systems over the past 10 years. Many of these systems required significant investment to correct service and environmental issues. Other systems did not need substantial capital investment.⁶³

58. Each of these acquisitions diversified the systems, which provided increased stability to customers by allowing for capital improvements to be made to each system at different times, thereby spreading the financial impacts of improving each system over the long-term operations of the utility.⁶⁴

59. No party disputed that Aqua will be able to successfully integrate the System into its operations.

60. No party disputed that Aqua's integration will result in the System being operated at a higher standard than it is today.

61. Downstream of the WWTP are several public water systems that serve an estimated 54 million people in the Ohio Valley.⁶⁵

⁶⁰ Aqua St. No. 3, pp. 5-6.

⁶¹ Aqua St. No. 3, p. 8.

⁶² Aqua St. No. 3, pp. 7-8.

⁶³ Aqua St. No. 1, p. 13.

⁶⁴ Aqua St. No. 1, p. 13.

⁶⁵ Aqua St. No. 3, p. 12.

62. In the years immediately preceding execution of the APA, the City received several Notices of Violation (“NOV”) from the Pennsylvania Department of Environmental Protection (“DEP”) for various effluent violations.⁶⁶

63. The City experienced a secondary bypass incident due to high levels of rainfall.⁶⁷

64. The City is currently operating under a Corrective Action Plan, believed to be a result of basement flooding experienced by a number of City customers due to surcharged sewers during rain events.⁶⁸

65. Aqua’s review of flow and billing data indicates there is likely Inflow and Infiltration (“I&I”) affecting the System.⁶⁹ I&I can cause flow to exceed treatment capability.

66. There are a number of inadequate and unsafe conditions at the WWTP.

67. Mr. Zach Martin, the Western Pennsylvania Area Manager for Aqua,⁷⁰ identified a number of inadequate and unsafe conditions at the WWTP, which is over 80 years, is troubled, distressed and needs significant attention.⁷¹

68. Mr. Martin testified that he “did not feel safe, and we would not allow Aqua employees to work at the WWTP under the current conditions.”⁷²

69. Process controls and Standard Operating Procedures were lacking at the WWTP, creating various environmental concerns.⁷³

⁶⁶ Aqua St. No. 2, p. 10.

⁶⁷ Aqua St. No. 2, p. 11.

⁶⁸ Aqua St. No. 2, p. 11. The System is not a combined system conveying both sanitary and stormwater flow. The City installed backflow preventers to address this problem.

⁶⁹ Aqua St. No. 2, p. 12.

⁷⁰ Mr. Martin has over 19 years experience operating water and wastewater systems. Aqua St. No. 3, pp. 1-2.

⁷¹ Aqua St. No. 3 Supp, pp. 12-39.

⁷² This statement was based upon approximately 10 visits that Mr. Martin took to visit the System over various seasons. Aqua St. No. 3 Supp, p. 11.

⁷³ Aqua St. No. 3 Supp, pp. 14-15.

70. The System has experienced more recent violations, such as total suspended solids (“TSS”) effluent violations in December 2022, and February March 2023, and a fecal coliform violation in June 2023.⁷⁴

71. In 2024, the DEP issued a NOV to the City for violations of its NPDES permit including TSS violations in October and November 2023 and April and May 2024, fecal coliform violation in April 2024, and pH violation in January 2024.⁷⁵

72. There are also substantial concerns associated with hazardous gases at the WWTP.⁷⁶

73. Aqua will address these concerns.⁷⁷

74. There are also security concerns associated with the facilities.⁷⁸

75. Aqua will address these concerns.⁷⁹

76. Aqua will work with the City and DEP to address I&I and sanitary sewer overflows (“SSOs”) within the System.⁸⁰

77. Aqua’s Information Technology systems will also provide advanced cybersecurity protection, to protect customer information and defend against cyber intrusions into operating systems.⁸¹

78. These numerous concerns identified by Aqua cannot be addressed by the City.⁸²

⁷⁴ Aqua St. No. 2-R, p. 4.

⁷⁵ Aqua St. No. 2-R, pp. 4-5.

⁷⁶ Aqua St. No. 3 Supp, pp. 20-30. Due to the sensitive nature of these conditions, they are treated as HIGHLY CONFIDENTIAL.

⁷⁷ Aqua St. No. 3 Supp, pp. 30-31.

⁷⁸ Aqua St. No. 3 Supp, p. 34; Aqua St. No. 3-RJ, p. 7. Due to the sensitive nature of these conditions, they are treated as HIGHLY CONFIDENTIAL.

⁷⁹ Aqua St. No. 3-R, p. 22.

⁸⁰ Aqua St. No. 2, p. 8.

⁸¹ Aqua St. No. 3, p. 9.

⁸² Aqua St. No. 8-R, p. 3.

79. The financial situation facing the City is dire, and there are not available resources to make capital improvements; even day to day operations can be difficult.⁸³

80. Aqua's ownership of the System will bring additional benefits to the customers of the System through enhanced customer service.⁸⁴

81. Other aspects of Aqua's customer service capabilities are a clear improvement over current services available from the City, such as access to payment plans and participation in Aqua's low-income programs.⁸⁵

82. Customers will also receive additional notifications regarding service call status, access to the new and improved customer ePortal and Aqua App for mobile devices, and additional payment options.⁸⁶

83. The City is a predominantly low income, minority community. The average annual incomes of the City's residents are significantly lower than the U.S. average and the City's average unemployment rate has been higher than the state and national rates.⁸⁷

84. The majority of 2 to 4 person households in the City fall under 200% of the federal poverty level guidelines ("FPL"), and thus could qualify for Aqua's Customer Assistance Program ("CAP").⁸⁸

85. Aqua's CAP had recently been enhanced as a result of Aqua's 2024 base rate case.⁸⁹

86. As a result, all City customers below 100% of FPL will be paying much less under Aqua's CAP than they pay under current rates of the City, and all customers under 150% of FPL

⁸³ Aqua St. No. 8-R, p. 2.

⁸⁴ Aqua St. No. 3, p. 5.

⁸⁵ Aqua St. No. 3-R, p. 17.

⁸⁶ Aqua St. No. 3-R, pp. 16-23.

⁸⁷ Aqua St. No. 7, p. 3.

⁸⁸ Aqua St. No. 4 Supp, pp. 4-5.

⁸⁹ *Pa. PUC et. al. v. Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047822 and R-2024-3047823 (Order entered Feb. 7, 2025).

enrolled in CAP would pay less than projected City rates. In addition, when a customer enrolls in CAP, any balance owed at the time of enrollment is frozen. Customers earn a \$40 credit towards that frozen balance each time they pay their monthly bill, allowing them to eliminate the debt through arrearage forgiveness over time.⁹⁰

87. Low-income City customers would also be eligible for the Aqua Aid hardship fund and conservation kits.⁹¹

88. The City is in poor financial conditions, and it will not be able to keep up with the growing capital needs of the aging System.⁹²

89. If the City sells the System to Aqua, the capital needs will be met and the proceeds from the sale of the System will help prevent the City from being named by the Commonwealth Department of Community and Economic Development a distressed community or Act 47 status, which indicates severe financial difficulties and could lead to the City being placed in receivership.⁹³

90. The City undertook a financial public benefit analysis of the proposed transaction, which shows the sale would generate annual financial benefits of over \$4.56 million.⁹⁴

91. This was compared to the estimated increase to City customers' rates of approximately \$4.2 million, producing a net annual public benefit of \$362,037.⁹⁵

92. OCA does not challenge this net financial benefit.⁹⁶

93. If the acquisition is approved, the City will be able to repay general obligation debt of \$5.5 million. The City will also have \$2 million in cash to immediately address unmet

⁹⁰ Aqua St. No. 9-R, p. 3.

⁹¹ Aqua St. No. 9-R, p. 4.

⁹² Aqua St. No. 4 Supp, p. 4.

⁹³ Aqua St. No. 4 Supp, p. 4.

⁹⁴ Aqua St. No. 8, p. 6 and Appendix A.

⁹⁵ Aqua St. No. 8, p. 6 and Appendix A.

⁹⁶ OCA St. No. 1, p. 27.

community needs. The remainder will be invested, to provide for ongoing needs. Further benefits include pay increases for City employees and property tax reductions.⁹⁷

94. If the acquisition is approved, the City will be able to invest in community resources, such as business development, new public safety vehicles and improved roads.⁹⁸

95. Acquisition of the System will increase Aqua's customer base continuing the trend of a declining cost per customer as Aqua has acquired various wastewater systems since the passage of Section 1329.⁹⁹

96. The Commonwealth and the Commission have historically supported the consolidation/regionalization of water and wastewater systems.¹⁰⁰

97. Consolidation/regionalization provides the utility industry with a greater chance to realize improvements to customer service, environmental protection, and economics, by providing smaller utilities with access to better management and economies of scale from larger utility system operators.¹⁰¹

98. Currently, the City's average bill is **\$33.38 per month**. This is substantially lower than tariffed rates for major wastewater utilities in Pennsylvania.¹⁰²

99. In applying the estimated increase on a stand alone basis to the City's existing average bill, results in an **average monthly bill of \$88.65**. This average bill is less than major wastewater providers regulated by the Commission.¹⁰³

100. Rate increases under continued City ownership would be inevitable.¹⁰⁴

⁹⁷ Aqua St. No. 8, pp. 6-7 and Appendix A.

⁹⁸ Aqua St. No. 7, pp. 4-5.

⁹⁹ Aqua St. No. 1-R, p. 6.

¹⁰⁰ Aqua St. No. 1, p. 12.

¹⁰¹ Aqua St. No. 1, p. 12.

¹⁰² Aqua St. No. 1-R, p. 5.

¹⁰³ Aqua St. No. 1-R, p. 5.

¹⁰⁴ Aqua St. No. 4, p. 10; Aqua St. No. 8-R, p. 3.

101. The Commission has approved multiple 1329 transactions for Aqua, even though the differences in costs incurred by investor-owned utilities vs. municipal systems were present in every acquisition previously completed, even when investor-owned utilities were limited to depreciated original cost.¹⁰⁵

102. With respect to Aqua’s acquisition of the System, the negotiated purchase price is \$41,250,000.¹⁰⁶

103. The average of the two FMV appraisals is \$42,245,674.¹⁰⁷

104. Therefore, in accordance with Section 1329, the ratemaking rate base is \$41,250,000, being the lesser of the two amounts.¹⁰⁸

105. Aqua selected Mr. Dylan W. D’Ascendis of ScottMadden to provide one of the FMV appraisals (i.e., **Exhibit Q**). The City selected Mr. Harold Walker, III of Gannett Fleming to provide the second FMV appraisal (i.e., **Exhibit R**).¹⁰⁹

106. The results of the ScottMadden analyses and calculations are as follows:¹¹⁰

Valuation Approach	Indicated Value	Weight	Weighted Value
Cost	\$11,446,928	10%	\$1,144,693
Market	\$46,817,319	45%	\$21,067,793
Income	\$39,970,803	45%	\$17,986,861
Conclusion		100%	\$40,199,347

¹⁰⁵ Aqua St. No. 1-R, p. 5.

¹⁰⁶ Aqua Exhibit 2, Amended Application, ¶ 21.

¹⁰⁷ Aqua Exhibit 2, Amended Application, ¶ 56.

¹⁰⁸ Aqua Exhibit 2, Amended Application, ¶ 56.

¹⁰⁹ Aqua St. No. 5, pp. 4-5; Aqua St. No. 6, pp. 4-6. In accordance with Section 1329, both UVEs performed separate appraisals in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), employing the cost, market and income approaches. Both firms were selected from the Commission’s list of qualified appraisers. Both firms have extensive experience with the valuation and appraisal of utility assets.

¹¹⁰ Aqua St. No. 5, p. 13.

107. The results of the Gannett Fleming analyses and calculations are as follows:¹¹¹

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost	\$32,994,154	25%	\$8,248,539
Market	\$50,664,671	37.5%	\$18,999,252
Income	\$45,450,675	37.5%	\$17,044,003
Conclusion		100%	\$44,292,000

108. I&E does not oppose the ratemaking rate base of \$41,250,000, that is based upon the lesser of the negotiated purchase price and the average of the appraisal results of the two UVEs.¹¹²

109. Section 6.05(c) of Exhibit B addresses I&E's and OCA's recommendations regarding missing easements.¹¹³

110. If maintenance or repair is needed for an asset when there is no easement, Aqua can enter into a temporary construction easement as needed until a permanent easement can be obtained, or can enter a property on an emergency basis as necessary.¹¹⁴

111. Aqua agreed to submit a separate cost of service study ("COSS") for the System, in a similar manner to what it submitted for Section 1329 systems in the Company's 2021 and 2024 base rate proceedings.¹¹⁵

112. Aqua Witness Mr. Packer also indicated that he saw merit in a separate class for the Contributing Municipalities, but that he would reserve his final opinion as to rate design until the next base rate proceeding.¹¹⁶

¹¹¹ Aqua St. No. 6, p. 13.

¹¹² I&E St. No. 2, p. 5.

¹¹³ Aqua St. No. 1-R, p. 15.

¹¹⁴ Aqua St. No. 1-R, p. 14.

¹¹⁵ Aqua St. No. 1-R, p. 12.

¹¹⁶ Aqua St. No. 1-R, p. 12

113. The Company is not under any obligation to update its Long-Term Infrastructure Improvement Plan (“LTIP”) within a certain time following closing, but agreed to submit an update within 180 days of closing, which will allow Aqua sufficient time to integrate the assets into Aqua’s overall operations.¹¹⁷

114. The Company will not include incremental investments in Beaver Falls in the Distribution System Improvement Charge (“DSIC”) until Beaver Falls customers are subject to the DSIC.¹¹⁸

115. As a matter of normal business and accounting, the Company tracks all closing costs as a result of any acquisition application and those costs will be claimed as rate base in the Company’s next rate filing. All of which would be available to review and any opposition in that next rate case. Consistent with claims made following other acquisitions, Aqua would not be seeking recovery of costs incurred by the selling entity.¹¹⁹

116. There is no discernable benefit or purpose to tracking capital costs in categories as proposed by OCA, and there is overlap between the two categories of costs.¹²⁰

117. Aqua agreed with OCA’s proposal to provide a letter to acquired customers about Aqua’s low-income programs which would include eligibility requirements, a description of benefits and information on how to apply within 30 days after closing.¹²¹ Aqua also agreed with OCA’s recommendation to include this information within bills to Beaver Falls customers within 90 days of closing.¹²²

¹¹⁷ Aqua St. No. 3-R, p. 3.

¹¹⁸ Aqua St. No. 1-R, p. 19.

¹¹⁹ Aqua St. No. 1-R, p. 12.

¹²⁰ Aqua St. No. 2-R, pp. 9-10.

¹²¹ Aqua St. No. 9-R, p. 5.

¹²² Aqua St. No. 9-R, p. 5.

118. The Company agreed to an additional annual funding \$30,000 per year for three years for its hardship fund, starting where the year 1 contribution amount would be within 60 days following closing.¹²³ The Company also agreed that any unused funds from this amount at the end of the program year should be rolled over and added to the budget of the hardship grant program in the following year(s).¹²⁴

119. OCA's proposal to provide rate impact calculations at different levels is not required by Commission regulations.¹²⁵

120. If OCA believes the notice standards should be changed, it should be presented in a separate rulemaking proceeding, where all potentially affected entities will be provided notice and an opportunity to be heard.¹²⁶

121. OCA's recommendation to notify customers in future acquisitions of estimated monthly or quarterly volumetric charges and DSIC impact is also unreasonable and should be denied because it would require Aqua to perform a billing analysis and rate design of what a potential future rate increase would be for a subject system without the benefit of all the inputs that are found in a base rate case.¹²⁷

122. The Amended Application asks that the Commission approve, if necessary, the APA between Aqua and the City (**Exhibit B**), as well as the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities (i.e., **Exhibits F9-F15**), the charitable contribution agreement between Aqua and the City (**Exhibit F16**), the pro forma meter read

¹²³ Aqua St. No. 9-R, p. 7.

¹²⁴ Aqua St. No. 9-R, p. 7.

¹²⁵ See 52 Pa. Code § 53.45.

¹²⁶ Aqua St. No. 1-R, pp. 13-14.

¹²⁷ Aqua St. No. 1, p. 14.

agreement between Aqua and the BFMA (**Exhibit F17**), and the Settlement Agreement entered into by Aqua, the City and the Municipal Protestants (**Exhibit F18**).¹²⁸

123. These contracts are necessary for the operation of the System.

124. No party challenged the terms of these contracts.

¹²⁸ See Aqua St. No. 1, at pp. 22-24; St. No. 1 Supp., at p. 4; *see also* Aqua Exhibit 2 – Amended Application, ¶¶ 5, 25, 69-70.

APPENDIX B
AQUA PROPOSED CONCLUSIONS OF LAW

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) proposes the following conclusions of law:

1. The Commission has jurisdiction over Aqua and the subject matter of this proceeding pursuant to Sections 1102, 1103 and 1329 of the Public Utility Code. 66 Pa. C.S. §§ 1102, 1102 and 1329.

2. Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

3. Sections 1102(a)(1) and (3) of the Code require a public utility to obtain a certificate of public convenience from the Commission to “begin to offer, render, furnish or supply within this Commonwealth service . . . to a different territory than that authorized” and to “acquire from . . . any . . . municipal corporation, by any method or device, . . . including the sale . . . of any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(1), (3).

4. Section 1103 of the Code provides that a CPC will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” *Id.* § 1103(a).

5. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth of Pennsylvania v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). Under the preponderance of the evidence standard, “the Commission is ‘not required to ensure

beyond all doubt that the noted public benefits would accrue.” *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1055 n.18 (Pa. 2007) (“*Popowsky*”). Rather, this standard “means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.” *Cicero v. Pa. PUC*, 300 A.3d 1106, 1118 (Pa. Cmwlth. 2023), *reargument denied* (Sept. 26, 2023), *appeal granted*, 568 MAL 2023 (Pa. June 14, 2024) (“*Cicero*”) (internal citation and quotations omitted).

6. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008)

7. In Section 1329 cases, the Applicant need only show that “the affirmative public benefits that arise from and are specific to a transaction outweigh the harms of the transaction such that approval of the transaction will ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’” *Cicero*, 300 A.3d at 1120 (quoting *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (“*City of York*”)).

8. In *Popowsky*, the Supreme Court of Pennsylvania explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make fact-based determinations (which may include predictive determinations informed by the Commission’s expert judgment) to determine whether public benefits will result from a transaction. *Id.* Further, the substantial public benefit test does not require that every customer receive a benefit from the Transaction. *Id.* at 1061.

9. In an acquisition proceeding, the acquiring party must demonstrate that, as the party to whom the assets and service obligations are being transferred, it is technically, legally and financially fit. *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

Fitness

10. An existing provider of public utility service is presumed fit. *See McCloskey*, 195 A.3d at 1058. The burden of proof to rebut this presumption is on the parties challenging the acquisition. *In Re Byerly*, 270 A. 2d 186 (Pa. 1970).

11. Aqua is presumed fit to own and operate the System because it is a certificated provider of wastewater public utility service. *See McCloskey*, 195 A.3d at 1058; *see also Re Pennsylvania-American Water Company*, 85 Pa. P.U.C. 548 (1995). Moreover, no party to this proceeding has challenged Aqua's fitness.

12. Aqua is legally fit to acquire the system. Aqua is a public utility operating under the Code and the Commission's regulations, and Aqua obeys the same. There are no pending legal proceedings before a court or administrative body challenging Aqua's ability to provide adequate, safe, and reliable wastewater service.

13. Aqua is financially fit because it has sufficient financial resources to provide wastewater service over the System. Aqua is a wastewater utility with total net utility plant assets of approximately \$490 million and annual revenues of approximately \$70 million, as of December 31, 2021.

14. In addition, Aqua is a direct subsidiary of Aqua Pennsylvania, Inc. ("Aqua PA"), which is a Class A water utility with total net utility plant assets of \$4.1 billion and annual revenues of \$495 million, as of 2021. As a direct subsidiary of Aqua PA (which had an A rating from

Standard and Poor's Rating Service at the time of filing), Aqua has access to Aqua PA's financing capabilities, as well as access to equity capital as a subsidiary of Essential Utilities, Inc.

15. Aqua is technically fit to operate the Beaver Falls System. It has sufficient staff, facilities, and operating skills to provide wastewater service over the System. Aqua will provide management, customer service, regulatory compliance, engineering, financial and ancillary services, seamlessly, from its Western Area office in Sharon, Pennsylvania, with management support from Aqua's headquarters in Southeastern Pennsylvania.

Substantial Public Benefits

16. Aqua demonstrated through a preponderance of the evidence and substantial evidence that its acquisition of the Beaver Falls System will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways.

17. Substantial evidence of affirmative public benefits were upheld in *McCloskey* because: (a) Aqua, based on its longstanding ownership of water and wastewater systems, can provide operational expertise and the ability to raise capital to support the system's operations and infrastructure; and (b) the Commission has a policy of consolidation/regionalization of wastewater systems that allows for improvements to municipally-owned sewer and water facilities. *See McCloskey*, 195 A.3d at 1065.

18. In *Cicero*, the Commonwealth Court held that a transaction will not result in substantial affirmative public benefits when it will simply provide the same services that are already being provided. *Cicero*, 300 A.3d at 1119.

19. Of particular emphasis in *Cicero*, was the factual determination that the selling municipality was "equally capable" of providing for upgrades to a system that "is already operating safely and reliably." *Id.*

20. In this case, the facts demonstrate that the City (a) does not desire to continuing operating the System, (b) the System faces substantial short-, mid- and long-term challenges, (c) the City lacks the expertise and resources to address these challenges, (d) the City does not have the financial ability to obtain the expertise and resources to address these challenges, and (e) the City has no plan to address these challenges and, if it is able to address them, will only be able to do so in a reactive manner once adverse impacts to service have occurred.

21. Aqua's acquisition of the System will provide for these challenges to be proactively addressed by an experienced operator with the necessary technical and financial resources to do so.

22. Aqua's acquisition of the system will provide the City with a desperately needed financial infusion that benefit the City and its residents on multiple fronts.

23. The acquisition will improve the System's operations and infrastructure, improve the service provided to the residents of Beaver Falls, improve the finances of the City, and reduce the costs of wastewater service for Aqua's existing customers over the long term. These are all substantial affirmative public benefits.

Section 1329

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

25. If the parties elect to use the Section 1329 process, the acquiring public utility and the selling municipality each select a utility valuation expert ("UVE") from a list of pre-qualified experts maintained by the Commission. The two UVE's separately prepare fair market value ("FMV") appraisals of the system being sold. 66 Pa. C.S. § 1329(a)(2).

26. Section 1329(g) of the Code defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g).

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

28. With respect to Aqua’s proposed acquisition of the Beaver Falls System, the negotiated purchase price is \$41,250,000. (Aqua Exhibit 2, Amended Application, ¶ 21) The average of the two FMV appraisals is \$42,245,674. (Aqua Exhibit 2, Amended Application ¶ 56) Therefore, in accordance with Section 1329, the ratemaking rate base is \$41,250,000, being the lesser of the two amounts.

29. The negotiated purchase price and resulting ratemaking rate base of \$41,250,000 fully comply with Section 1329 of the Code. 66 Pa. C.S. § 1329.

Section 507

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

31. The Commission has the power to institute proceedings to determine the reasonableness of contracts between public utilities and municipal corporations. 66 Pa. C.S. § 507.

32. The Contracts identified in this proceeding, including the APA, the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities, the charitable contribution agreement between Aqua and the City, the pro forma meter read agreement

between Aqua and the BFMA, and the Settlement Agreement entered into by Aqua, the City and the Municipal Protestants are reasonable and are approved pursuant to Section 507 of the Code.

APPENDIX C
AQUA PROPOSED ORDERING PARAGRAPHS

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) proposes the following ordering paragraphs:

1. That the above-captioned application of Aqua Pennsylvania Wastewater, Inc. to acquire the wastewater system assets of the City of Beaver Falls and to begin to offer, render, furnish and supply wastewater service to the public in the City of Beaver Falls, Beaver County Pennsylvania is approved.

2. The Pennsylvania Public Utility Commission hereby issues all certificates of public convenience under 66 Pa. C.S. §§ 1102 and 1103 necessary to authorize Aqua to acquire, by purchase, the wastewater system assets of the City of Beaver Falls, and begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory set forth in the Application;

3. The Pennsylvania Public Utility Commission hereby authorizes Aqua Pennsylvania Wastewater, Inc. to file tariff revisions, effective upon one day’s notice to include within its service territory all the Requested Territory set forth in the Application, and adopt and apply the rates of the City of Beaver Falls as set forth in Revised Exhibit G to the Application as Aqua’s base rates, and apply Aqua’s Rules and Regulations as set forth in its tariff within the Requested Territory.

4. The ratemaking rate base of the wastewater system assets of the City of Beaver Falls will be set at \$41,250,000 pursuant to 66 Pa. C.S. § 1329(c)(2).

5. That the Pennsylvania Public Utility 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 Contracts:

- a. the Asset Purchase Agreement

- b. the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities,
- c. the charitable contribution agreement between Aqua and the City,
- d. the pro forma meter read agreement between Aqua and the BFMA, and
- e. the Settlement Agreement entered into by Aqua, the City and the Contributing Municipalities; and

6. That all approvals, certificates, registrations and relief under the Code that are required with respect to Aqua's acquisition of the wastewater system assets of the City of Beaver Falls are hereby granted.