



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 18, 2025

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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
I&E Main Brief

Dear Secretary Chiavetta:

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

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

Sincerely,

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

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CBW/ac
Enclosures

cc: Administrative Law Judge F. Joseph Brady (via email – fbrady@pa.gov)
Pamela McNeal, Legal Assistant (via email – pmcneal@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Carrie B. Wright
Deputy Chief Prosecutor
PA Attorney ID No. 208185

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Bureau of Investigation and Enforcement
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Dated: March 18, 2025

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I. STATEMENT OF THE CASE

A. Procedural History

On February 17, 2023, Aqua Pennsylvania Wastewater, Inc. (Aqua), filed an application with the Pennsylvania Public Utility Commission (PUC or Commission) requesting the approval of the acquisition by Aqua of the wastewater system assets of the City of Beaver Falls (Beaver Falls). Aqua's request also included the approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in Beaver Falls and that the Commission include in its order approving the acquisition, the ratemaking rate base of Beaver Falls wastewater system assets as determined under § 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329(c)(2). Further, Aqua requested that the Commission issue certificates for filing, pursuant to § 507 of the Public Utility Code, 66 Pa. C.S. § 507, for certain municipal contracts that Aqua included in the Application, including new service agreements that Aqua will negotiate and enter into with Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough (the Contributing Municipalities) prior to Closing and which will replace any prior agreements and that the Commission allows certain existing agreements between Aqua and the Contributing Municipalities to be modified because the agreements contain a rate formula that is inconsistent with the rates charged by Beaver Falls to the Contributing Municipalities.

On March 17, 2023, the Office of Small Business Advocate (OSBA) filed a Protest and Notice of Appearance. On March 17, 2023, the Bureau of Investigation and

Enforcement filed a Notice of Appearance. On December 8, 2023, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement.

A Prehearing Conference was held on January 29, 2025, with Administrative Law Judge F. Joseph Brady (the ALJ) presiding. A litigation schedule was developed that provided for the filing of testimony, hearings and briefs as follows:

Direct testimony of other parties	February 14, 2025
Rebuttal testimony	February 24, 2025
Surrebuttal testimony	March 4, 2025
Evidentiary hearing	March 10, 2025
Main Briefs	March 18, 2025
Reply Briefs	March 25, 2025

Pursuant to the procedural schedule and in accordance with Commission regulations at Section 5.501, I&E submits this Main Brief.

B. Overview of the Proposed Transaction

Aqua’s Application requests that the Commission grant approval for multiple acquisition-related requests. Aqua’s first request arises under Section 1102, as it requests permission for it to acquire the City of Beaver Falls wastewater assets and to obtain the Certificates of Public Convenience necessary for it to begin to offer wastewater service to the public in the Beaver Falls service territory.¹ The Beaver Falls wastewater system assets include the assets, properties and rights of the City used in the system and all treatment facilities, pipes, pumping stations, generators, manholes and pipelines and billing and collections related assets necessary to run the system.² The Beaver Falls

¹ Aqua Amended Application, p. 2.

² Aqua Amended Application, p. 6.

system provides sanitary wastewater service to approximately 3,190 customers and 7 Contributing Municipalities.³

Pursuant to Section 1329, Aqua seeks to utilize the fair market value process to establish the ratemaking rate base of the Beaver Fall's assets at \$41,250,000.⁴ In accordance with Section 1329, the \$41,250,000 million amount represents the lower of Aqua and Beaver Fall's negotiated purchase price, and the average of two fair market value appraisals completed by each of these parties' utility valuation experts (UVEs). The average of the UVEs appraisals was \$42,245,674.⁵ The average was calculated using the value assigned by Beaver Falls' UVE, Harold Walker, III of Gannett Fleming Valuation and Rate Consultants, LLC who valued the Beaver Falls assets at \$44,292,000, and Aqua's UVE, Dylan D'Ascendis of ScottMadden, Inc., who valued the assets at \$40,199,348.⁶

In an additional request, pursuant to 66 Pa. C.S. § 507 (Section 507), Aqua is seeking approval for certain municipal contracts that Aqua has included in the Application, including new service agreements that Aqua will enter into with the Contributing Municipalities prior to Closing and which will replace any prior agreements.⁷

II. BURDEN OF PROOF

Aqua, as the proponent of the Application, bears the burden of proof to establish

³ Aqua St. No. 2, p. 9.

⁴ Aqua Amended Application, p. 18.

⁵ Aqua Amended Application, p. 18.

⁶ Aqua Amended Application, p. 18.

⁷ Aqua Amended Application p. 2.

that it is entitled to receive the approvals being sought in the Application.⁸ In a case such as this one, pending before an administrative tribunal, Courts have held that a “litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁹ In order to meet its burden of proof, Aqua must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”¹⁰ To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved.¹¹ Specifically in this case, Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102 and 1329 of the Code.

III. SUMMARY OF ARGUMENT

I&E recommended conditioning approval of this acquisition on several recommendations. Specifically, I&E addressed the rate impact on Beaver Falls’ customers, Aqua’s proposal to amend its Long Term Infrastructure Improvement Plan (LTIIP) and request a Distribution System Improvement Charge (DSIC) for Beaver Falls customers at some undefined time after closing, and the need to undertake a separate Cost of Service Study (COSS) for the Beaver Falls System in the next base rate case in which the System would be included if the Application is ultimately approved.

Additionally, I&E made a recommendation regarding easements and other

⁸ 66 Pa. C.S. § 332(a).

⁹ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

¹⁰ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹¹ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

property rights which I&E ultimately withdrew based upon evidence presented by Aqua which demonstrated that the APA between Aqua and Beaver Falls already ensured that easements will be obtained and an escrow fund will be established to ensure that the easements are transferred.¹²

IV. ARGUMENT

A. Section 1102/1103 Standards

1. Section 1102/1103 - Legal Principles

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests.¹³ The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code.¹⁴ A Certificate of Public Convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”¹⁵ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.¹⁶

Additionally, pursuant to Section 1103, Aqua must show that it is technically,

¹² I&E St. No. 2-SR, pp. 2-5.

¹³ 66 Pa. C.S. § 1102(a).

¹⁴ 66 Pa. C.S. § 1103.

¹⁵ 66 Pa. C.S. § 1103(a).

¹⁶ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

legally, and financially fit to own and operate the assets it will acquire from Beaver Falls.¹⁷ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”¹⁸ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹⁹ I&E submits that Aqua’s Application will only be in the public interest if the Commission conditions its approval on the conditions that I&E recommends.

2. Fitness

I&E does not challenge that Aqua is technically, legally, and financially fit to own and operate any of the assets that Beaver Falls may have the authority to convey.

3. Substantial Affirmative Public Benefit

In order to ensure that the benefits will materialize as alleged, I&E submits that any approval of Aqua’s Application be subject to the conditions I&E addressed below under Section C, *Recommended Conditions*. Absent adoption of I&E’s conditions, there is no assurance that the alleged affirmative public benefits will materialize.

4. Conclusion

For the reasons explained above, the public interest requires that Aqua’s Application be granted only on a conditional basis. I&E identifies these conditions and

¹⁷ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

¹⁸ *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

¹⁹ 66 Pa. C.S. § 1103(a).

their bases below.

B. Section 1329 Analysis

1. Introduction

While the crux of the issues that I&E identified are not directly related to Section 1329, one issue raised implicates the statute. I&E notes that Aqua’s ability to obtain all easements, public rights-of-way, and real property rights prior to or at closing is important because if Aqua fails to obtain such, the UVEs’ appraisals may be based on incorrect assumptions.

2. Section 1329 - Legal Principles

Section 1329 of the Public Utility Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”²⁰

²⁰ 66 Pa. C.S. § 1329(d)(3)(ii); Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township (“Aqua/New Garden Section 1329 Case”), Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

3. Challenges to UVE Appraisals

I&E has not challenged the UVEs appraisals in this case.

C. Recommended Conditions

1. Cost of Service Study

It is well-settled that in order to ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.²¹ Importantly, the Commission is granted great latitude when determining conditions imposed on award of certificate of public convenience.²² In order to ensure that the transaction is in the public interest, and consistent with the Code, I&E initially recommended that it be approved subject to the following three conditions:

- (1) Aqua should provide a separate cost of service study for the Beaver Falls system.²³
- (2) North Sewickley Township, Patterson Township, West Mayfield Borough, White Township, Patterson Heights Borough, Big Beaver Municipal Authority, and Eastvale Borough (collectively, Contributing Municipalities) be included as a separate rate class in the cost of service study for Beaver Falls.²⁴

Through testimony, I&E was able to reach a resolution of its first condition regarding cost of service study and is identified below.

²¹ 66 Pa. C.S. § 1103(a).

²² *Rheems Water Co. v. Pa. PUC*, 620 A.2d 609, 153 Pa.Cmwlth. 49 (Cmwlth.1993).

²³ I&E St. No. 2, pp. 16-17.

²⁴ I&E St. No. 2, pp. 13-14, I&E St. No. 2-SR, pp. 3-4.

To protect ratepayers, I&E recommended that Aqua provide a cost of service study for the Beaver Falls system. As I&E witness Cline explained, the recommended cost of service study was necessary because it would be beneficial in the following ways: (1) determining the cost to operate the Beaver Falls wastewater system separately; (2) calculating the costs of the Aqua's different services; (3) separating the costs between Aqua's different customer classes and service areas; (4) attributing costs to Aqua's different customer classes and service areas (5) determining how costs will be recovered from the Aqua's different customer classes and service areas; and (6) establishing the existence and extent of subsidization (inter and intra-class) and assist in determining the appropriate amount of revenue requirement to be shifted from wastewater customers to water customers, which Aqua has utilized in past base rate cases.²⁵

In response to I&E's recommendation regarding the cost of service study, Aqua witness Packer accepted I&E's recommendation to provide separate cost of service study for the Beaver Falls system, using a similar methodology to what was used for other systems acquired through Section 1329 proceedings.²⁶ I&E witness Cline acknowledged that Aqua agreed to file the cost of service study Mr. Packer identified and therefore satisfied his recommendation.²⁷

However, I&E had an additional recommendation that was not fully accepted by Aqua. I&E recommended that the Contributing Municipalities be included as a separate rate class in the Beaver Falls COSS so that costs can be properly allocated, and a

²⁵ I&E St. No. 1, pp. 11.

²⁶ Aqua St. No. 1-R, p. 12.

²⁷ I&E St. No. 2-SR, p. 3.

reasonable rate can be determined.²⁸ Aqua witness Packer, did not explicitly agree to this recommendation, but noted that it made logical sense, while reserving his final opinion until he is able to see the resulting rate design and cost of service analysis.²⁹ As Mr. Cline explains in testimony, it is an important consideration that the owner of Beaver Falls has no input or control over these contributing municipalities, but must ensure the Beaver Falls system is sized to address the wastewater flows that come from these systems.³⁰ Because Beaver Falls must be sized to accommodate these flows, future infrastructure investments may be driven by the Contributing Municipalities due to excess I&E or population growth. Therefore, it is imperative that the share paid by the Contributing Municipalities covers the cost to serve and the easiest way to determine this is by having them included as a separate rate class in the Beaver Falls COSS so that cost can be properly allocated and a reasonable rate determined.

I&E submits that the proposals made by witness Cline related to the cost of service study are in the public interest because, as witness Cline explained, the cost of service study is necessary to protect ratepayers. Without Mr. Cline's recommendations being implemented, the cost to operate the Beaver Falls wastewater system and the costs attributed to the Contributing Municipalities will not be known, and therefore the appropriate ratemaking recommendations for those costs cannot be proposed or implemented when Aqua files its next base rate case which includes this system.

²⁸ I&E St. No. 2, p. 11.

²⁹ Aqua St. No. 1-R, p. 20.

³⁰ I&E St. No. 2, pp. 13-14.

Therefore, I&E recommends the Commission order Aqua to include the Contributing Municipalities as a separate rate class when it files a COSS for the Beaver Falls system.

2. LTIP and DSIC

As another condition, I&E witness Cline recommended that Aqua file an amended LTIP including Beaver Falls and applying the DSIC to the acquired Beaver Falls customers within 90 days of closing.³¹ Aqua agreed with I&E that it would not include incremental investments in Beaver Falls in the DSIC until Beaver Falls customers are subject to the DSIC. Aqua, however, agreed to update its LTIP after closing on the Beaver Falls system within 180 days rather than the 90 days proposed by I&E.³² In testimony I&E agreed that Aqua's proposal to update the LTIP within 180 days was reasonable.³³

Therefore, I&E recommends the Commission direct Aqua to file an amended LTIP including the Beaver Falls system within 180 days of closing.

D. Rate Impact

In testimony, I&E pointed out that the rate impact for acquired Beaver Falls customers, could potentially be higher than what was noticed to Beaver Falls customers. According to the estimate provided by the Company the average bill for a Beaver Falls residential customer could increase from the existing \$97.24 per quarter to \$266.52 per quarter which equates to an increase of \$169.28 per quarter or 174.09% under the

³¹ I&E St. No. 2, pp. 9-10.

³² Aqua St. No. 1-R, p. 19 and Aqua St No. 3-R, p. 3.

³³ I&E St. No. 2-SR, p. 2.

assumption that Beaver Falls assumes one hundred percent of the revenue requirement generated by that system, that is with no subsidy being provided by Aqua water customers.³⁴

However, I&E submits that the 174.09% increase is most likely understated. After the present acquisition was filed, Aqua filed a request for an increase in base rates at Docket Nos. R-2024-3047822 and R-2024-3047824. The parties in that proceeding reached a settlement which was approved by the Commission on February 6, 2025. Therefore, the difference between the present rates of Beaver Falls and the effective rates of the Company will likely be even larger than the 174.09% difference described in Aqua Statement No. 1. Additionally, Beaver Falls customers are likely to experience significant rate increases over the next several base rate cases as their rates “catch up” with Aqua’s Rate Zone 1 rates.

Further, Aqua estimates it will invest approximately \$10,200,000 in capital projects over the next ten years to improve Beaver Falls’ system.³⁵ Aqua used a weighted average cost of capital of 7.24% in calculating the revenue deficiency and overall impact on customers in the proposed transaction.³⁶ In comparison, Aqua’s fair market valuation report prepared by ScottMadden, Inc. (ScottMadden) used weighted average cost of capital (WACC) of 6.62% for Beaver Falls.³⁷ The WACC for Beaver Falls is a hypothetical capital structure which includes common equity even though a

³⁴ Aqua St. No. 1, p. 18.

³⁵ Aqua Statement No. 2, p. 8.

³⁶ Aqua Statement No. 1, Appendix A, p. 1.

³⁷ Aqua Exhibit Q, Appendix H, p. 1.

municipality’s only source of capital is debt, not equity, where ScottMadden used 3.04%.³⁸

The example below illustrates the impact of the cost of capital for Aqua and Beaver Falls (excluding the cost of common equity for Beaver Falls):³⁹

Company	Cost of Capital	Estimated Capital Improvements Over the Next 10 Years	Impact
Aqua	7.24%	\$10,200,000	\$738,480
Beaver Falls	3.04%	\$10,200,000	\$310,080
Difference			\$428,400

In this example, the cost of capital for improvements to Beaver Falls’ system over the next ten years would be \$428,400 higher if it were performed by Aqua rather than by Beaver Falls. This is primarily because debt is the only source of capital for Beaver Falls (a municipality) compared to Aqua (an investor-owned utility) which utilizes both common equity and debt resulting in a substantially higher cost of capital.

Additionally, municipalities do not pay federal and income taxes, but investor-owned utilities do. As a result, this cost disparity becomes even greater when the Aqua return is grossed up for the tax impact. Using the tax gross up factor from Aqua’s most recent base rate case of 1.39073⁴⁰ increases the impact of \$738,480 of plant additions to \$1,027,026 ($\$738,480 \times 1.39073$), which increases the difference by \$716,946 ($\$1,027,026 - \$310,080$).⁴¹

³⁸ Aqua Exhibit Q, Appendix H, p. 1.

³⁹ I&E St. No. 1, p. 8.

⁴⁰ Docket Nos. R-2024-3047822 and R-2024-3047824. Aqua Exhibit 1-A, Schedule A-5, line 14.

⁴¹ I&E St. No. 1, p. 9.

Aqua has acquired and will continue to acquire other systems similar to the Beaver Falls system. Because of this, any potential revenue shortfall for operating costs will be spread across Aqua's existing customers, which will include Beaver Falls residents if the acquisition is approved. Unlike current ownership, the acquired Beaver Falls customers will then become part of a large investor-owned utility that must ensure return for shareholders and coverage in rates for tax liabilities.⁴² As a result, Beaver Falls customers will be subjected to regular rate increases.

As explained by witness Keller, while this does not amount to a recommendation that the Commission reject the application, it is important to remind all parties, as well as the Commission, of the potential impact of this acquisition on all customer rates.⁴³

V. CONCLUSION WITH REQUESTED RELIEF

If approved, conditions must be imposed prior to granting the requested certificates of public convenience to protect the interests of Aqua, Aqua's existing customers, and the regulated community. Accordingly, if the transaction is approved, I&E respectfully requests that the Administrative Law Judge recommend that the Commission condition its approval on the following terms:

1. Aqua will provide a separate cost of service study for the Beaver Falls system.⁴⁴
2. North Sewickley Township, Patterson Township, West Mayfield Borough, White Township, Patterson Heights Borough, Big Beaver Municipal Authority, and Eastvale Borough (collectively,

⁴² I&E St. No. 2, p. 14.

⁴³ I&E St. No. 1, p. 10.

⁴⁴ I&E St. No. 2, pp. 16-17.

Contributing Municipalities) shall be included as a separate rate class in the cost of service study for Beaver Falls.⁴⁵

3. Within 180 days of closing Aqua will file an amended LTIIP including the Beaver Falls system.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Deputy Chief Prosecutor
PA Attorney ID No. 208185

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: March 18, 2025

⁴⁵ I&E St. No. 2, pp. 13-14, I&E St. No. 2-SR, pp. 3-4.

Proposed Findings of Fact

1. Parties

- a. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).
- b. The I&E analysis in the proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interest of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1, p. 1.
- c. Aqua furnishes wastewater services to 45,000 customers in Pennsylvania. Aqua St. No. 1, p. 12.

2. The Beaver Falls System

- a. The Beaver Falls system provides sanitary wastewater service to approximately 3,190 customers and 7 Contributing Municipalities. Aqua St. No. 2, p. 9.

3. The Asset Purchase Agreement

- a. Aqua's negotiated purchase price for the Beaver Falls system is \$41,250,000. Aqua's Application p. 18.
- b. In this case, Aqua is requesting to establish a ratemaking rate base level of \$41,250,000 for the Beaver Falls system. Aqua's Application, p. 18.

4. The Application and the UVE's Appraisals

- a. Aqua selected ScottMadden, Inc. to perform an appraisal of the Beaver Falls system. Aqua's Application, Ex. BB1.
- b. Beaver Falls selected Gannett Fleming Valuation and Rate Consultants, LLC to perform an appraisal of the Beaver Falls system. Aqua's Application, Ex. BB2.

- c. Beaver Falls's UVE, Harold Walker, III of Gannett Fleming Valuation and Rate Consultants, LLC valued the Beaver Falls assets at \$44,292,000. Aqua's Application, Ex. R, p. 1 (Letter dated August 10, 2022).
- d. Aqua's UVE, Dylan D'Acendis of ScottMadden, Inc., valued the Beaver Falls assets at \$40,199,348. Aqua's Application, Ex. Q, p. 1 (Letter dated September 7, 2022).
- e. The average of the UVE appraisals of the Beaver Falls system was \$41,250,000. Aqua's Application, p. 18.

5. Aqua's Financial, Technical and Legal Fitness

- a. Aqua alleges that it is financially, technically, and legally fit to own and operate the Beaver Falls system and it sets forth the basis for those claims in its direct testimony. Aqua St. No. 1, pp. 8-9.
- b. I&E has not challenged Aqua's financial, technical and legal fitness to own and operate the Beaver Falls system.

6. Affirmative Public Benefits of a Substantial Nature

- a. Aqua alleges that multiple public benefits will arise under the transaction. Aqua St. No. 1, pp. 12-16.

7. Cost of Service Study

- a. Without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing Aqua customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised. I&E St. No. 2, pp. 11-12.
- b. The goal of a cost of service study is to determine a utility's revenue requirement to provide service to its different customer classes.
- c. Through the litigation process, I&E and Aqua reached an agreement that Aqua would provide a separate cost of service study for the Beaver Falls system. I&E St. No. 2-SR, pp. 3.
- d. I&E continues to believe that including the Contributing Municipalities as a separate rate class in the Beaver Falls cost of service study is necessary. I&E St. No. 2-SR, p. 4.

Proposed Conclusions of Law

1. Commission Jurisdiction

- a. The Commission has jurisdiction over the subject matter of this proceeding. 66 Pa.C.S. §§ 507, 102, 1103, 1329.
- b. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code. 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).
- c. The Commission maintains the ultimate rate setting authority.

2. Burden of Proof

- a. Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application. 66 Pa. C.S. § 332(a).
- b. In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- c. To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- d. Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102 1329 of the Code.

3. Legal Standards

- a. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102.

- b. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. Under these Sections, a Certificate of Public Convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. §§ 1102-1103.
- c. These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).
- d. Under Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Beaver Falls. *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmwlt. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).
- e. In assessing Aqua’s Application, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. C Cmwlt. 1984).
- f. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).
- g. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. 66 Pa. C.S. § 1329.
- h. Section 1329’s fair market valuation approach dictates that once the buyer and the seller agree to its use, they must engage the services of a licensed engineer to assess the tangible assets of the seller. The licensed engineer assessment is then presented to two UVEs, one to represent the buyer and

one to represent the seller, to conduct independent analyses based on the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. 66 Pa. C.S. § 1329.

- i. Aqua's request to assume enumerated municipal contracts alleged to be currently held by Beaver Falls is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval. 66 Pa. C.S. § 507.

- j. Aqua's request to assume enumerated municipal contracts currently held by Beaver Falls is subject to review under Section 2102 of the Code. Under Section 2102, no contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those listed, made between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement as received the written approval of the Commission. It is the duty of every public utility to file with the Commission a verified copy of any such contract and the Commission shall approve such contract only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. 66 Pa. C.S. § 2102.

Proposed Ordering Paragraph

IT IS ORDERED THAT:

Aqua's Application is approved subject to the following terms:

- (1) In the next base rate case, Aqua must provide a separate cost of service study for the Beaver Falls system;
- (2) In its next base rate case, Aqua must identify North Sewickley Township, Patterson Township, West Mayfield Borough, White Township, Patterson Heights Borough, Big Beaver Municipal Authority, and Eastvale Borough (collectively, Contributing Municipalities) be included as a separate rate class in the cost of service study for Beaver Falls

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated March 18, 2025,
in the manner and upon the persons listed below:

Served via Electronic Mail Only

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