

COMMONWEALTH OF PENNSYLVANIA



DARRYL A. LAWRENCE
Acting Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

 @pa_oca
 /pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

March 18, 2025

Via Electronic Mail

Administrative Law Judge F. Joseph Brady (Via Email: fbrady@pa.gov, pmcneal@pa.gov)
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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 Judge Brady:

Please find enclosed a copy of the Main Brief being submitted on behalf of the Office of
Consumer Advocate in this proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
Harrison W. Breitman, Esq.
Assistant Consumer Advocate
PA Attorney I.D. # 320580
Email: HBreitman@paoca.org

Enclosures

cc: Secretary Rosemary Chiavetta (Cover Letter and Certificate of Service Only)
Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Main Brief upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission's electronic filing system.

Dated this 18th day of March 2025.

***Received Confidential Version**

SERVICE BY E-MAIL ONLY

*Carrie B. Wright, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
carwright@pa.gov
Counsel for I&E

Elizabeth Preate Havey, Esq.
James J. Rodgers, Esq.
Dilworth Paxon LLP
1650 Market Street, Suite 1200
Philadelphia, PA 19103
epreatehavey@dilworthlaw.com
jrodgers@dilworthlaw.com
Counsel for the City of Beaver Falls

*Rebecca Lyttle, Esq.
*Steven C. Gray, Esq.
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
relyttle@pa.gov
sgray@pa.gov
Counsel for OSBA

*Michael W. Hassell, Esq.
*Garrett P. Lent, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
mhassell@postschell.com
glent@postschell.com
Counsel for Aqua PA WW, Inc.

Kevin C. Higgins
Principal, Energy Strategies
111 East Broadway, Suite 1200
Salt Lake City, UT 84111
khiggins@energystrat.com

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
717-783-5048

Dated: March 18, 2025

/s/ Harrison W. Breitman
Harrison W. Breitman, Esq.
Assistant Consumer Advocate
PA Attorney I.D. # 320580
Email: HBreitman@paoca.org
Email: OCAAquaBFalls@paoca.org

Counsel for:
Darryl A. Lawrence
Acting Consumer Advocate

**BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PUBLIC VERSION

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: March 18, 2025

Harrison W. Breitman, Esq.
Assistant Consumer Advocate
PA Attorney I.D. # 320580
Email: HBreitman@paoca.org

Counsel for:
Darryl A. Lawrence
Acting Consumer Advocate

Table of Contents

I. PROCEDURAL HISTORY.....1

II. LEGAL STANDARDS3

 A. Burden of Proof, 66 Pa. C.S. § 332(a)3

 B. Valuation of Utility Property, 66 Pa. C.S. § 13294

 C. Substantial Affirmative Public Benefits, 66 Pa. C.S. § 1103(a).....5

III. QUESTIONS PRESENTED.....6

IV. STATEMENT OF THE CASE.....7

V. SUMMARY OF ARGUMENT8

VI. ARGUMENT10

 A. This transaction does not result in substantial affirmative public benefits.10

 1. This record lacks substantial evidence of net public benefits.....10

 2. Aqua’s fitness and benefits that flow from it are not substantial affirmative public benefits.....12

 3. The Beaver Falls wastewater system is viable.....15

 4. Evidence that Beaver Falls’ desires to exit the wastewater business does not create substantial affirmative public benefits.18

 5. Alleged cybersecurity benefits are speculative and ignore the reality of Beaver Falls’ existing operations.18

 6. The public benefits proffered by the City only benefit the municipal government of Beaver Falls.19

 7. The record shows that there are few, if any, perceptible changes in service quality if this transaction is approved.20

 B. The Transaction will result in substantial rate harm to customers that is not outweighed by the alleged benefits.21

 1. The \$4,288,000 annual revenue deficiency negatively impacts all of Aqua’s current customers.21

 2. Aqua failed to provide evidence that economies of scale would result from the Transaction.....23

 3. Aqua requests that the Commission approve a ratemaking rate base that is 820% over the net book value of the system.....24

 4. Current Beaver Falls customers are projected to experience a 165.61% rate increase under Aqua ownership.26

 C. After considering the known and probable rate harms, there are no net benefits to the proposed transaction.27

 D. Should the Commission decide to approve the Joint Application, the OCA’s adjustments to the Section 1329 ratemaking rate base value should be adopted because they are necessary for determining that net public benefits exist here.....29

1. Aqua’s Application	30
2. Challenges to UVE Appraisals	32
E. The OCA’s Cost Approach adjustment should be adopted.	33
1. The OCA’s Market Approach adjustments should be adopted.	34
2. The OCA’s Income Approach adjustments should be adopted.	41
3. The OCA’s adjustments to the weightings of the UVE appraisals should be adopted.	46
4. Conclusion	47
F. Should the Commission decide to approve the Joint Application, the OCA’s recommended conditions to CPC authority should be adopted because they are necessary for determining that net public benefits exist here.....	47
1. Cost of Service Studies	48
2. Low-Income Program Information and Tracking.....	48
3. Missing Easements and Other Property Rights	49
4. Transaction and Closing Costs.....	49
5. Increased Hardship Funding from Aqua.....	49
6. Amended LTTIP and DSIC for Beaver Falls Customers	50
7. Customer Notices of Rate Impact from the Transaction	51
VII. CONCLUSION.....	53
Appendix A: Proposed Findings of Fact.....	1
Appendix B: Proposed Conclusions of Law.....	6
Appendix C: Ordering Paragraphs.....	9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Burleson v. Pa. PUC</i> , 461 A.2d 1234 (Pa. 1983).....	4
<i>Cicero v. Pa. PUC</i> , 300 A.3d 1106 (Pa. Cmwlth. 2023).....	<i>passim</i>
<i>Lansberry v. Pa. PUC</i> , 578 A.2d 600 (Pa. Cmwlth. 1990).....	3, 4
<i>McCloskey v. Pa. PUC</i> , 195 A.3d 1055 (Pa. Cmwlth. 2018).....	5, 6, 11, 30
<i>Middletown Township v. Pa. PUC</i> , 482 A.2d 674 (Pa. Cmwlth. 1984).....	13, 14
<i>Norfolk & Western Ry. Co. v. Pa. PUC</i> , 413 A.2d 1037 (Pa. 1980).....	4
<i>Popowsky v. Pa. PUC</i> , 937 A.2d 1040 (Pa. 2007).....	5, 6, 11, 14
<i>Se-Ling Hosiery, Inc. v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	4
<i>York v. Pa. PUC</i> , 295 A.2d 825 (Pa. 1972).....	<i>passim</i>
Administrative Decisions	
<i>Application of Aqua Pennsylvania Wastewater, Inc.</i> , Docket No. A-2016- 2580061, Order (June 29, 2017).....	33
<i>Application of Aqua Pennsylvania Wastewater, Inc.</i> , Docket No. A-2017- 2605434, Order (Nov. 29, 2017).....	33
<i>Application of Aqua Pennsylvania Wastewater, Inc.</i> , Docket No. A-2019- 3008491, Order (Nov. 5, 2019).....	5
<i>Application of Aqua Pennsylvania Wastewater, Inc.</i> , Docket No. A-2021- 3927268, Order (July 8, 2022).....	33
<i>Application of CMV Sewage Co., Inc.</i> , 2008 PaPUC LEXIS 950 (Dec. 18, 2008).....	14, 28

<i>Application of North Heidelberg Water Co., 2010 PaPUC LEXIS 919 (June 7, 2010)</i>	14
<i>Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings, Docket No. M-2024-3050303</i>	25
<i>Pa. PUC v. Aqua Pa., Inc.,</i> Docket Nos. R- 2021-3027385 (water) and R-2021-3027386 (wastewater), Order (May 12,2022)	23
<i>Pa. PUC v. Aqua Pa., Inc.,</i> Docket Nos. R-2024-3047822 (water) and R-2024-3047824 (wastewater), Order (Feb. 7, 2025).....	23, 52
<i>Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation, Final Supplemental Implementation Order, M-2016-2543193(July 2, 2024)</i>	5, 46, 47
<i>Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation, Final Supplemental Order, M-2016-2543193</i>	26
Statutes	
25 Pa. Code § 963.5	19
25 Pa. Code § 963.8	19, 20
52 Pa. C.S. § 5.501.....	3
66 Pa. C.S. § 203.....	13
66 Pa. C.S. § 332(a)	3
66 Pa. C.S. § 507.....	1, 7, 28, 53
66 Pa. C.S. § 1102.....	<i>passim</i>
66 Pa. C.S. § 1102(a)(1).....	13
66 Pa. C.S. § 1102(a)(3).....	13
66 Pa. C.S. § 1103.....	<i>passim</i>
66 Pa. C.S. § 1103(a)	5, 6
66 Pa. C.S. § 1103(c)	5
66 Pa. C.S. § 1301.....	33

66 Pa. C.S. § 1311.....	4
66 Pa. C.S. § 1311(b).....	4
66 Pa. C.S. § 1311(c).....	11, 23
66 Pa. C.S. § 1311(c)(3).....	11
66 Pa. C.S. § 1327.....	4
66 Pa. C.S. § 1329.....	<i>passim</i>
66 Pa. C.S. § 1329(a).....	4, 29
66 Pa. C.S. § 1329(a)(3).....	29, 30
66 Pa. C.S. § 1329(a)(4).....	16
66 Pa. C.S. § 1329(b).....	29
66 Pa. C.S. § 1329(c)(2).....	1, 5, 29
66 Pa. C.S. § 1329(d)(1).....	5
66 Pa. C.S. § 1329(d)(1)(iv).....	49
66 Pa. C.S. § 1329(d)(4).....	50
66 Pa. C.S. § 1329(g).....	29
71 P.S. § 309-4.....	7

I. PROCEDURAL HISTORY

On February 17, 2023, Aqua Pennsylvania Wastewater, Inc. (Aqua, Applicant, or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code. Through its Application, Aqua requested that the Commission: (1) approve consistent with the provisions of 66 Pa. C.S. Sections 1102 and 1103, the acquisition of the wastewater system assets owned by the City of Beaver Falls (Beaver Falls or City); (2) approve the right of Aqua to provide wastewater service in the City of Beaver Falls Eastvale Borough, and West Mayfield Borough, Beaver County, Pennsylvania; and (3) include, in its Order approving the acquisition, the ratemaking rate base of the acquired Assets as determined under Section 1329(c)(2) of the Public Utility Code (Application or the Transaction). Application ¶ 3. As part of its Amended Application, Aqua requests approval of the Asset Purchase Agreement (APA) dated October 20, 2021. Application ¶ 3. Additionally, Aqua requests approval of other municipal agreements pursuant to Section 507 of the Public Utility Code, to the extent necessary. Application ¶¶ 69-70. Finally, Aqua requests that the Commission issue an Order granting the Certificate of Public Convenience authority requested in the Application. Application ¶ 5.

Aqua provides wastewater service to approximately 60,000 customers throughout Pennsylvania. Application at ¶ 7. Beaver Falls owns a sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 3,190 customers and which also provides transmission and treatment service for seven contributing municipalities. Application at ¶ 8.

On March 17, 2023, the Office of Small Business Advocate (OSBA) filed a Protest, a Public Statement, a Notice of Appearance, and a Notice of Intervention. 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”) filed Protests. 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 27, 2023, the OCA filed a Protest and Public Statement.

On June 28, 2023, the Commission conditionally accepted the Application. On February 13, 2024, Patterson Heights Borough, Patterson Township, West Mayfield Borough, and White Township filed Notices of Withdrawal of Protest and Letters of Consent to Sale of the City of Beaver Falls Wastewater Collection and Treatment Systems to Aqua.

On March 28, 2024, Aqua filed an Amended Application. On April 4, 2024, the Commission issued a Secretarial Letter withdrawing the Commission’s conditional acceptance of the application. On June 27, 2024, the Commission issued a Secretarial Letter conditionally accepting the Amended Application. 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. On October 10, 2024, Keith Gabage filed a Protest to the Amended Application. On December 23, 2024, Aqua filed a Letter and Certificate of Service verifying service of the Amended Application upon the designated entities, and a proof of publication.

By Notice dated December 30, 2024, a Telephonic Prehearing Conference was scheduled for January 29, 2025. On January 29, 2025, the Prehearing Conference was held as scheduled and the litigation schedule and discovery modifications were discussed. On February 4, 2025,

Administrative Law Judge (ALJ) F. Joseph Brady issued a Prehearing Order memorializing the protocols in place for this case.

On February 14, 2025, the OCA served the direct testimony of Nicholas A. DeMarco¹ (OCA Statement 1) and David J. Garrett² (OCA Statement 2). I&E and OSBA also served direct testimony that same date. Aqua and Beaver Falls served rebuttal testimony on February 24, 2025. The OCA, I&E, and OSBA filed surrebuttal testimony on March 4, 2025 (OCA Statements 1SR and 2SR). On March 7, 2025, Aqua submitted written rejoinder testimony.

On March 10, 2025, ALJ Brady conducted a telephonic evidentiary hearing. At the hearings, testimony and exhibits were entered into the record and cross examination was conducted. The OCA entered OCA's testimony and exhibits into the evidentiary record. Pursuant to the procedural schedule adopted in this case, and in accordance with the Commission's regulations at 52 Pa. Code Section 5.501, the OCA submits this Main Brief.

II. LEGAL STANDARDS

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

As the proponent of an order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. Code § 332(a). Aqua must demonstrate its case by a preponderance of evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990)

¹ Mr. DeMarco is a Regulatory Analyst at the Office of Consumer Advocate. He received his Bachelor of Arts degree from Bloomsburg University of Pennsylvania and his Master's degree from Lehigh University. Mr. DeMarco regularly analyzes the financial, economic, and policy issues relevant to utility filings, including utility acquisition filings, universal service, customer service issues, Lead Service Line policy, as well as work on behalf of the OCA on issues related to the PJM Interconnection. Mr. DeMarco's background and qualifications are attached as Exhibit NAD-1 to OCA Statement 1.

² Mr. Garrett is the managing member of Resolve Utility Consulting, LLC. He is an independent consultant specializing in public utility regulation. Mr. Garrett has represented numerous consumer groups and state agencies in utility regulatory proceedings, primarily in the areas of cost of capital and depreciation. He is a Certified Depreciation Professional with the Society of Depreciation Professionals. He is also a Certified Rate of Return Analyst with the Society of Utility and Regulatory Financial Analysts. Mr. Garrett's background and qualifications are attached as Exhibit DJG-1 to OCA Statement 2.

Lansberry), *alloc. denied*, 602 A.2d 863 (Pa. 1992). More precisely, Aqua’s evidence supporting its case must be more convincing than the evidence presented by any opposing party against it. *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950). Additionally, a Commission decision must be supported by substantial evidence in the record. Indeed, “the elements of that cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (Pa. 1983). Additionally, the evidence must be substantial and legally credible and cannot be mere “suspicion” or a “scintilla” of evidence. *Lansberry* at 602; *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

B. Valuation of Utility Property, 66 Pa. C.S. § 1329

Section 1311 of the Code specifies that the value of the rate base of a utility “shall be the original cost of the property when first devoted to the public service less the applicable accrued depreciation...” 66 Pa. C.S. § 1311(b). The Code provides two alternatives to this valuation method found in Sections 1327 and 1329. 66 Pa. C.S. §§ 1327, 1329. The alternatives allow for higher-than-depreciated original cost value to be assigned to a utility’s rate base where a utility acquires qualifying water/wastewater systems. Of relevance in this case, Section 1329 of the Code permits a “fair market value” of the acquired property to be added to rate base where the system is acquired from a municipal corporation or municipal authority and the acquisition meets the criteria of Section 1329. 66 Pa. C.S. § 1329.

Pursuant to Section 1329, upon agreement by the acquiring public utility and the selling entity, “two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value” and each “shall determine fair market value” in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) based on the Cost, Market, and Income approaches. 66 Pa. C.S. § 1329(a). “The ratemaking base shall be the

lesser of the purchase price negotiated by the acquiring public utility . . . and selling utility or the fair market value of the selling utility.” 66 Pa. C.S. § 1329(c)(2). The Applicant must provide to the Commission copies of the appraisals, the purchase price, the ratemaking rate base, the closing costs, and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1).

Utility valuation experts (UVEs) are required to apply jurisdictional exceptions under the valuation approaches, to establish appropriate guidelines and consistent assumptions for Section 1329 Fair Market Value appraisals, to comply with Commission precedent, and to reduce variances in the appraisals for the same property. *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2019-3008491, Order at 6-7 (Nov. 5, 2019) (*Cheltenham*). “UVEs are required to weigh each valuation result evenly: one-third for cost, on-third for market, and one-third for income.” *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation*, Final Supplemental Implementation Order, M-2016-2543193, at 103-106 (July 2, 2024) (*FSIO*).

C. Substantial Affirmative Public Benefits, 66 Pa. C.S. § 1103(a)

The Applicant seeking Commission approval of utility property by acquisition has the burden of proving that the acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlth. 1972) (*City of York*); 66 Pa. C.S. § 1103(c); *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1056 (Pa. 2007) (*Popowsky*); *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. Ct. 2018), *alloc. denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*); *Cicero*, 300 A.3d 1106, 1119 (Pa. Cmwlth. 2023) (*Cicero*).

Even if the valuation of utility property is done under Section 1329, the determination by the Commission that a transaction produces substantial affirmative public benefits means that the

benefits must outweigh the harms of the transaction as supported by the facts of record specific to the transaction. *McCloskey*, 195 A.3d at 1064; *Cicero*, 300 A.3d at 1119.

To satisfy Section 1103, the Commission must conduct a fact-based evaluation of the system to be acquired, the impact of the acquisition on service, the general probable effect of the acquisition on rates, and any other facts it deems relevant and conduct a legal analysis balancing the harms against the benefits such that any approval must demonstrate that the public is better off – on net – because of the transaction than it would be in the absence of the transaction. *Id.*; *City of York*, 295 A.2d at 828-829; *Popowsky*, 937 A.2d at 1054-57; *McCloskey v. Pa. PUC*, 195 A.3d at 1066-67.

Finally, the Commission can impose just and reasonable conditions in granting CPC authority. 66 Pa.C.S. § 1103(a). Section 1103(a) states: “The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.” *Id.*

III. QUESTIONS PRESENTED

1. Should the Commission deny the Joint Application because the Joint Applicants have failed to demonstrate with substantial evidence that the proposed acquisition will provide substantial affirmative public benefits?

Suggested answer: Yes.

2. In the event the Commission decides to approve the Joint Application, should the Commission adopt the OCA’s conditions for CPC authority and ratemaking rate base adjustments given that they are necessary to determine that net public benefits exist here?

Suggested answer: Yes.

IV. STATEMENT OF THE CASE

The Office of Consumer Advocate (OCA) is a statutory advocate with authority and duty to represent the interest of utility consumers as a party before the Pennsylvania Public Utility Commission (Commission). 71 P.S. § 309-4. The OCA's interest in this case is to protect utility consumers by ensuring that the Commission appropriately exercises its authority to ensure that only where there is a net, affirmative public benefit from approving an acquisition, with or without Commission imposed conditions, can a certificate of public convenience (CPC) be issued.

Aqua is requesting a CPC to acquire Beaver Falls's wastewater system assets and provide wastewater service to those areas previously served by Beaver Falls in the Borough of Greenville, Hempfield City, and West Salem City in Mercer County, Pennsylvania. Application at ¶ 5. Aqua proposes to pay \$41,250,000 for Beaver Falls's assets that have a depreciated original cost value of approximately \$5,032,210. More specifically, Beaver Falls's assets have an original cost of \$12,898,487 with a depreciation reserve of \$7,866,277. Application at ¶ 19. Aqua requests that the \$41,250,000 purchase price for the Beaver Falls be approved in its entirety as the rate base for ratemaking purposes. Application at ¶56. In addition, Aqua seeks approval from the Commission for several other municipal agreements pursuant to Section 507 of the Public Utility Code, including the APA and enumerated municipal agreements. Application at ¶ 70.

While Aqua undoubtedly is fit to run the City's sewer system, both Aqua and the City can provide the same or similar service to the Beaver Falls' customers, and Aqua's service would come at a very substantial rate increase to the City's consumers and a significant rate increase to Aqua's existing customers given the proposed ratemaking rate base in this proceeding. OCA St. 1 at 4.

For Beaver Falls customers, the rate impact of moving from municipal ownership to Aqua's ownership at the \$41.25 million proposed ratemaking rate base would be a **165.61%** increase in rates. OCA St. 1 at 22. For Aqua's existing wastewater customers, Aqua acquiring the Beaver Falls system results in an estimated 6.03% increase in rates. OCA St. 1 at 23. By comparison, Aqua's recently approved base rate case increases Aqua's wastewater bill for its rate zone 1 customers by 6.6%, which is not accounted for in the 165% noticed rate impact for Beaver Falls customers. OCA St. 1 at 23.

Aqua projects an annual revenue deficiency of \$4,288,000 for operating the Beaver Falls system. OCA St. 1 at 4. This annual revenue deficiency will be paid for by Beaver Falls customers or Aqua's existing customers, or both. OCA St. 1 at 15. This annual revenue deficiency is only 14.79% less than the \$5,032,210 depreciated original cost of the Beaver Falls system. *Id.*

V. SUMMARY OF ARGUMENT

Aqua's request for approval of its proposed purchase of the Beaver Falls wastewater system under Sections 1102 and 1103 of the Public Utility Code should be denied because Aqua failed to establish that the transaction would result in substantial affirmative public benefits. Aqua's averred benefits are not benefits because they do not differ in any substantial way from the technical, legal, or financial capability of Beaver Falls. To the extent the Commission determines that Aqua's averments are benefits, they do not outweigh the substantial adverse rate impact on Aqua's existing wastewater customers and the Beaver Falls customers who would be served by Aqua following the close of the proposed transaction.

Aqua's existing wastewater customers will see no material benefit in any form as a result of this acquisition. Instead, Aqua's existing wastewater customers will bear Aqua's cost of acquiring the Beaver Falls system with a rate impact that is almost as high as Aqua's recently

approved wastewater base rate increase.

Given that the Joint Applicants have failed to demonstrate with substantial evidence that the proposed acquisition will provide substantial affirmative public benefits, the Joint Application should be denied.

However, if the Commission decides to approve the Joint Application, such approval should be conditioned based on the OCA's proposed conditions in OCA witness DeMarco's testimony and the OCA's proposed adjustments to the appraisals in OCA witness Garrett's testimony. Aqua's proposed ratemaking rate base for the Beaver Falls system is overstated due to unreasonable subjective decisions by the UVEs in making their appraisals. If the Commission decides to approve the acquisition, OCA witness Garrett determined that the reasonable ratemaking rate base for the Beaver Falls system is \$19,628,354.

OCA witness Garrett's adjustments to the cost, market and income approaches contained in the UVE appraisals are reasonable. For the Cost Approach, OCA witness Garrett agreed with Mr. D'Ascendis' \$11,446,928 valuation.

For the Market Approach, OCA witness Garrett used all of the comparable 1329 transactions and all of the associated metrics provided in Mr. Walker's exhibits without adjustment and applied equal weight to all metrics. By contrast, Mr. Walker subjectively applied a 75% weighting to higher demographic statistics and a 25% weighting to financial statistics. Mr. D'Ascendis used other metrics that both Mr. Walker and Mr. Garrett did not use, which did not consider actual financial metrics. OCA witness Garrett's adjustments to the appraisals using all of the 1329 transactions and associated metrics presented by Mr. Walker with equal weightings resulted in a \$24,083,523 market approach valuation.

For the Income Approach, OCA witness Garrett arrived at a valuation by using the Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) methodologies as these

are the two most widely used financial models. The key difference between the OCA and UVE positions are the OCA's use of a constant growth rate DCF model based on cash flow or dividends from the current period and use of a more reasonable estimated long-term growth rate and discount rate. OCA witness Garrett also calculated a CAPM and averaged the results of his DCF and CAPM analysis to arrive at an \$23,354,612 income approach valuation.

Unlike the UVEs, OCA witness Garrett applied equal weightings to all three valuation approaches. Both UVEs applied substantially lower weighting to the lowest indicated valuation, which was the income approach in both appraisals. The UVEs' decision to use a significantly lower weighting is a decision influenced by bias.

VI. ARGUMENT

A. This transaction does not result in substantial affirmative public benefits.

1. This record lacks substantial evidence of net public benefits.

In addition to the requirements of Section 1329, the proposed transaction must satisfy Section 1102. 66 Pa. Code Section 1102. As proposed, Aqua has not provided evidentiary support that the acquisition will produce substantial affirmative public benefits for its existing wastewater and water customers and the acquired Beaver Falls customers. Indeed, Aqua provided no support that its existing customers would benefit at all from the proposed transaction. Aqua has failed to show that the transaction would provide the required affirmative benefits and therefore should not be approved or at a minimum, only be approved with the acceptance of the appropriate and necessary conditions, including those recommended by the OCA. The record demonstrates that there are not net public benefits to be garnered because of the proposed transaction and therefore, the Commission should not approve Aqua's Application.

In this proceeding, the Commission must fully consider the impacts of this acquisition on

three specific groups of customers with respect to the traditional *City of York* affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers—who may potentially bear costs of the Beaver Falls system, if the Commission permits costs to be shifted under 66 Pa. Code Section 1311(c), and (3) the existing Beaver Falls customers who will be transferred to Aqua. The Commission cannot merely wait until a subsequent base rate case to make a determination regarding the acquired system’s ratemaking rate base. *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1067 (Pa. Cmwlth. Ct. 2018)

The general benefits claimed by Aqua in this Application would apply to any system acquisition by Aqua and this, standing alone, is not sufficient to meet the substantial public benefit standard. *Cicero*, 300 A.3d at 1119. On the other hand, all existing Aqua and Beaver Falls customers will pay higher rates because of this transaction, and such future rate harm outweighs the few, if any, benefits of the transaction. OCA St. 1 at 25.

As the OCA demonstrated in the record of this case, approving Aqua’s Application would be detrimental to all identified groups of customers. Accordingly, Aqua has failed to meet its burden of demonstrating that substantial public benefits will result from the Application’s approval, that those benefits arise out of the instant transaction, and that those benefits outweigh the known or foreseeable harms which will result from approval. 66 Pa.C.S. §§ 1102, 1103; *City of York*, 295 A.2d at 828; *Popowsky*, 937 A.2d at 1057; *McCloskey*, 195 A. 3d at 1067; *Cicero*, 300 A.3d at 1119-21. Because Aqua has not demonstrated that the proposed transaction will meet the substantial public benefit standard under Sections 1102 and 1103, the instant Application must be denied. 66 Pa.C.S. §§ 1102, 1103; *City of York*, 295 A.2d at 828; *Popowsky*, 937 A.2d at 1057; *McCloskey*, 195 A. 3d at 1067.

2. Aqua's fitness and benefits that flow from it are not substantial affirmative public benefits.

The OCA did not contest Aqua's fitness as a certificated public utility. However, under *Cicero*, Aqua is required to present evidence that any benefits which derive from its technical, managerial, or financial fitness provide a substantial benefit above and beyond the fitness of the acquired utility. *Cicero*, 300 A.3d at 1119. The record demonstrates that Aqua has not provided evidence sufficient to prove that the approval of the instant Application would create a substantial improvement for Beaver Falls customers over the *status quo*.

Aqua's argument in this case is that making Beaver Falls operate exactly like Aqua operates its existing wastewater systems will provide affirmative benefits despite the rate impact of \$41.25 million being added to Aqua's ratemaking rate base and the \$10.2 million of capital expenditures Aqua estimates it will invest into the Beaver Falls system over the next 10 years. OCA St. 1 at 6. The OCA's position is that the harms related to the transaction, including, but not limited to, the rate harm, imposed ratemaking rate base and subsequent capital expenditures, do not outweigh the purported benefits in this proceeding.

If acquired by Aqua, Aqua is essentially claiming that Beaver Falls' operations will be brought up to Aqua's standards, while also increasing Aqua's rate base by \$41.25 million. Subsequent rate impacts do not include the normal Aqua rate increases that would be approved by the time Beaver Falls rates conform to the rates existing Aqua customers pay. The rate impact also does not include the rate increases that may be shifted to former Beaver Falls customers from the acquisitions of other systems through fair market value as has happened to other former municipal system customers acquired by fair market value.

Under Section 1102 of the Public Utility Code, the Commission may grant a certificate of public convenience to a regulated public utility, permitting that utility to begin to offer service in

an additional territory, and to acquire property used and useful in the public service, as is requested in this application. 66 Pa. C.S. § 1102(a)(1), (3). Section 1103 provides that the Commission may only grant a certificate of public convenience “if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103.

In *City of York*, the Pennsylvania Supreme Court established the standard applied by the Commission under Section 1103. The Court addressed the Commission’s approval of the proposed merger of three telephone companies, where the Commission’s approval was based on the absence of adverse effects. *York* at 828. Specifically, the Court held that:

Section [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the “service, accommodation, convenience, or safety of the public” in some substantial way.

Id. (referring to Section 203, the predecessor statute to Section 1103) (quoted in *Application of Pennsylvania-American Water Co.*, Docket No. A-2016-2537209, Order at 11 (Oct. 19, 2016)). This is the standard by which all acquisitions proposed by Commission-regulated utility companies must be judged.

The Commonwealth Court, in *Middletown Township v. Pa. PUC*, 482 A.2d 674 (Pa. Cmwlth. 1984) (*Middletown*), clarified that *York* required weighing the impact of the proposed merger on all affected parties, not just certain groups. In that case, Middletown Township filed an application for a Certificate of Public Convenience to acquire part of the facilities of the Newtown Artesian Water Company. *Id.* at 678. After finding that the Commission’s rejection of Middletown’s application was supported by substantial evidence, the Commonwealth Court affirmed the Commission’s decision, deciding that “when the ‘public interest’ is considered, it is

contemplated that the benefits and detriments of the acquisition be measured as they impact on *all affected parties*, and not merely on one particular group or geographic subdivision as might have occurred in this case.” *Id.* at 682 (emphasis in original). The Court added that “the primary objective of the law in this area is to serve the interests of the public.” *Id.*; *see also Popowsky*, 937 A.2d at 1057.

Sections 1102 and 1103, as a result, require an Applicant to demonstrate that a proposed acquisition provides an affirmative public benefit, meaning that the benefits of the transaction outweigh the adverse impacts of that transaction, when all affected parties are considered. *Application of CMV Sewage Co., Inc.*, 2008 PaPUC LEXIS 950, *30 (Dec. 18, 2008) (*CMV*). This is commonly referred to as the “affirmative public benefits test.” *See Popowsky* at 937 A.2d at 1052-53. To determine whether benefits meet this standard, the Commission may consider: “(1) the legal and technical fitness of the purchasing entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence.” *Application of North Heidelberg Water Co.*, 2010 PaPUC LEXIS 919, *20 (June 7, 2010).

The Commonwealth Court recently provided additional clarity to the evaluation of utility acquisitions under Section 1102 and 1103 and the relationship between these sections and Section 1329. The Court held that the benefits which derive from the acquiring utility’s technical, managerial, and financial fitness are not sufficient to satisfy the utility’s burden under *City of York* to find substantial affirmative benefits, where the system being acquired provides similar benefits. *Cicero*, 300 A.3d at 1119. Instead, only those benefits which are specific to the transaction before the Commission are considered substantial; and only those benefits may be weighed against the harm which would result from the proposed transaction. *Cicero*, 300 A.3d at 1120.

This application fails to meet the appropriate legal standard. The benefits Aqua asserts will result from the transaction are almost exclusively based on its fitness, are not specific to the transaction, and are not marked improvements over the safe and reliable service already being provided by Beaver Falls.³ Aqua's desire is to incorporate Beaver Falls into Aqua Wastewater's service territory. The general benefits claimed by Aqua would apply to *any* utility acquisition Aqua could engage in and this, standing alone, is not sufficient to meet the *City of York* standard. *Cicero*, 300 A.3d at 1119.

Under *Cicero*, a regulated public utility applying for a Certificate of Public Convenience approving a proposed merger must demonstrate that benefits will result from the transaction which are specific to the proposed transaction and do not merely flow from the acquiring utility's fitness. *Cicero*, 300 A.3d at 1120. In that case, Aqua sought Commission approval of its acquisition of the East Whiteland Township wastewater system, averring that the acquired customers would benefit from Aqua's managerial and technical expertise, access to capital, and other, aspirational, proposed benefits. *Id.* at 1117. The Commonwealth Court reversed the Commission's approval of the acquisition, finding that Aqua's reliance on general, aspirational benefits flowing from its fitness were not substantial enough to outweigh the known harms of the proposed transaction. *Id.* at 1120. Instead, the Commonwealth Court applied the *City of York* standard, that affirmative public benefits must arise from and be specific to a transaction, and outweigh the harms of the transaction, such that substantial affirmative public benefit would result therefrom *Id.*

3. The Beaver Falls wastewater system is viable.

Beaver Falls states that the reason for selling its wastewater system to Aqua is because it

³ The OCA avers that Beaver Falls' unwillingness to prioritize upkeep and improvements to its Sewer system with the consequence that an investor-owned utility will make similar improvements at a higher cost to Beaver Falls, when Beaver Falls is capable of making these investments, is antithetical to the public interest and cannot be viewed as a substantial public benefit.

needs to replace the oxidation tower pump, fix cracks in a digester, and remedy the deterioration of secondary tanks. OCA St. 1 at 7-8 (internal citations omitted). Specifically, Beaver Falls stated “[w]e have not done any of this work as we do not have the funds to do so. This is why we are selling the System to Aqua.” *Id.*

When Beaver Falls was asked if it applied for a PENNVEST grant or low-interest loan for maintenance or system upgrades in the last five years, Beaver Falls respond as follows:

“No. Please see the response to OCA-II-4. We started the process to sell the system in 2020. We expected the sale to be approved and closed in 2022. We did not explore grants or loans because we anticipated that the City would not be operating the system for long.”

OCA St. 1 at 8 (internal citations omitted).

When asked whether the City completed any projects necessary to upgrade or maintain the system, the City responded “[w]e have completed one project since the negotiation of the sale of the system and that was in the chlorination room. We replaced some pipes, two mixers and the chlorinator.” OCA St. 1 at 8 (internal citations omitted).

There is no evidence showing that Beaver Falls is technically unfit to complete any necessary improvements or upgrades. Beaver Falls has shown both that it can complete projects with funding that currently exists without grants and loans and that it has not attempted to apply for available PENNVEST grants and loans in the last five years due to its expectation that the system will be acquired by Aqua. While Aqua witness Bubel notes that the City is currently under a Corrective Action Plan (CAP) with PA DEP, the CAP does not require physical upgrades to the system. OCA St. 1 at 10 (internal citations omitted). Moreover, there is no EPA violation or corrective action plan for the Beaver Falls System. *Id.*

Section 1329(a)(4) requires that the acquiring public utility and selling utility engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling

utility. The Engineering Report submitted by Gannett Fleming, which is the same firm that employs Aqua UVE witness Walker, provides an inventory assessment that underlies that fair market value appraisals. *See* Aqua. Exh. D.

While Beaver Falls states that it is selling its system because it needs to replace its oxidation tower pump, the engineering report indicates that all pumps are in “good condition.” *See* Aqua Exh. D at 10, 15. Moreover, while Beaver Falls states that it’s selling the system because it needs to fix cracks in a digester, the engineering report states that the anaerobic digesters are in “poor to fair condition” but also notes that they were installed as part of the original plant constructed in 1936-1938. *Id.* at 29. Additionally, the engineering report notes that the digesters and control building remain in service and that two of the sludge drying beds were demolished in 2010 to make room for a three-bay garage. *Id.* Only two of the original four sludge drying beds remain but are not used as part of normal plant operations. *Id.* Similarly, while Beaver Falls avers that it is selling its system because its secondary tanks are deteriorating, the engineering report states that the tanks are in good condition. *See* Aqua Exh. D at 22.

Neither of the two fair market value appraisals underlying Aqua’s Application recommended a downward adjustment to the valuation of Beaver Falls’ assets due to non-viability or poor condition. To the contrary, both Aqua and Beaver Falls’ utility valuation experts expressly acknowledged their reliance upon the Gannett Fleming Engineering Assessment’s inventory and indicated that they have no reason to doubt the accuracy of the inventory of the assets. Aqua St. 5 at 9-11; Aqua St. 6 at 11.

As wastewater systems age, they require standard maintenance and improvements. The necessity of standard maintenance and improvements is not a substantial affirmative public benefit.

4. Evidence that Beaver Falls’ desires to exit the wastewater business does not create substantial affirmative public benefits.

Beaver Falls touts its desire to exit the wastewater business as a public benefit. Aqua St. 4 at 5-6. The OCA does not question Beaver Falls’ decision making in determining to sell its wastewater system to Aqua for a \$41.25 million purchase price. However, the OCA does not agree that the decision to add \$41.25 million to Aqua’s ratemaking rate base for Aqua to acquire the Beaver Falls system constitutes a substantial affirmative public benefit.

5. Alleged cybersecurity benefits are speculative and ignore the reality of Beaver Falls’ existing operations.

In the face of the substantial rate harm that will result from this transaction, Aqua points to other factors to bolster its arguments that the Transaction will provide substantial affirmative public benefits. Specifically, Aqua makes much of the cybersecurity improvements it alleges it will make in order to improve the cybersecurity of Beaver Falls’ wastewater operations. OCA St. 1SR at 7-8.

The Commonwealth Court found in *Cicero* it is not a benefit “to provide for upgrades that [the City] is equally capable of providing.” *Cicero*, 300 A.3d at 1119. There is no evidence that Beaver Falls’ situation violates any cybersecurity or physical security regulations. OCA St. 1SR at 8. Importantly, Beaver Falls stated that it has not been informed by any local, state, or federal regulatory authority that it must improve cybersecurity. OCA St. 1 at 30. This is another example of touting Aqua’s fitness as a utility rather than accepting that the Beaver Falls wastewater system has no cybersecurity concerns in the evidentiary record.

There is no evidence that a cybersecurity issue exists for the Beaver Falls wastewater system. While the OCA supports cybersecurity, the realities of Beaver Falls existing operations does not support a determination that Aqua’s claimed cybersecurity benefits are substantial affirmative public benefits beyond what Beaver Falls has in place and could readily pursue on its

own. Aqua’s cybersecurity alone does not justify a \$41.25 million ratemaking rate base which is over 840% of the net book value of the system. Beaver Falls can seek funding and resources to make improvements on its own, such as PENNVEST funding, for projects that improve safety and bring systems into statutory and regulatory compliance.⁴ OCA St. 1 at 8. Eligible projects could include building out cybersecurity infrastructure. 25 Pa. Code §§ 963.5, 963.8.

6. The public benefits proffered by the City only benefit the municipal government of Beaver Falls.

The record demonstrates that there are not net public benefits to be garnered because of the proposed transaction. Although the OCA does not weigh in on how any municipality spends post-acquisition money, it is important to highlight that the calculations of “public benefits” provided by the City purports to show how the money from the transaction will be used to benefit *only* the City of Beaver Falls. OCA St. 1 at 27.

Importantly, the purchase price that Aqua is willing to pay to Beaver Falls is not the de facto ratemaking rate base for the system. Purchase price and ratemaking rate base are two separate concepts. While the municipal government of Beaver Falls benefits from the purchase price of the system, Aqua’s existing and acquired customers would only be harmed by the \$41.25 million ratemaking rate base Aqua requests approval of from the Commission.

In totality, improvements to the municipal government of Beaver Falls’ finances as a result of the purchase price does not outweigh the rate harm of a \$41.25 million addition to Aqua’s ratemaking rate base for Aqua’s current customer base nor Beaver Falls’ customers. OCA witness

⁴ In addition to PENNVEST funding availability, the OCA identified the existence of a significant number of free programs which are specifically designed to assist small- and medium-sized wastewater systems with upgrading their cybersecurity infrastructure without requiring substantial funding or technical expertise. As an example, tools are available through the US Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency Performance Goals Checklist, USEPA and National Institute of Standards and Technology. OCA St. 1 SR at 8.

DeMarco explained that the projects that Aqua identified are the types of projects that a wastewater system undertakes in its normal course of business. OCA St. 1SR at 8. Moreover, under Aqua's ownership, the capital projects will include costs that Beaver Falls customers currently do not need to pay, such as taxes and costs related to Aqua's return on equity for shareholders. There is no demonstrated need for Aqua specifically to perform upgrades and Aqua's improvements will generate increased rates for Aqua and Beaver Fall ratepayers. There is no substantial affirmative public benefit to Beaver Falls' ratepayers if Aqua's requested ratemaking rate base is approved.

7. The record shows that there are few, if any, perceptible changes in service quality if this transaction is approved.

Both Aqua and Beaver Falls failed to identify perceptible changes in service quality or system performance for Beaver Falls customers beyond incorporating Beaver Falls' system into Aqua's operations. The cost of Aqua's ownership, however, is not commensurate with quantifiable service benefits. More specifically, at the \$41.25 million requested ratemaking rate base, the rate impact of moving Beaver Falls from municipal ownership to Aqua's ownership is a 165% increase in rates. OCA St. 1 at 9. The additional \$10.2 million of capital expenditures over the first ten years will also need to be included as part of the ongoing revenue requirement deficiency. OCA St. 1 at 6. These rate impacts do not include the Aqua rate increases that would be approved over the course of the same period and any cost increases that may be shifted to Beaver Falls customers from future acquisitions.

Record evidence shows that Beaver Falls' customers will be harmed by this transaction in addition to paying higher rates. Currently, Beaver Falls customers can pay in-person at the Municipal Authority's office and four additional drop-off locations without paying an additional fee. OCA St. 1 at 30. Aqua does not offer any tangible benefits over Beaver Falls' current billing system. *Id.* Nevertheless, even if there were any advantages to using Aqua's billing system

compared to Beaver Falls' billing practices, such benefits are significantly outweighed by the costs that ratepayers will bear based on the proposed ratemaking rate base.

There is no record evidence that any customer has an issue with Beaver Falls' billing system or would prefer to be billed under Aqua's billing practices. Indeed, there is no record evidence that Beaver Falls has any complaints from customers about wastewater service. The only difference that Beaver Falls customers will perceive in their wastewater service is increased rates and fewer bill payment options.

B. The Transaction will result in substantial rate harm to customers that is not outweighed by the alleged benefits.

While the Commission is vested with the ultimate authority to set the rates charged by regulated public utilities, it is axiomatic that someone will have to pay for the annual revenue requirement deficiency that would result if the Commission approves this transaction and, thus, it is both likely and foreseeable that the rates paid by existing Aqua customers will increase as a result of this transaction.

The rate harm includes: (1) an **annual** revenue deficiency of \$4,288,000 for its acquisition and operation of the Beaver Falls system; (2) a purchase price that is 820% over the net book value of the Beaver Falls system – \$5,032,210; and (3) the projected 165.61% rate increase to Beaver Falls customers under Aqua ownership. OCA St. 1 at 22, 25, 32. The current average bill of a residential customer in Beaver Falls is \$100.13 per quarter and Aqua calculated that the average bill of a Beaver Falls residential customer could increase to \$265.96 per quarter under Aqua's ownership. Aqua Supp. 1, p. 2 at ln. 10-15; OCA St. 1 at 22.

1. The \$4,288,000 annual revenue deficiency negatively impacts all of Aqua's current customers.

The lack of benefits and clear detriments for Aqua's existing customers only serve to compound the rate burdens that Aqua's customers have already borne to date. The revenue

collected from Beaver Falls customers at the rates currently in effect is insufficient by approximately \$4,288,000 every year to cover the cost of operating the system, as calculated when Aqua filed the Application. OCA St. 1 at 16. This annual revenue deficiency will likely lead Aqua to seek a higher cost recovery than it would need to seek if the transaction did not create a significant annual revenue deficiency.

To gauge the impact that existing customers have already faced, and continue to face, OCA witness DeMarco provided annual revenue deficiencies in pending fair market value acquisitions by Aqua. More specifically, the annual revenue deficiency for the DELCORA system is \$4,553,000 and the annual revenue deficiency for the Greenville Sewer Authority will be \$2,223,000. OCA St. 1 at 15. Taken together, DELCORA, Greenville and Beaver Falls totals nearly \$11,064,000 in total annual revenue deficiency for these three pending Section 1329 acquisitions alone. *Id.*

In return, Aqua has provided no concrete benefits to existing Aqua customers which will result from this transaction, outside of vague, illusory, aspirational and unsupported statements regarding cost-sharing, regionalization, and consolidation. Even if the Commission accepted the OCA's adjustments to the proposed ratemaking rate base, using Aqua's calculations, Aqua's annual revenue deficiency as a result of the transaction would be \$1.5 million. OCA St. 1 at 17 (internal citations omitted).

A \$4,288,000 annual revenue deficiency significantly eclipses any savings that may arise because of Aqua's ownership. Aqua touts as a benefit that the operating expenses for the system might be approximately \$570,000 a year lower for Aqua than for Beaver Falls. OCA St. 1 at 26 (internal citations omitted). Importantly, Aqua's estimate of the \$570,000 in operational expense savings is included in Aqua's annual revenue deficiency calculation and still generates a

\$4,288,000 annual revenue deficiency, inclusive of the savings. *Id.* In other words the \$4,288,000 annual revenue deficiency that occurs as the result of this transaction is approximately 652.37% larger than the \$570,000 operational savings that Aqua touts as a benefit. Aqua also estimates increased rates for all Aqua customers, including acquired Beaver Falls customers. *Id.* In no way is Aqua’s relatively lower operating expenses a substantial affirmative public benefit as all of the anticipated savings are already accounted for in the \$4,288,000 annual revenue deficiency.

The lack of benefits and clear detriments for Aqua’s existing customers only serve to compound the rate burdens that Aqua’s customers have already borne to date. In Aqua’s 2021 rate case, it included 5 acquisitions made pursuant to fair market value. Aqua proposed an overall increase in annual revenues of \$96.99 million, or an 18% increase in revenues. Aqua proposed to shift \$20.8 million from wastewater to water customers under Section 1311(c). Although the Commission did not adopt Aqua’s original proposal, it approved shifting \$11.2 million to water customers of the overall increase of \$70.393 million. *Pa. PUC v. Aqua Pa., Inc.*, Docket Nos. R-2021-3027385 (water) and R-2021-3027386 (wastewater) (Order entered May 12, 2022) at Table Act 11. Significantly, in its most recent base rate cases, Aqua included three more acquisitions valued using fair market value. *Pa. PUC v. Aqua Pa., Inc.*, Docket Nos. R-2024-3047822 (water) and R-2024-3047824 (wastewater) (Order entered Feb. 7, 2025) (*Aqua 2024 BRC Order*).

2. Aqua failed to provide evidence that economies of scale would result from the Transaction.

Adding customers alone does not increase economies of scale and there is no information to show that the proposed transaction would make *any* customers’ rates more affordable in the short or long term. OCA St. 1 at 13, 28-29; OCA St. 1SR at 11-12. Aqua’s Application indicates that it has 60,000 wastewater customers, and that it will only be acquiring approximately 3,190 wastewater customers under the Transaction. Application at ¶ 8. Aqua witness Packer stated, “the

System has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition.” Aqua St. 1 at 18, In. 15-16. However, Aqua presented a graph in rebuttal testimony that showed an increase in the weighted average revenue requirement per customer if the Beaver Falls system is acquired. OCA St. 1SR at 12.

The record does not show that Aqua provided a sufficient basis to show that its acquisition of the Beaver Falls assets will create actual economies of scale or how existing or acquired customers would experience a benefit. OCA St. 1 at 29. Instead, the evidence supports the opposite conclusion.

3. Aqua requests that the Commission approve a ratemaking rate base that is 820% over the net book value of the system.

The continued rate burden Aqua’s customers would face under the Transaction are exacerbated in that Aqua is proposing to include in ratemaking rate base the premium \$41,250,000 price it agreed to pay Beaver Falls. By paying this exorbitant price for the Beaver Falls system, Aqua agreed to pay 820% over the net book value of the asset and is now proposing to recover the entirety of the purchase price from ratepayers in rate base and earn a return on the purchase price from ratepayers. OCA St. 1 at 16.

Net book value matters because it shows the book cost of an asset after depreciation is subtracted due to use of the asset. In this case, the asset is the Beaver Falls wastewater system and the net book value shows how much Aqua is over paying for this asset. OCA witness DeMarco provided an example in which a car has a net book value of \$9,000 that originally cost \$10,000 due to \$1,000 worth of depreciation as a result of using the car. OCA St. 1 at 15-16. If a buyer agreed to pay 820% of the net book value of the car, the buyer needs to pay \$82,800. OCA St. 1 at 16. Similar to how paying \$82,800 seems expensive for a car with a net book value of \$9,000, Aqua is paying \$41,250,000 for a wastewater system with a net book value of \$5,032,210, which

is 820% over net book value. Indeed, the \$4,288,000 annual revenue deficiency that results if the Application is approved as filed alone is only \$744,210 less than the entire net book value of the system.

For Aqua's existing wastewater customers, Aqua acquiring the Beaver Falls system results in an estimated 6.03% increase in rates. OCA St. 1SR at 16. This rate impact also does not include the normal rate increases and further increases that may be shifted to Aqua's existing customers from acquiring other systems through fair market value. By comparison, Aqua's recently approved base rate case increases Aqua's wastewater bill for its rate zone 1 customers by 6.6%, which is not accounted for in the 165% increase to Beaver Falls customers. OCA St. 1SR at 22-23. Aqua's existing wastewater customers will see no material benefit in any form as a result of this acquisition. Instead, Aqua's existing customers will bear Aqua's cost of acquiring the Beaver Falls system with a rate impact that is almost as high as Aqua wastewater's recently approved base rate increase. To put Aqua's requested ratemaking rate base for Beaver Falls in better context, the Commission recently released its first annual Reasonableness Review Ratio (RRR), which serves as a reference for assisting the Commission's review of Section 1329 purchases. *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303. Specifically, from the vantage point of an approximation of a ratio of a proxy fair market value to the depreciated original cost of similarly-situated investor owned water utilities, the Commission calculated a RRR. *Id.* at 1. The RRR is not binding and it does not establish any legal standard. *Id.* However, it serves as a reference point. *Id.*

The Commission's recently-determined RRR result identified 1.68 as the reference point formed by its analysis. OCA St. 1 at 6 (internal citations omitted). While OCA acknowledges that

no RRR was calculated at the time Aqua's submitted its Application in 2022, and while it is not determinative,⁵ the OCA submits that Aqua's 8.20 ratio of fair market value to depreciated original cost is significantly higher than the Commission's 1.68 RRR. OCA St. 1 at 19.

The Commission's RRR value for the Beaver Falls wastewater system is \$10,797,806, compared to Aqua's \$41,250,000 requested ratemaking rate base. OCA St. 1SR at 8. For perspective, Aqua's requested \$41,250,000 ratemaking rate base for the Beaver Falls system is approximately 388.1% higher than the Commission's RRR. This is an unreasonably high request by any metric or standard. The *FSIO* does not rule out the Commission's ability to take the RRR into consideration when determining if the sale is in the public interest.

While Beaver Falls would receive a premium price for its system, there are no substantiated, quantifiable benefits for Aqua's customer base. If the Commission accepts the OCA's adjustments to ratemaking rate base, discussed *infra*, the Beaver Falls system would still be sold at approximately 132% over RRR and would be valued at 360% over net book value. OCA St. 1 at 21. Accepting the OCA's adjustments to fair market value (FMV) appraisals also lowers the annual revenue deficiency from the transaction from \$4.5 million to \$1.5 million.

4. Current Beaver Falls customers are projected to experience a 165.61% rate increase under Aqua ownership.

The rate harm for current Beaver Falls customers will be realized when they experience a 165.61% rate increase under Aqua ownership. The current average bill of a residential customer in Beaver Falls is \$100.13 per quarter and Aqua calculated that the average bill of a Beaver Falls residential customer could increase to \$265.96 per quarter under Aqua's ownership. Aqua Supp. 1, p. 2 at ln. 10-15; OCA St. 1 at 22.

⁵ *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation*, Final Supplemental Order, M-2016-2543193, at 114 (Entered July 2, 2024) (*FSIO*).

On November 8, 2022, Beaver Falls adopted a rate ordinance confirming rates for residential and commercial customers that provided for an automatic 3% annual rate increase. Aqua St. 4 at p. 10, ln. 15-18. Should the 3% annual rate increase remain in place if there is no acquisition, it is assumed the City's rate increases would be significantly lower than Aqua's estimated 165.61% increase. OCA St. 1 at 9. Importantly, wastewater bills in Aqua's rate zone 1 are projected to increase by \$5.36, or by 6.6%. OCA St. 1 at 22. This additional increase is not accounted for in Aqua's estimated 165.61% increase. *Id.*

With the OCA's recommended adjustments to ratemaking rate base, discussed *infra*, Beaver Falls customer rates increase by approximately 60% to \$160.20 a quarter. OCA St. 1 at 23. This does not take into account Aqua's recent 6.6% increase to its existing customers. *Id.* While the premium price of \$41,250,000 generates a windfall for the municipal government of the City of Beaver Falls, the wallets of the City's ratepayers stand to be harmed if the entirety of the purchase price is included in ratemaking rate base.

C. After considering the known and probable rate harms, there are no net benefits to the proposed transaction.

After weighing Aqua's claims of substantial benefits against the known or foreseeable harms which would result from the proposed transaction, it is clear that there is no substantial affirmative public benefit. Specifically, to the extent that Aqua's claims regarding economic, environmental, and regionalization benefits appear more in line with Aqua's fitness as a large, investor-owned utility. Where an Application under Sections 1102 and 1103 of the Public Utility Code relies on benefits which flow from the acquiring utility's fitness – as opposed to benefits which arise specifically from the transaction – those benefits cannot be considered substantial. *Cicero*, 300 A.3d at 1119. Instead, purported benefits must be specific to the transaction, even if aspirational, to be able to outweigh any known or foreseeable harms which would result from the

transaction. *Id.* This Transaction produces the opposite outcome, as known and foreseeable harms outweigh the few benefits that may materialize and which are contingent upon significant rate increases that are likely to exceed Aqua's representation of "worst-case scenario" rates.

In *CMV*, the Commission concluded that the adverse impacts of the proposed transaction for the existing customers outweighed the benefits. *CMV v. Pa. P.U.C.*, 2008 PaPUC LEXIS 950, *30. While the CMV system might have required upgrades to comply with stricter environmental requirements at an unknown future date, the Commission emphasized the acquired system's compliance with applicable environmental regulations at the time of the application. *Id.* The Commission could not rely on the presented evidence to determine the cost of any required, future upgrades to the target system. *Id.*

When considering the long-term rate impact of the proposed transaction, to both Aqua and Beaver Falls customers, Aqua has not provided evidentiary support to establish that net benefits will result. To the extent that Aqua has alleged any benefits exist, those benefits result entirely from Aqua's fitness, are not specific to this transaction, and do not differ substantially from the service currently provided by the Beaver Falls. As a result, Aqua has failed to meet its burden of proof under Section 1103 of the Public Utility Code, as interpreted by the Commonwealth and Supreme Courts, to establish that substantial affirmative public benefits would result from the proposed transaction. The Applicants have failed to show that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. Where a utility is unable to establish a net benefit would result from an Application under Section 1102, the Commission should reject that Application. *York*, 295 A.2d at 141. Therefore, the OCA respectfully requests that Aqua's Application be denied. However, if the Commission approves the application under Sections 507, 1102, and 1329 of the Public Utility Code, the Office of

Consumer Advocate's proposed conditions should be adopted, including the OCA's proposed adjustments to the appraisals.

D. Should the Commission decide to approve the Joint Application, the OCA's adjustments to the Section 1329 ratemaking rate base value should be adopted because they are necessary for determining that net public benefits exist here.

Section 1329 provides, *inter alia*, that when a regulated water or wastewater utility acquires a municipal water or wastewater provider, the regulated utility can ask for ratemaking treatment of the acquired utility's assets using fair market value. 66 Pa. C.S. § 1329. As set forth in Section 1329(a) and (b), the process for determining the fair market value is based on two separate appraisals, each using the Cost, Market, and Income approaches. 66 Pa. C.S. §§ 1329(a)(3), (b). The appraisals are then averaged to determine the fair market value, 66 Pa. C.S. § 1329(g), and the lesser of the purchase price or the fair market value is what the acquiring utility will present as the proposed rate base. 66 Pa. C.S. § 1329(c)(2). This is not a simple mathematical exercise. The appraisals reflect the judgments and choices made by each utility valuation expert as will be discussed below.

In this proceeding, the two appraisal values for the Beaver Falls assets were \$44,291,793 (Gannett Fleming) and \$40,199,348 (ScottMadden). OCA St. 2 at 3. The average of these two appraisals is \$42,245,570. *Id.* Aqua and the City have negotiated a purchase price of \$41,250,000. *Id.* As discussed below, Aqua's proposed rate base is overstated due to errors, flaws, and unreasonable subjectivity by the UVEs making the appraisals. If the Commission approves the proposed acquisition, the correct ratemaking rate base amount is \$19,628,354 for the City's system. OCA St. 2 at 4.

In the first Section 1329 proceeding, the Commonwealth Court reversed the Commission for failing to consider rate impacts in its determination. It stated:

Simply, by approving the sale and then putting off the consideration of the impact on rates to a later rate base proceeding, the Commission cannot do the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit. It is in this proceeding that the Commission is charged with deciding whether the impact on rates based on the OCA’s undisputed evidence was outweighed by the other positive factors that the acquisition served a substantial public benefit. Because it did not do so, this matter is remanded to the Commission to make that determination, including the propriety of the rate restriction on New Garden ratepayers set forth in the APA.

McCloskey v. Pa. PUC, 195 A.3d 1055, 1067 (Pa. Cmwlth. Ct. 2018) (*New Garden*) (emphasis added)

1. Aqua’s Application

The Company and the City commissioned appraisals from Gannett Fleming and ScottMadden. Harold Walker III of Gannett Fleming estimated an FMV of \$44,291,793 and Dylan D’Ascendis of Scott Madden Consultants estimated an FMV of \$40,199,348 for the Beaver Falls wastewater system assets. OCA St. 2 at 3. Gannett Fleming and ScottMadden provided these appraisals using the cost, income, and market approaches, as set forth in Section 1329(a)(3).

Gannett Fleming’s appraisal results are summarized as follows:

Approach	Base Value	Weight	Weighted Value
Market	\$ 50,664,671	37.5%	\$ 18,999,252
Cost	32,994,154	25.0%	8,248,539
Income	45,450,675	37.5%	17,044,003
Total		100.0%	\$ 44,291,793

OCA St. 2 at 3.

ScottMadden’s appraisal results are summarized as follows:

Approach	Base Value	Weight	Weighted Value
Market	\$ 46,817,319	45.0%	\$ 21,067,794
Cost	11,446,928	10.0%	1,144,693
Income	39,970,803	45.0%	17,986,861
Total		100.0%	\$ 40,199,348

Id.

These estimates are influenced by several unreasonable assumptions. As the above tables show, Gannett Fleming and ScottMadden apply different weightings to each approach, indicating that judgment plays a role in the UVEs determinations about the FMV of the City’s assets. Both UVEs used the same three approaches to calculate FMV, and both came up with different results overall, and different results through each individual approach. As such, the OCA submits that the Commission should carefully consider the assumptions informing each UVE’s appraisal results, the flaws in those assumptions that are identified in the OCA’s testimony, and the Commission should accept the adjustments proposed by the OCA to more properly reflect financial and ratemaking principles.

OCA witness Garrett calculated that with the appropriate adjustments, the FMV of the Beaver Falls system is \$19,628,354. OCA St. 2 at 6. The adjustments to Gannett Flemming’s appraisal under all three approaches are summarized as follows:

Approach	OCA Adjustment	Adjusted Value	OCA Weight	OCA Weighted Value
Market	\$ (26,581,148)	\$ 24,083,523	33.3%	\$ 8,027,841
Cost	(21,547,226)	11,446,928	33.3%	3,815,643
Income	(22,096,063)	23,354,612	33.3%	7,784,871
Total				\$ 19,628,354

OCA St. 2 at 4.

The adjustments to ScottMadden’s appraisal under all three approaches are summarized as follows:

Approach	OCA Adjustment	Adjusted Value	OCA Weight	OCA Weighted Value
Market	\$ (22,733,796)	\$ 24,083,523	33.3%	\$ 8,027,841
Cost	-	11,446,928	33.3%	3,815,643
Income	(16,616,191)	23,354,612	33.3%	7,784,871
Total				\$ 19,628,354

OCA St. 2 at 5.

The average of these two adjusted appraisal results is \$19,628,354, which is the amount that Mr. Garrett recommends be used by the Commission for establishing rate base under Section 1329 rather than the \$41,250,000 proposed by Aqua. OCA St. 2 at 2, 5. These recommendations are summarized in the following chart:

OCA’s Recommended Rate Base:

	Appraiser Results	OCA Adjusted
Gannett Fleming	\$ 44,292,000	\$ 19,628,354
AUS Consultants	40,199,348	19,628,354
Average	\$ 42,245,674	\$ 19,628,354
Purchase Price	\$ 41,250,000	\$ 41,250,000
Proposed Ratebase	\$ 41,250,000	\$ 19,628,354

OCA St. 2 at 6.

2. Challenges to UVE Appraisals

The issue of whether parties can challenge Utility Valuation Expert (UVE) appraisals has already been decided by the Commission. The Commission found that “Section 1329 permits the

Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the UVEs.” *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2016-2580061, Order at 35 (June 29, 2017) (internal citations omitted) (*New Garden*). The ratemaking approvals of Section 1329 must be reconciled with the requirement of Section 1301 of the Public Utility Code, 66 Pa. Code Section 1301, requiring each rate to be just and reasonable and the requirements of Section 1102 that acquisitions provide substantial affirmative benefits.

In a subsequent Section 1329 proceeding, the Commission reiterated that Section 1329 contains no prohibitions on the ability of parties to review the UVE appraisals as to their reasonableness and stated as follows:

We agree that Section 1329 does not prevent a review of the UVE assumptions for reasonableness, and for the reasons discussed below, we find that the ALJ appropriately considered several of the recommendations to the fair market appraisals of the Limerick system.

Application of Aqua Pennsylvania Wastewater, Inc., Docket No. A-2017-2605434, Order at 36 (Nov. 29, 2017) (*Limerick*).

The Commission made the same determination in other Aqua Section 1329 acquisitions, including the following acquisitions: New Garden, Cheltenham, Lower Makefield, and Willistown. *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3927268, Order at 73 (July 8, 2022) (*Willistown*) (internal citations omitted). Thus, it would be inconsistent with the requirements of the Public Utility Code and prior Commission orders to permit Aqua to simply present a rate base number, show that the appraisers chose numbers to fill in all the blanks in the formulas, and not permit any review or challenges of those inputs.

E. The OCA’s Cost Approach adjustment should be adopted.

The Cost Approach is a procedure to estimate the current costs to reproduce or create a property with another of comparable use and marketability. OCA St. 2 at 17 (internal citations

omitted). Both UVEs relied on the reproduction cost new less depreciation (RCNLD) method. OCA St. 2 at 18.

OCA witness Garrett did not propose any adjustment to Mr. D'Ascendis' \$11,446,928 cost approach valuation. OCA St. 2 at 3, 19. OCA witness Garrett also noted that Mr. D'Ascendis' cost approach result of \$11,446,928 fell within the range of Mr. Walker's cost approach range of \$7.9 million and \$33 million. OCA St. 2 at 19. Mr. Walker chose the upper-most value from this range at \$32,994,153 as his cost approach result. OCA St. 2 at 3. As such, OCA witness Garrett proposed a \$21.5 million adjustment to Mr. Walker's cost approach, which is simply the difference between Mr. Walker's and Mr. D'Ascendis' cost approach valuations to arrive at an adjusted cost approach valuation of \$11,446,928. OCA St. 2 at 19.

1. The OCA's Market Approach adjustments should be adopted.

The Market Approach involves comparing an asset with similar assets that have been sold or are for sale in the relevant marketplace by making adjustments to prices based on marketplace conditions and the properties' characteristics of value. OCA St. 2 at 6 (internal citations omitted). To evaluate whether a reasonable basis for comparison exists, the American Society of Appraisers recommends considering whether the assets in question have similar qualitative and quantitative characteristics and whether there is a comparable amount of data known about each asset.⁶ The American Society of Appraisers, *ASA Business Valuation Standards* at 12.

Gannett Fleming estimated a market approach valuation of \$50.7 million and ScottMadden estimated a market approach valuation of \$46.8 million for the Beaver Falls system assets. OCA St. 2 at 6.

⁶ https://www.appraisers.org/docs/default-source/5---standards/bv-standards-feb-2022.pdf?sfvrsn=5c9e5ac0_3 (last accessed Feb. 12, 2025).

Aqua witness Walker used the Market Multiples Method and the Selected Transactions method in his market approach valuation. OCA St. 2 at 7. Mr. Walker's selected transaction method indicates a valuation of \$33.3 million. *Id.* Mr. Walker's Market Multiples method indicates a valuation of \$39.3 million. OCA St. 2 at 7.

a. Gannett Flemming Market Approach – Selected Transactions

Mr. Walker's Selected Transactions method estimated the value of the City's system using financial and demographic statistics from other acquired systems. However, Mr. Walker makes several assumptions and applies unequal weightings to his results. OCA St. 2 at 7. These decisions upwardly biased and ultimately increase his final indicated values. For example, Mr. Walker's demographic statistics (customers and population) under the selected transactions method indicates a higher value than using Mr. Walker's capital statistics (capital, PP&E, etc.). *Id.* As such, Mr. Walker applied a 75% weighting to the higher demographic statistics, and only a 25% weighting to the lower capital statistics. OCA St. 2 at 7. Mr. Walker's application of these weightings is arbitrary and lacks any meaningful support. *Id.*

Mr. Walker provides the key metrics for 20 different "comparable transactions" involving the sales of water and wastewater systems in Pennsylvania. OCA St. 2 at 8 (internal citations omitted). He also provides the metrics for Beaver Falls. *Id.* These metrics include investor supplied capital, gross PP&E, net PP&E, customers, and population. *Id.* The 20 transactions selected by Mr. Walker and the key metrics he provided related to each transaction are as follows:

System Name	Purchase Price	Investor Capital	Gross PP&E	Net PP&E	Cust.	Pop.
Municipal Authority of the City of McKeesport	\$ 156,000	\$ 83,903	\$ 91,436	\$ 73,814	13	46
New Garden Township/Authority's WW System's Assets	29,500	23,001	25,988	17,967	2	12
Limerick Township Wastewater System's Assets	75,100	43,502	60,847	36,114	5	19
Steelton Borough (Water) Authority	22,500	-	-	-	2	6
Exeter Township Wastewater System Assets	96,000	-	-	-	9	28
Kane Borough Authority Wastewater System	17,560	10,809	20,266	8,898	2	5
Borough of Royersford Wastewater System Assets	13,000	4,703	6,883	4,546	2	5
York City Sewer Authority Wastewater System Assets	235,000	100,493	120,655	78,592	14	81
Sadsbury Township Wastewater Utility	9,250	-	-	-	1	4
East Bradford Township Wastewater System Assets	5,000	1,299	-	-	1	10
Township of Mahoning Water System Assets	4,735	-	-	-	1	4
Township of Mahoning Sewer System Assets	4,765	-	-	-	1	4
Cheltenham Township Wastewater System Assets	50,250	-	-	-	10	38
East Norriton Township Wastewater System Assets	21,000	4,055	-	-	5	14
Valley Township Water System Assets	7,325	-	-	-	2	7
Valley Township Wastewater System Assets	13,950	-	-	-	3	7
Upper Pottsgrove Township Wastewater System Assets	13,750	-	15,295	11,549	1	6
Lower Makefield Township Wastewater System Assets	53,000	16,525	-	17,592	11	33
Willistown Township Wastewater Systems Assets	17,500	9,867	8,674	4,888	2	11
East Whiteland Township Wastewater System Assets	54,930	42,513	48,673	34,144	4	15

OCA St. 2 at 8-9, (numbers shown in 000s).

Under the selected transactions method, the appropriate purchase price for Beaver Falls should be determined by equating the capital and demographics metrics for the comparable transactions to those of Beaver Falls. OCA St. 2 at 9. For example, the mathematical relationship between the investor capital and purchase price of the McKeesport transaction could be described as a ratio of 1.9. *Id.* Using that ratio and the investor supplied capital for Beaver Falls of \$8.1 million indicates a purchase price of \$15.1 million. *Id.* In other words, the mathematical relationship between capital and purchase price for McKeesport indicates a fair purchase price of \$15.1 million for Beaver Falls. *Id.*

The following table applies the same calculation for all of the comparable companies using all five capital and demographic results:

System Name	Investor Capital	Gross PP&E	Net PP&E	Cust.	Pop.
Municipal Authority of the City of Mckeesport	\$ 15,148	\$ 22,006	\$ 16,592	\$ 39,781	\$ 52,304
New Garden Township/Authority's WW System's Assets	10,449	14,641	12,890	53,530	38,031
Limerick Township Wastewater System's Assets	14,065	15,920	16,326	45,190	62,244
Steelton Borough (Water) Authority				29,663	59,095
Exeter Township Wastewater System Assets				34,825	54,174
Kane Borough Authority Wastewater System	13,235	11,176	15,494	28,345	58,899
Borough of Royersford Wastewater System Assets	22,520	24,361	22,452	26,546	39,298
York City Sewer Authority Wastewater System Assets	19,051	25,123	23,474	55,711	45,241
Sadsbury Township Wastewater Utility				30,206	37,432
East Bradford Township Wastewater System Assets	31,368			13,057	7,835
Township of Mahoning Water System Assets				13,011	17,489
Township of Mahoning Sewer System Assets				10,703	17,601
Cheltenham Township Wastewater System Assets				16,026	20,689
East Norriton Township Wastewater System Assets	42,190			13,782	22,886
Valley Township Water System Assets				14,303	15,231
Valley Township Wastewater System Assets				14,548	29,006
Upper Pottsgrove Township Wastewater System Assets		11,595	9,347	31,380	38,739
Lower Makefield Township Wastewater System Assets	26,129		23,652	15,490	24,874
Willistown Township Wastewater Systems Assets	14,450	26,024	28,110	24,862	24,313
East Whiteland Township Wastewater System Assets	10,526	14,557	12,630	45,961	58,139
Average	\$ 19,921	\$ 18,378	\$ 18,097	\$ 27,846	\$ 36,176
Indicated Valuation			\$ 24,083,523		

OCA St. 2 at 9-10, (numbers shown in 000s). The calculations presented in the figure above represent all of the comparable 1329 transactions and associated metrics provided in Mr. Walker's exhibits, without adjustment. OCA St. 2 at 11.

Mr. Walker's selected transactions and metrics indicate a significantly lower value than Mr. Walker's market approach result. Under an equal weighting of all comparable transactions used in Mr. Walker's selected transactions methodology, the valuation for Beaver Falls' system is \$24.1 million. OCA St. 2 at 10. This result is significantly less than Mr. Walker's market approach valuation of \$50.6 million. OCA St. 2 at 11.

Importantly, OCA witness Garrett made no decisions or assumptions that may have an impact on the final results when compiling the above table. OCA St. 2 at 11. However, additional adjustments could have been reasonably made that would have a decreasing effect on the results.

Id. For example, instead of using the negotiated purchase price for the ratio calculation of each metric, the commission-approved rate base could have been used instead. *Id.* Another adjustment that OCA witness Garrett could have, but did not make, is applying a greater weighting to the capital statistics relative to the demographic statistics. OCA witness Garrett testified that capital statistics are more directly linked to indicated valuations than statistics such as population and customers. OCA St. 2 at 11. In fact, valuation methods such as the discounted cash flow (“DCF”) method *only* consider financial metrics, and do not account for any demographic metrics. OCA St. 2 at 11-12. In other words, under the DCF method of valuation, capital statistics receive a 100% weighting and demographic statistics receive a 0% weighting. OCA St. 2 at 12. Moreover, metrics such as PP&E are tangible capital assets on a company’s balance sheet that are used to generate revenues and profits. OCA St. 2 at 12. OCA witness Garrett testified that investors would directly consider this type of metric when assessing the value of a company they were considering investing more than the current demographic statistics in a particular area. OCA St. 2 at 12.

Nevertheless, OCA witness Garrett did not make any additional adjustment beyond equally weighing all provided metrics. Mr. Walker, however, applied a three-fold *greater* weighting to demographic statistics over the financial statistics. OCA St. 2 at 12. Mr. Walker’s decision does not appear to be tied to any objective approach to determining a fair market value of the system assets. *Id.* Moreover, Mr. Walker did not provide an adequate explanation as to why the level of customers and population should be primary drivers of a fair market valuation when compared with capital and financial metrics. *Id.*

Mr. Walker did not have a persuasive reason for applying a 75% weighting to the higher demographic statistics, and only a 25% weighting to the capital statistics. If all of the Pennsylvania’s Section 1329 transactions are considered, and an equal weighting is applied to each

transaction without any upwardly biased decisions or assumptions, the indicated valuation using Mr. Walker's own transactions and metrics (\$24.1 million) is significantly less than his ultimate proposed valuation under the market approach (\$50.6 million). OCA St. 2SR at 6.

b. Gannett Flemming Market Approach – Market Multiple Methodology

Mr. Walker's market multiples methodology also contains upwardly biased assumptions. Under Mr. Walker's market multiples method, he uses a proxy group of publicly traded water companies and considers several metrics, such as revenue, EBIT, gross PP&E, and net PP&E. OCA St. 2 at 12-13. The adjustments Mr. Walker makes to his results under the market multiples method are based in part on Mr. Walker's conclusory and unsupported assumptions that the Beaver Falls system is riskier than the proxy group simply because of its relatively small size. OCA St. 2 at 13. However, the "size effect" has been discredited in multiple publications and Mr. Walker's claims that the Beaver Falls system is somehow riskier than the proxy group and should thus receive an upward adjustment in valuation, is unwarranted and should be rejected. OCA St. 2 at 13-15 (internal citations omitted).

Similar to his selected transactions methodology, Mr. Walker inexplicably gives a 3 to 1 preference for demographic statistics over financial metrics. OCA St. 2 at 15. Again, the financial models investors used for decades including the CAPM and DCF exclusively consider financial metrics (such as dividends, earnings growth, the risk free rate, etc.). OCA St. 2 at 15.

If Mr. Walker's weightings appropriately gave more credit to financial metrics over demographics, than his indicated value under his own market multiples approach, even using all of Mr. Walker's questionable assumptions, is \$25.6 million. OCA St. 2 at 15-16. Importantly, this result is substantially similar to OCA witness Garrett's \$24.1 million adjusted valuation under the market approach. OCA St. 2 at 16. However, OCA witness Garrett testified that if he applied a

75% weighting to capital metrics and a 25% weighting to demographic statistics, the valuation under the market approach would be \$22.1 million. *Id.* If financial metrics are exclusively considered, the market approach valuation is \$18.8 million. *Id.* This illustrates the reasonableness of OCA witness Garrett's \$24.1 million market approach valuation.

c. ScottMadden Market Approach

Mr. D'Ascendis' market approach valuation is \$46,817,319. OCA St. 2 at 3. Mr. D'Ascendis' market approach valuation, however, includes indicated values as high as \$62.3 million, which grossly exceeds all other valuations in this case. *Id.* To arrive at his result, Mr. D'Ascendis [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] OCA St. 2 at 16.

Mr. D'Ascendis' market approach methodology is unreasonable as it does not consider actual financial metrics. Instead of relying on financial metrics such as investor capital and PP&E as part of the selected transactions method, which both Mr. Walker and Mr. Garrett considered, Mr. D'Ascendis considered [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] OCA St. 2 at 17. This approach is inferior to an approach which considers the actual financial metrics of the selected transaction. *Id.* In valuing any asset, using

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] *Id.* As such, the Commission should reject the valuation indicated under Mr. D'Ascendis' market approach. *Id.*

2. The OCA's Income Approach adjustments should be adopted.

The Income Approach values a business based on the anticipated value the business creates over time. The American Society of Appraisers, *ASA Business Valuation Standards* at 10-11.⁷ As such, OCA witness Garrett's income approach adjustment recognizes that assets that are expected to generate cash flows over time can be valued with various discounted cash flow models. OCA St. 2 at 20. This basic premise also underlies the approach taken by the UVEs in their income approach valuations. OCA St. 2 at 20-21.

OCA witness Garrett described the Income Approach models utilized by the UVEs and the reasoning for the OCA's proposed adjustments in this proceeding as follows:

Under this valuation method, the value of an asset (the City's wastewater system assets in this case), is equal to the present value of its future cash flows. This model also requires estimates for a growth rate and discount rate. For publicly traded assets, we can use the dividend discount model. A derivation of this model that solves for the discount rate is called the Discounted Cash Flow ("DCF") model in regulatory proceedings. However, since Beaver Falls is not publicly traded and does not issue dividends, we must consider its estimated free cash flow from operations, rather than dividends, as part of the valuation model. I also proposed adjustments to the UVEs' long-term growth rate and discount rate, which are both key inputs to the DCF Model. Under the DCF Model used for the valuation adjustment in this case, the discount rate is the asset's estimated cost of capital. My adjustment is the result of applying these reasonable estimates to the UVE income approaches.

OCA St. 2 at 20-21 (internal citations omitted). The key differences between the OCA and UVE positions are the OCA's use of a constant growth rate discounted cash flow (DCF) model based on cash flow or dividends from the current period and use of a more reasonable estimated long-term growth rate and discount rate (cost of capital).

⁷ https://www.appraisers.org/docs/default-source/5---standards/bv-standards-feb-2022.pdf?sfvrsn=5c9e5ac0_3 (last accessed Mar. 25, 2022).

Mr. Walker and Mr. D’Ascendis estimate income approach valuations of \$45.5 million and \$40 million, respectively. OCA St. 2 at 19. OCA witness Garrett’s adjustments to Mr. Walker’s and Mr. D’Ascendis’ Income Approach analysis reduce the valuations to \$24,083,523, or by \$22.1 million and \$16.6 million, respectively. OCA St. 2 at 3, 20.

Mr. Garrett’s adjustments are reasonable and consistent with public utility principles and should be adopted. First, OCA witness Garrett adjusted the City’s free cash flows from operations. OCA St. 2 at 21. In formulating this adjustment, OCA witness Garrett utilized the average amount of operating revenues, earnings before interest and taxes (EBIT), depreciation, and capital expenditures for 2021 (which Mr. Walker refers to as “Year 0” in his income approach) to calculate free cash flow from operations presented by Mr. Walker to use as the basis for discounted cash flow analysis. *Id.*

Next, OCA witness Garrett adjusted the cost of capital for Beaver Falls as follows:

Capital Component	Proposed Ratio	Cost Rate	After-Tax Rate	Weighted Cost
Long Term Debt	47%	4.0%	2.9%	1.35%
Equity	53%	7.8%	7.8%	4.14%
Total	100%			5.48%

OCA St. 2 at 23. The capital composition and rates contemplated in this calculation produce a cost of capital estimate of 5.48%. *Id.* By comparison, Mr. Walker estimated a 6.59% to 8.5% range for the cost of capital. *Id.* Mr. D’Ascendis estimated a 6.62% cost of capital. *Id.* As such, OCA witness Garrett’s cost of capital estimate is less than the estimate of both UVEs. *Id.*

The weighted cost of capital essentially involves several key components, including the cost of debt, the cost of equity, and the capital structure. OCA St. 2 at 24. In terms of estimation,

the most critical of these components is the cost of equity. The cost of equity refers to the required return on equity expected from a company's equity investor based on the risk inherent in that investment. OCA St. 2 at 24. OCA witness Garrett used a utility proxy group of water utilities substantially similar to the proxy group considered by the UVEs to estimate the cost of equity. OCA St. 2 at 22.

In estimating the City's cost of equity, OCA witness Garrett utilized the two most widely used financial models: the DCF and the Capital Asset Pricing Model (CAPM). OCA St. 2 at 24-37. Mr. Garrett utilized these models because, unlike the known, contractual and embedded cost of debt, there is not any explicitly quantifiable "cost" of equity. Instead, the cost of equity must be estimated through various financial models, such as the DCF and CAPM. OCA St. 2 at 24.

OCA witness Garrett's DCF model, which is based on the average DCF result for each company in the proxy group, results in a 6.7% cost of equity estimate for the City. OCA St. 2 at 29. OCA witness Garrett's Direct Testimony provides an extensive discussion on the DCF and CAPM models. *Id.* at 20-37. The most critical input in the DCF Model is the growth rate. Unlike the stock price and dividend inputs in the DCF and CAPM, the growth rate input must be estimated. OCA St. 2 at 24. Before future cash flows are discounted by the cost of equity, however, they must be "grown" into the future by a long-term growth rate. OCA St. 2 at 27. One of the inherent assumptions of the DCF is that these cash flows in the form of dividends grow at a constant rate forever. OCA St. 2 at 27. Thus, the growth rate term in the constant growth DCF model is often called the "constant" or "stable" growth rate. *Id.*

A fundamental concept in finance is that no firm can grow forever at a rate higher than the growth rate of the economy in which it operates. OCA St. 2 at 27. As such, the constant growth rate used in the DCF Model should not exceed the aggregate economic growth rate. This is

especially true when the DCF Model is conducted on public utilities because these firms have defined service territories. OCA St. 2 at 28.

OCA witness Garret also calculated an 8.2% CAPM cost of equity. OCA St. 2 at 36. The CAPM is a market-based model founded on the principle that investors expect higher returns for incurring additional risk. OCA St. 2 at 29. The CAPM equation requires only three inputs to estimate the cost of equity: (1) the risk-free rate; (2) the beta coefficient; and (3) the equity risk premium (ERP). *Id.* For the risk-free rate, OCA witness Garrett considered the commonly used 30-day average of daily Treasury yield curve rates on 30-year Treasury Bonds in his risk-free rate estimate, which resulted in a risk-free rate of 4.64%. OCA St. 2 at 30. For the beta coefficient, OCA witness Garret used betas recently published by Value Line Investment Survey. OCA St. 2 at 31. For the ERP, OCA witness Garrett considered results from ERP surveys along with the implied ERP calculations and the ERP reported by Kroll for the following results:

IESE Business School Survey	5.5%
Kroll (Duff & Phelps) Report	5.0%
Damodaran (average)	4.5%
Garrett	5.1%
Average	5.0%

OCA St. 2 at 35.

To estimate cost of debt, OCA witness Garrett considered the interest expense and long-term debt reported for each of the proxy companies. OCA St. 2 at 37. To estimate the capital structure, OCA witness Garrett considered the long-term debt ratios for each proxy company. *Id.* As such, OCA witness Garrett considered substantially the same proxy group of companies as both

UVEs as well as their consideration of Value Line as a source for some of the pertinent financial data used in their analyses, including the debt ratios. *Id.*

Assuming an unreasonably low debt level has an increasing effect on the estimated cost of capital. OCA witness Garrett's average adjusted cost of debt (pre-tax) and debt ratio for the proxy group is 4% and 47%, respectively. OCA St. 2 at 37. In comparison, Mr. Walker utilized a debt ratio of only 22.7%, which is significantly less than the average debt ratio of the proxy group. OCA St. 2 at 38. Mr. D'Ascendis' assumes a capital structure consisting of [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] OCA St. 2 at 38.

Based on the cost of equity and cost of capital components, OCA witness Garrett's adjustments to the UVEs' appraisals resulted in an Income Approach valuation of \$23.3 million. OCA St. 2 at 39. OCA witness Garrett's income approach results are summarized in the following table:

Annual Cash Flow	\$ 378,971
Constant Growth Rate	3.80%
Discount Rate	5.48%
Adjusted Value	<u><u>\$ 23,354,612</u></u>

OCA St. 2 at 39.

Under these assumptions, the Beaver Falls' system valuation under the income approach is \$23.3 million, which is nearly equal to the indicated valuation under the market approach. Mr. Garrett's adjustments to the Gannet Fleming and ScottMadden approach valuations are reasonable and should be adopted.

3. The OCA’s adjustments to the weightings of the UVE appraisals should be adopted.

The Commission has recently reiterated that “UVEs are required to weigh each valuation result evenly: one-third for cost, one-third for market, and one-third for income.” *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation*, Final Supplemental Implementation Order, M-2016-2543193, at 62 (July 2, 2024) (*FSIO*). Both Mr. Walker and Mr. D’Ascendis applied unequal weightings to their three indicated valuations. Importantly, they both applied a substantially lower weighting to the lowest indicated valuation, which was the income approach for both appraisals. OCA St. 2 at 39.

The UVEs’ decision to use a significantly lower weighting for the lowest of their three indicated valuations is another decision that is influenced by bias, rather than one that is designed to produce the fairest overall valuation. OCA witness Garrett testified that there were no persuasive arguments made by the UVEs to deviate from equal weightings. OCA St. 2 at 39-40.

Had Gannett Fleming’s appraisal applied equal weightings, the following table shows what Mr. Walker’s valuations would equate to:

<u>Approach</u>	<u>Base Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Market	\$ 50,664,671	33.3%	\$ 16,888,224
Cost	32,994,154	33.3%	10,998,051
Income	45,450,675	33.3%	15,150,225
Total			\$ 43,036,500

OCA St. 2 at 40. As shown in the table, the weighted average FMV estimated by Gannett Fleming using equal weightings is \$43.0 million. The table below shows the results of ScottMadden’s appraisal using equal weightings:

Approach	Base Value	Weight	Weighted Value
Market	\$ 46,817,319	33.3%	\$ 15,605,773
Cost	11,446,928	33.3%	3,815,643
Income	39,970,803	33.3%	13,323,601
Total			\$ 32,745,017

OCA St. 2 at 41. The weighted average FMV estimated by Mr. D’Ascendis using equal weightings is \$32.7 million.

The results of both appraisals are lower when using equal weightings rather than the unequal weightings applied by the UVEs. The average of the two appraisals using equal weightings is \$37,890,758.50. OCA St. 2 at 41. Compared to the Joint Applicants’ proposal to value the system at \$41,250,000 for rate base purposes, the average of the two appraisals using equal weightings is \$3,359,41.50, or 8.14%, less than the proposed ratemaking rate base of the system.

4. Conclusion

Mr. Garrett’s recommended adjustments to Mr. Walker’s Cost, Income and Market approaches modify the Gannett Fleming appraisal result from \$44,291,793 to \$19,628,354. OCA St. 2 at 3-4. Mr. Garrett’s recommended adjustments to Mr. D’Ascendis’ Cost, Income and Market approaches modify the ScottMadden appraisal result from \$40,199,348 to \$19,628,354. *Id.* at 3-5. Because this amount is less than the \$41,250,000 requested ratemaking rate base, the OCA submits that the amount approved for ratemaking rate base pursuant to Section 1329 must be no more than \$19,628,354, rather than \$41,250,000 as proposed by Aqua.

F. Should the Commission decide to approve the Joint Application, the OCA’s recommended conditions to CPC authority should be adopted because they are necessary for determining that net public benefits exist here.

The Transactions detriments significantly outweigh any benefits, and no finding of substantial affirmative public benefits would be appropriate under the facts of this case. If,

however, the Commission determines to approve Aqua's Application, the OCA recommends that the following conditions be imposed:

1. Cost of Service Studies

OCA witness DeMarco testified that Aqua should be required to perform a separate cost of service study for Beaver Falls' system when it files its next base rate case. OCA St. 1 at 34. OCA's recommendation was made because if adopted, it provides the necessary information needed to establish rates that reflect the costs of the Beaver Falls system in Aqua's next rate case. *Id.* Aqua witness Packer indicated that Aqua would agree to adopt this condition. Aqua St. 1R at 12. Accordingly, this cost-of-service condition should attach to any approval of Aqua's Application.

2. Low-Income Program Information and Tracking

To ensure that Beaver Falls customers can avail themselves of CAP programming benefits, the OCA recommended that Aqua provide a letter to the acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and Aqua's contact information. OCA St. 1 at 31-32. The letter should be sent within 30 days after closing so that eligible customers can benefit from the program as soon as possible and before rates are increased.

Also, Aqua should include the same information regarding low-income programs in bills sent to Beaver Falls customers within 90 days after closing. OCA St. 1 at 30. Aqua should report the number of eligible customers from the former Beaver Falls service area who are enrolled in Aqua's CAP. *Id.* The report should be provided to the Commission and to the parties every six months until the conclusion of Aqua's next base rate case. *Id.* Aqua agreed to these conditions; accordingly, they should be adopted in any approval of Aqua's Application. *See* Aqua 9R at 6.

3. Missing Easements and Other Property Rights

As a condition for approval of the application, the Commission should require that the closing of the transaction shall not be permitted to occur until Aqua acquires all outstanding easements. OCA St. 1 at 38. Aqua stated that it is not currently aware of any leases, easements, or access to public rights-of-way that will not be transferred at the time of closing. *Id.* As such, this recommendation is reasonable and should be adopted.

4. Transaction and Closing Costs

Section 1329 permits only the transaction and closing costs incurred by the acquiring public utility to be included in the established ratemaking rate base. 66 Pa. C.S. § 1329(d)(1)(iv). Aqua will incur transaction and closing costs of approximately \$714,980, which Aqua will claim in its rate base in the base rate case following closing if the proposed acquisition is approved by the Commission and not subject to appeal. OCA St. 1 at 33 (internal citations omitted).

Aqua should be required to separately identify all of its closing costs by cost category, including outside legal fees, when it makes a claim for recovery in its next base rate case. OCA St. 1 at 33-34. Aqua should be barred from claiming any transaction and closing costs incurred by the seller. OCA St. 1 at 34. The OCA recommendations regarding transaction and closing costs is necessary to ensure that ratepayers do not pay imprudent and unreasonable transaction and closing costs if the Commission determines to approve Aqua's Application.

5. Increased Hardship Funding from Aqua

While the evidentiary record does not support the existence of affirmative public benefits to this transaction, if the Commission were to approve the transaction against the recommendation of the OCA, it should be conditioned on the requirement that Aqua make an annual contribution of \$100,000 to the hardship fund for five years following closing. OCA St. 1 at 32. These contributions should not be recovered in rates and all unspent funds at the end of the program year

should be rolled over and added to the budget for the hardship grant program in the following year(s). *Id.*

Although Aqua did not entirely oppose OCA's recommendation for additional funding, Aqua suggested that a more appropriate level of funding would be \$30,000 for each of the next three years. Aqua 5R at 7. The OCA appreciates Aqua's recognition that additional hardship finding would be appropriate here and agreed to a lesser contribution in the interest of compromise. OCA St. 1SR at 2. Accordingly, if the Transaction is approved, Aqua should be required to provide an additional annual contribution of \$30,000 to the hardship fund for three years following the closing.

6. Amended LTTIP and DSIC for Beaver Falls Customers

Although Section 1329(d)(4) provides that Beaver Falls rates will not increase until new base rates are approved in Aqua's next base rate case post-closing, the statute does allow Aqua to collect a DSIC during this time. *See* 66 Pa. Code § 1329(d)(4). While Aqua does not commit to when it will file an amended LTIIP, having the acquired customers pay a DSIC is one small way in which Aqua's existing customers can receive a short-term benefit from the acquisition by spreading the costs recovered through the DSIC over a larger customer base. OCA St. 1 at 35.

As such, the OCA recommends that Aqua's amended LTIIP including the Beaver Falls customers should be filed within 90 days of closing. OCA St. 1 at 35. Additionally, the proposed projects reflected in the amended LTIIP should be in addition to, and not re-prioritize, any capital improvements that Aqua has already committed to undertake for existing customers. *Id.* Also, Aqua should not include Beaver Falls system-related investments in its DSIC until Aqua collects a DSIC from Beaver Falls customers. *Id.* These recommendations are necessary to ensure that Aqua is accountable for timely planning the infrastructure improvements it claims will occur for

Beaver Falls, that existing customers' projects will not be compromised, and that Beaver Falls customers contribute to projects in their service area. *Id.* at 35-36.

Aqua's response to OCA's recommendations is simply that it is not required to honor them. Aqua St. 3R at 13-14. be sure, Section 1329 does permit Aqua to charge a DSIC to acquired customers as proposed, and the other recommendations OCA made were intended to provide at least some level of rate relief for existing DSIC customers by protecting their planned infrastructure improvements and by including Beaver Falls customers in at least some of the DSIC costs that will be incurred. Given the significant rate impacts customers have faced under Aqua's acquisition scheme, the OCA avers that providing at least a floor level protection for existing ratepayers by requiring Aqua to adopt these terms as conditions of any Application approval is appropriate.

7. Customer Notices of Rate Impact from the Transaction

Currently, there is no information on customer notices that would permit a customer with different usage levels other than the average usage level determined by Aqua. OCA St. 1 at 36. If customers are not clearly and transparently shown the rate impact of the acquisition on their usage level, it will be unreasonably difficult for customers to understand the potential impact of the acquisition on their vital utility bills. As such, going forward, the OCA recommends that the welcome letter sent to Beaver Falls ratepayers include notice language referring customers to include a link to Aqua's website where a customer can find the rate impact range consistent with Aqua's commitment in the 2024 base rate case settlement, which states:

92. Aqua PA will develop a section on its website to provide rate impact information based on the final rates approved in the Commission's determination in a final order in this proceeding and will make it "live" within 60 days after the entry of a final order in this proceeding. The website will provide information separately for each water and wastewater rate zone. Aqua PA will include a bill impact analysis at usage levels up to 7,000 gallons for residential customer, in 500-gallon increments between 500 gallons and 7,000 gallons. Aqua PA will promote

the website information in its weekly social media posts for a period of 60 days following the website going live.

Aqua 2024 BRC Order at 35 (Feb. 7, 2025).

Reasonable notice requirements enhance transparency, further the customers' due process rights, and provide the people who will be most impacted by the acquisition more information that will affect their everyday lives. Going forward, the OCA's recommendation to increase the transparency of investor-owned utility notice in relation to Section 1329 should be adopted as in the public interest.

VII. CONCLUSION

For the reasons stated above, the OCA requests that the Application be denied. If the Commission approves the application under Sections 507, 1102, and 1329 of the Public Utility Code, the Office of Consumer Advocate's proposed conditions should be adopted, including the OCA's proposed adjustments to the appraisals.

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: 717-783-5048
Fax: 717-783-7152

Dated: March 18, 2025

Respectfully Submitted,

/s/ Harrison W. Breitman
Harrison W. Breitman, Esq.
Assistant Consumer Advocate
PA Attorney I.D. # 320580
Email: HBreitman@paoca.org

Counsel for:
Darryl A. Lawrence
Acting Consumer Advocate

OCA Proposed Findings of Fact

1. Aqua is requesting a CPC to acquire Beaver Falls's wastewater system assets and provide wastewater service to those areas previously served by Beaver Falls in the Borough of Greenville, Hempfield City, and West Salem City in Mercer County, Pennsylvania. Application at ¶ 5.
2. Beaver Falls's assets have an original cost of \$12,898,487 with a depreciation reserve of \$7,866,277. Application at ¶ 19.
3. Aqua requests that the \$41,250,000 purchase price for the Beaver Falls be approved in its entirety as the rate base for ratemaking purposes. Application at ¶ 56.
4. For Beaver Falls customers, the rate impact of moving from municipal ownership to Aqua's ownership at the \$41.25 million proposed ratemaking rate base would be a 165.61% increase in rates. OCA St. 1 at 22.
5. For Aqua's existing wastewater customers, Aqua acquiring the Beaver Falls system results in an estimated 6.03% increase in rates. OCA St. 1 at 23.
6. By comparison, Aqua's recently approved base rate case increases Aqua's wastewater bill for its rate zone 1 customers by 6.6%, which is not accounted for in the 165% noticed rate impact for Beaver Falls customers. OCA St. 1 at 23.
7. Aqua projects an annual revenue deficiency of \$4,288,000 for operating the Beaver Falls system. OCA St. 1 at 4.
8. This annual revenue deficiency will be paid for by Beaver Falls customers or Aqua's existing customers, or both. OCA St. 1 at 15.
9. This annual revenue deficiency is only 14.79% less than the \$5,032,210 depreciated original cost of the Beaver Falls system. OCA St. 1 at 15.
10. The City is currently under a Corrective Action Plan with PA DEP and the Corrective Action Plan does not require physical upgrades to the system. OCA St. 1 at 10.
11. There is no EPA violation or corrective action plan for the Beaver Falls System. OCA St. 1 at 10.
12. Both Aqua and Beaver Falls' utility valuation experts expressly acknowledged their reliance upon the Gannett Fleming Engineering Assessment's inventory and indicated

- that they have no reason to doubt the accuracy of the inventory of the assets. Aqua St. 5 at 9-11; Aqua St. 6 at 11.
13. There is no evidence that Beaver Falls' situation violates any cybersecurity or physical security regulations. OCA St. 1SR at 8.
 14. Beaver Falls stated that it has not been informed by any local, state, or federal regulatory authority that it must improve cybersecurity. OCA St. 1 at 30.
 15. Beaver Falls can seek funding and resources to make improvements on its own, such as PENNVEST funding, for projects that improve safety and bring systems into statutory and regulatory compliance. OCA St. 1 at 8.
 16. The additional \$10.2 million of capital expenditures over the first ten years will also need to be included as part of the ongoing revenue requirement deficiency. OCA St. 1 at 6.
 17. Currently, Beaver Falls customers can pay in-person at the Municipal Authority's office and four additional drop-off locations without paying an additional fee. OCA St. 1 at 30.
 18. The current average bill of a residential customer in Beaver Falls is \$100.13 per quarter and Aqua calculated that the average bill of a Beaver Falls residential customer could increase to \$265.96 per quarter under Aqua's ownership. Aqua Supp. 1, p. 2 at ln. 10-15; OCA St. 1 at 22.
 19. the annual revenue deficiency for the DELCORA system is \$4,553,000 and the annual revenue deficiency for the Greenville Sewer Authority will be \$2,223,000. OCA St. 1 at 15.
 20. Taken together, DELCORA, Greenville and Beaver Falls totals nearly \$11,064,000 in total annual revenue deficiency for these three pending Section 1329 acquisitions alone. OCA St. 1 at 15.
 21. If the Commission accepted the OCA's adjustments to the proposed ratemaking rate base, using Aqua's calculations, Aqua's annual revenue deficiency as a result of the transaction would be \$1.5 million. OCA St. 1 at 17

22. Aqua's estimate of the \$570,000 in operational expense savings is included in Aqua's annual revenue deficiency calculation and generates a \$4,288,000 annual revenue deficiency, inclusive of the savings. OCA St. 1 at 26.
23. Aqua's Application indicates that it has 60,0000 wastewater customers, and that it will only be acquiring approximately 3,190 wastewater customers under the Transaction. Application at ¶ 8.
24. Aqua presented a graph in rebuttal testimony that showed an increase in the weighted average revenue requirement per customer if the Beaver Falls system is acquired. OCA St. 1SR at 12.
25. Aqua agreed to pay 820% over the net book value of the asset and is now proposing to recover the entirety of the purchase price from ratepayers in rate base and earn a return on the purchase price from ratepayers. OCA St. 1 at 16.
26. For Aqua's existing wastewater customers, Aqua acquiring the Beaver Falls system results in an estimated 6.03% increase in rates. OCA St. 1SR at 16.
27. Aqua's recently approved base rate case increases Aqua's wastewater bill for its rate zone 1 customers by 6.6%, which is not accounted for in the 165% increase to Beaver Falls customers. OCA St. 1SR at 22-23.
28. The Commission's RRR value for the Beaver Falls wastewater system is \$10,797,806, compared to Aqua's \$41,250,000 requested ratemaking rate base. OCA St. 1SR at 8.
29. On November 8, 2022, Beaver Falls adopted a rate ordinance confirming rates for residential and commercial customers that provided for an automatic 3% annual rate increase. Aqua St. 4 at p. 10, ln. 15-18.
30. Wastewater bills in Aqua's rate zone 1 are projected to increase by \$5.36, or by 6.6%. OCA St. 1 at 22.
31. The two appraisal values for the Beaver Falls assets were \$44,291,793 and \$40,199,348. OCA St. 2 at 3.
32. The average of these two appraisals is \$42,245,570. OCA St. 2 at 3.
33. OCA witness Garrett calculated that with the appropriate adjustments, the FMV of the Beaver Falls system is \$19,628,354. OCA St. 2 at 6.

34. The Cost Approach is a procedure to estimate the current costs to reproduce or create a property with another of comparable use and marketability. OCA St. 2 at 17.
35. Both UVEs relied on the reproduction cost new less depreciation (RCNLD) method. OCA St. 2 at 18.
36. OCA witness Garrett did not propose any adjustment to Mr. D'Ascendis' \$11,446,928 cost approach valuation. OCA St. 2 at 3, 19.
37. Mr. D'Ascendis' cost approach result of \$11,446,928 fell within the range of Mr. Walker's cost approach range of \$7.9 million and \$33 million. OCA St. 2 at 19.
38. Mr. Walker chose the upper-most value from this range at \$32,994,153 as his cost approach result. OCA St. 2 at 3.
39. The Market Approach involves comparing an asset with similar assets that have been sold or are for sale in the relevant marketplace by making adjustments to prices based on marketplace conditions and the properties' characteristics of value. OCA St. 2 at 6
40. Gannett Fleming estimated a market approach valuation of \$50.7 million and ScottMadden estimated a market approach valuation of \$46.8 million for the Beaver Falls system assets. OCA St. 2 at 6.
41. Mr. Walker applied a 75% weighting to the higher demographic statistics, and only a 25% weighting to the lower capital statistics. OCA St. 2 at 7.
42. Under an equal weighting of all comparable transactions used in Mr. Walker's selected transactions methodology, the valuation for Beaver Falls' system is \$24.1 million. OCA St. 2 at 10.
43. Mr. Walker's market approach valuation is \$50.6 million. OCA St. 2 at 11.
44. Mr. D'Ascendis' market approach valuation is \$46,817,319. OCA St. 2 at 3.
45. Mr. Walker and Mr. D'Ascendis estimate income approach valuations of \$45.5 million and \$40 million, respectively. OCA St. 2 at 19.

46. OCA witness Garrett's adjustments to Mr. Walker's and Mr. D'Ascendis' Income Approach analysis reduce the valuations to \$24,083,523, or by \$22.1 million and \$16.6 million, respectively. OCA St. 2 at 3, 20.
47. Mr. Walker and Mr. D'Ascendis applied unequal weightings to their three indicated valuations. OCA St. 2 at 39.
48. Aqua will incur transaction and closing costs of approximately \$714,980, which Aqua will claim in its rate base in the base rate case following closing if the proposed acquisition is approved by the Commission and not subject to appeal. OCA St. 1 at 33.
49. Currently, there is no information on customer notices that would permit a customer with different usage levels other than the average usage level determined by Aqua. OCA St. 1 at 36.

OCA Proposed Conclusions of Law

1. As the proponent of an order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. Code § 332(a). Aqua must demonstrate its case by a preponderance of evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990).
2. Aqua’s evidence supporting its case must be more convincing than the evidence presented by any opposing party against it. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).
3. Additionally, a Commission decision must be supported by substantial evidence in the record. Indeed, “the elements of that cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234 (Pa. 1983).
4. Additionally, the evidence must be substantial and legally credible and cannot be mere “suspicion” or a “scintilla” of evidence. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).
5. Section 1311 of the Code specifies that the value of the rate base of a utility “shall be the original cost of the property when first devoted to the public service less the applicable accrued depreciation...” 66 Pa. C.S. § 1311(b).
6. Section 1329 of the Code permits a “fair market value” of the acquired property to be added to rate base where the system is acquired from a municipal corporation or municipal authority and the acquisition meets the criteria of Section 1329. 66 Pa. C.S. § 1329.
7. Upon agreement by the acquiring public utility and the selling entity, “two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value” and each “shall determine fair market value” in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) based on the Cost, Market, and Income approaches. 66 Pa. C.S. § 1329(a).
8. “The ratemaking base shall be the lesser of the purchase price negotiated by the acquiring public utility . . . and selling utility or the fair market value of the selling utility.” 66 Pa. C.S. § 1329(c)(2).
9. Utility valuation experts (UVEs) are required to apply jurisdictional exceptions under the valuation approaches, to establish appropriate guidelines and consistent assumptions for Section 1329 Fair Market Value appraisals, to comply with Commission precedent, and to

reduce variances in the appraisals for the same property. *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2019-3008491 (Nov. 5, 2019).

10. “UVEs are required to weigh each valuation result evenly: one-third for cost, one-third for market, and one-third for income.” *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation*, Final Supplemental Implementation Order, M-2016-2543193, at 103-106 (July 2, 2024).
11. The Applicant seeking Commission approval of utility property by acquisition has the burden of proving that the acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlth. 1972); 66 Pa. C.S. § 1103(c); *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1056 (Pa. 2007); *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. Ct. 2018).
12. The Applicant seeking Commission approval of utility property by acquisition has the burden of proving that the acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlth. 1972); 66 Pa. C.S. § 1103(c); *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1056 (Pa. 2007); *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. Ct. 2018).
13. Even if the valuation of utility property is done under Section 1329, the determination by the Commission that a transaction produces substantial affirmative public benefits means that the benefits must outweigh the harms of the transaction as supported by the facts of record specific to the transaction. *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1064.
14. To satisfy Section 1103, the Commission must conduct a fact-based evaluation of the system to be acquired, the impact of the acquisition on service, the general probable effect of the acquisition on rates, and any other facts it deems relevant and conduct a legal analysis balancing the harms against the benefits such that any approval must demonstrate that the public is better off – on net – because of the transaction than it would be in the absence of the transaction. *City of York*, 295 A.2d at 828-829; *Popowsky*, 937 A.2d at 1054-57; *McCloskey v. Pa. PUC*, 195 A.3d at 1066-67.
15. The Commission can impose just and reasonable conditions in granting CPC authority. 66 Pa.C.S. § 1103(a).

16. Aqua is required to present evidence that any benefits which derive from its technical, managerial, or financial fitness provide a substantial benefit above and beyond the fitness of the acquired utility. *Cicero*, 300 A.3d at 1119.
17. Under Section 1102 of the Public Utility Code, the Commission may grant a certificate of public convenience to a regulated public utility, permitting that utility to begin to offer service in an additional territory, and to acquire property used and useful in the public service, as is requested in this application. 66 Pa. C.S. § 1102(a)(1), (3).
18. Section 1103 provides that the Commission may only grant a certificate of public convenience “if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103.
19. Section 1103 requires that the proponents of a merger demonstrate that the merger will affirmatively promote the “service, accommodation, convenience, or safety of the public” in some substantial way. *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlt. 1972).
20. *City of York* required weighing the impact of the proposed merger on all affected parties, not just certain groups. *Middletown Township v. Pa. PUC*, 482 A.2d 674 (Pa. Cmwlt. 1984)
21. Sections 1102 and 1103, as a result, require an Applicant to demonstrate that a proposed acquisition provides an affirmative public benefit, meaning that the benefits of the transaction outweigh the adverse impacts of that transaction, when all affected parties are considered. *Application of CMV Sewage Co., Inc.*, 2008 PaPUC LEXIS 950, *30 (Dec. 18, 2008).
22. To determine whether benefits meet this standard, the Commission may consider: “(1) the legal and technical fitness of the purchasing entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence.” *Application of North Heidelberg Water Co.*, 2010 PaPUC LEXIS 919, *20 (June 7, 2010).

OCA Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. The Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 507, 1102, 2102, and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls is denied.