

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. (hereinafter referred to as “Aqua” or “Applicant”) pursuant to Sections 1102 and 1329 of the Public Utility Code for:

- (1) Approval of the acquisition by Aqua of the wastewater system assets of the City of Beaver Falls (“Beaver Falls” or “City”) situated within the City of Beaver Falls Eastvale Borough, and West Mayfield Borough, Beaver County, Pennsylvania**
- (2) Approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the City of Beaver Falls, Beaver County, Pennsylvania; and**
- (3) An order approving the acquisition that includes the ratemaking rate base of the City of Beaver Falls wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code.**

Docket No. A-2022-3033138

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

BRIEF OF INTERVENOR CITY OF BEAVER FALLS IN SUPPORT OF APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC. FOR APPROVAL OF ACQUISITION OF BEAVER FALLS’ WASTEWATER ASSETS PURSUANT TO 66 Pa.C.S. §§ 507, 508, 1102, 1329

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Intervenor City of Beaver Falls (“Beaver Falls” or “the City”), by and through its counsel, Dilworth Paxson, LLP, submits its Brief in Support of AQUA Pennsylvania Wastewater, Inc. (“AQUA” or “Applicant”)’s Amended Application (“the AQUA Application”).

1. STATEMENT OF THE CASE

The proposed transaction is the acquisition by AQUA for the collection, conveyance, and treatment of wastewater (the “System”) owned and operated by the City of Beaver Falls. AQUA seeks the Commission’s approval of the agreements integral to its acquisition of the System. The transaction had its genesis approximately five years ago, when Beaver Falls commenced a thorough evaluation of the possibility of selling the System, including the involvement of local officials and citizens, as well as consultation with outside experts. Nearly four years ago the City Council made the decision to pursue a sale and, on July 23, 2021, the City issued a Request for Bids. The City determined that the bid received from AQUA was the best option. After public meetings and action by the City Council, the City negotiated the Asset Purchase Agreement (“APA”) with AQUA, which was executed on October 20, 2021¹. In deciding that a sale was the best course of action open to the City and implementing that course of action through the negotiation of the APA and the extensive work required to complete the Application, the City expended considerable resources in time and money relying on the anticipated consummation of the sale. This included extensive work with AQUA on the application as well as negotiations (and ultimately litigation) with the neighboring municipalities that send wastewater to the City’s sewage treatment plant.

¹ Exhibit B. Wherever possible, exhibit designations refer to the Evidence Lists found at Appendices A through D of the Joint Stipulation for Submission of Evidence entered on March 14, 2025.

The AQUA Application, was filed on February 17, 2023² and amended on March 28, 2024³. Patterson Heights Borough, Patterson Township, West Mayfield Borough, and White Township, which are among a group of municipalities that send their wastewater to the Beaver Falls System for transport and treatment, initially opposed the Application, but now support it. The Office of Consumer Advocate, the Office of Small Business Advocate and several staff bureaus of the Commission participated actively in the proceedings, including conducting discovery.

2. FACTUAL BACKGROUND

Beaver Falls is a predominantly low-income community with higher unemployment rates than the state and national average and like its residents, the City has historically experienced significant financial issues.⁴ The City, which is struggling to make payroll and provide basic services, is on the verge of being named a “distressed community” by the Commonwealth Department of Community and Economic Development or Act 47 status, which indicates severe financial difficulties and could lead to the City being placed in receivership.⁵ The City negotiated and approved the sale of the City’s System to AQUA in 2021 due to this dire financial situation.⁶

The evidence shows that the City has struggled to run the System and it is purely reactive.⁷ The City does not have a long-term capital plan for the System as a result of the City’s financial condition.⁸ The City is not comfortable with this and wants “to be proactive to ensure that the System is well run rather than attempting to fix problems as they arise and hoping there isn’t a crisis - which is where we are now.”⁹

² AQUA Exhibit 1.

³ AQUA Exhibit 2.

⁴ Exhibit DD, AQUA Statement 7-R, Direct Testimony of Dr. Kenya Johns, p. 3.

⁵ Supplement Ex. X, AQUA Statement 4 Supp., Supplemental Direct of Charles R. Jones, Jr. p. 4.

⁶ Exhibit DD, AQUA Statement 7-R, Direct Testimony of Dr. Kenya Johns, p.3.

⁷ Supplement Ex. X, AQUA Statement 4 Supp, Supplemental Direct Testimony of Charles R. Jones Jr., p. 3.

⁸ *Id.*

⁹ AQUA Statement 4-R, Rebuttal Testimony of Charles R. Jones Jr., p. 3.

The City has been unsuccessful in recruiting the experienced operators needed to run this highly complex system, especially with the changing and increasing regulatory environment.¹⁰ And the City does not have the money to utilize top-notch, experienced consultants to run the System, nor does it have the time to do so.¹¹ The Chief Financial Officer of the City, Sandra Wilkins, testified that hiring such independent contractors is not a viable option because it would still require the City to be “responsible for the cost, the management, the hiring and firing of the firm, the risk, and the compliance deadlines while still being saddled with the structural deficits [it] will face if the City does not have the use of the sale proceeds from AQUA.”¹²

Although there is not a glaring history of environmental citations by the Department of Environmental Protection, there *is* evidence of environmental and safety issues raised by Zach Martin in his direct testimony.¹³ City Manager, Charles R. Jones, Jr., testified that he is very concerned about Zach Martin’s findings, in particular mentioning the raw sewage seepage into the Beaver River from the System.¹⁴

The City does not have the necessary finances to provide the kind of fundamental services (not just wastewater) to the community that the citizens deserve and it does not have the time or resources to run the System adequately.¹⁵ The Mayor testified that the over-burdened City staff and the tight City budget are focused on providing the fundamentals like safety, jobs, healthcare, and helping keep small businesses stay open, and keeping the City out of bankruptcy, and the City simply cannot continue to manage an aging, complicated wastewater system.¹⁶

¹⁰ Supplement Ex. X, AQUA Statement 4 Supp, Supplemental Direct Testimony of Charles R. Jones Jr., p. 3.

¹¹ Exhibit DD, AQUA Statement 7-R, Direct Testimony of Dr. Kenya Johns p., 4.

¹² Exhibit EE, AQUA Statement 8-R, Direct Testimony of Sandra Wilkins p. 5.

¹³ Exhibit W, AQUA Statement 3, Direct Testimony of Zach Martin.

¹⁴ AQUA Statement 4-R, Rebuttal Testimony of Charles R. Jones, Jr., p. 2.

¹⁵ Exhibit DD, AQUA Statement 7-R, Direct Testimony of Dr. Kenya Johns, p.4.

¹⁶ *Id.*

A. Facts If The Sale Is Not Consummated.

The City has spent years working on this sale and has spent tens of thousands of dollars to cover expenses related to the sale of the System. If the sale is not approved and the City does not have the proceeds from the sale and instead has to refund the \$2,000,000 deposit to AQUA as required by the APA - which it already spent balancing budgets - and pay the remaining expenses related to this transaction, it will be devastating for the City. Furthermore, “the City relied upon the anticipated sale proceeds when it negotiated increases in benefits and salaries for the firefighters and police, as well as when the City made decisions about a tax decrease for [its] residents.”¹⁷ “Even with significant rate and tax increases, the City will likely be unable to provide essential services for our citizens - who are the very same people [Office of the Consumer Advocate’s witness] Mr. DeMarco claims will be harmed if AQUA acquires the System and raises rates.”¹⁸ The City “cannot guarantee that the System will be efficiently and safely run.”¹⁹ “The City likely will not be able to keep up with the growing capital needs of the aging System” and be forced into Act 47 status.²⁰

The City is projecting a \$1.4M deficit in 2025 without the sale proceeds.²¹ The City’s Chief Financial Officer testified that the City will be unable to make payroll obligations and cover other essential expenses, will be prevented from investing in vital programs, and addressing its aging infrastructure.²² The “City would have to raise rates dramatically just to keep the wastewater treatment plant operating at the current level, which [is] significantly lacking.”²³ Borrowing money will also likely be problematic as the City will unlikely be able to make debt payments to

¹⁷ Exhibit EE, AQUA Statement 8-R, Direct Testimony of Sandra Wilkins, p. 3.

¹⁸ AQUA Statement 4-R, Rebuttal Testimony of Charles R. Jones, Jr., p. 4.

¹⁹ *Id.*, p. 5.

²⁰ Supplement Exhibit X, AQUA Statement 4 Supp: Supplemental Direct Testimony of Charles R. Jones, Jr., p. 4.

²¹ Exhibit EE, AQUA Statement 8-R, Direct Testimony of Sandra Wilkins, p. 4.

²² *Id.*

²³ *Id.*

bondholders on its existing debt, and the cost to the City of a loan would likely increase because of the negative impact on its bond rating if the sale is not approved.²⁴

S&P Global Ratings had previously given the City a BB+ Bond rating with a positive outlook but S&P stated that the “stable outlook is based upon the likelihood the sale of the city’s wastewater treatment plant, which should occur in the next year, vastly improving the city’s finances and liquidity position.”²⁵ S&P also recognized that the payment of a deposit from AQUA which the City used to balance its budget, stabilized the city’s liquidity position over the outlook period.²⁶ The two deposits from AQUA under the APA are required to be returned if the sale is not consummated. S&P Global suggested in its report that it would likely take negative rating action if the sale of the wastewater treatment plant is not approved.²⁷ If the City’s bond rating is downgraded it will make it more difficult and costly for the City to obtain the funding it will need to run the City and the System.

B. Facts If The Sale Is Consummated.

AQUA will run the System in a proactive, safe and reliable manner which the City is unable do.²⁸ AQUA will bring in an experienced team to operate the System and quickly fix all unsafe conditions at the treatment plant and make necessary long- term capital improvements. AQUA will provide critical environmental compliance, and protection of the System’s receiving waterways eliminating the raw sewage seepage into the Beaver River from the System as described in Zach Martin’s Supplemental Direct Testimony.²⁹ AQUA will provide “enhanced customer service, expanded customer service hours, additional payment options (including by phone and

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See AQUA Main Brief (discussing AQUA’s fitness as required pursuant to Sections 1102 and 1103).

²⁹ Supplement Exhibit W, Supplemental Direct Testimony of Zach Martin, p. 16.

online), enhanced customer information and education programs, access to AQUA’s customer assistance program and AQUA’s team of experienced water and wastewater professionals.”³⁰

AQUA’s extensive financial assistance to lower income customers struggling to pay their wastewater bills will be available to assist a significant portion of the population of Beaver Falls. Mr. Jones testified that the median household income in Beaver Falls based on 2022 data was \$39,194, which is below the amount required to obtain customer assistance.³¹

The City will be able to use the proceeds to stabilize the City’s finances for the long-term so it can provide much needed services to its marginalized community.³² The Mayor testified that it would invest a portion of the proceeds to ensure the future financial stability of the City and pay off the nearly \$5.5 million in outstanding debt, while also investing in vital community resources.³³ Those resources would include “youth engagement programs, supporting business development to stop the bleeding of jobs and money from our City, and providing necessary public safety by acquiring new fire and police vehicles, as well as an ambulance.”³⁴ Additionally, the City needs to address its aging infrastructure, including roads and streetscapes and will do so with a portion of the proceeds.³⁵

Finally, there is a net financial public benefit to the City and its citizens each year if the sale proceeds are realized. Ms. Wilkins explained in her direct testimony that there are real financial public benefits that need to be considered and weighed, in addition to just focusing on potential wastewater rate increases by AQUA as OCA has done.³⁶ She compared the difference between the annual monetary benefit the public would receive versus the annual amount the public

³⁰ Exhibit X, AQUA Statement 4, Direct Testimony of Charles R. Jones Jr., p. 9.

³¹ Supplement Exhibit X, AQUA Statement 4 Supp, Supplemental Direct Testimony of Charles R. Jones, Jr., p. 3.

³² Exhibit DD, AQUA Statement 7-R, Direct Testimony of Dr. Kenya Johns, p. 4.

³³ *Id.*

³⁴ *Id.*, p. 4-5.

³⁵ *Id.*, p.5.

³⁶ Exhibit EE, AQUA Statement 8-R, Direct Testimony of Sandra Wilkins, p. 7.

would have to pay in wastewater rate increases if the sale is approved. She concluded that the annual public benefit is \$362,037 taking into consideration the gross proceeds of \$41,250,000 (the purchase price), then deducting costs, such as transaction fees, litigation settlement with municipal customers, debt repayment, and external payments.³⁷ Moreover, Ms. Wilkins testified that in addition to interest income and savings in eliminating debt, other anticipated public benefits include: (i) property tax reductions, (ii) new tax revenue from AQUA, (iii) avoided wastewater rate increases that the City otherwise would have to make, (iv) and City employee pay increases.³⁸

3. STATEMENT OF QUESTIONS INVOLVED

Whether the proposed acquisition would, if approved, provide affirmative public benefits as required by the applicable statutory standards.

Suggested Answer: Yes

4. SUMMARY OF ARGUMENT

Beaver Falls strongly believes that the proposed transaction should be approved due to the substantial public benefits it will bring. Specifically, (1) AQUA will run a proactive, efficiently managed, and safe System for Beaver Falls customers - something the City has been unable to provide; and (2) the proceeds from the sale will help the City overcome its dire financial difficulties, ensuring long-term stability and the ability to deliver essential services to its residents. Furthermore, if the sale of the System is not approved by the PUC the consequences to Beaver Falls will be severe. Beaver Falls relied on the APA and the likelihood of PUC approval of the proposed transaction when it negotiated and executed the APA nearly 4 years ago in 2021, taking material actions with respect to budgets, taxes and benefits for workers.

³⁷ AQUA Statement 8-R, Direct Testimony of Sandra Wilkins p. 7.

³⁸ AQUA Statement 8-R, Direct Testimony of Sandra Wilkins p. 6.

5. LEGAL ARGUMENT

A. The Proposed Transaction Will Provide Substantial Affirmative Public Benefits as Required by Section 1102 and 1103 of the Code.

i. Legal Standard Under Section 1102 and 1103 of the Code.

The Code requires a public utility to obtain a certificate of public convenience (“CPC”) from the Commission before it may “begin to offer, render, furnish or supply within this Commonwealth service . . . to a different territory than that authorized.” 66 Pa. C.S.A. § 1102(a)(1). A CPC must be required before a public utility may acquire “tangible or intangible property used or useful in the public service.” 66 Pa. C.S.A. § 1102(a)(3). A CPC shall be issued by the Commission if it “find[s] or determine[s] that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S.A. § 1103(a).

The Pennsylvania Supreme Court has explained that Section 1103(a) requires a showing by the applicant that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106, 1117-18 (Pa.Cmwlt. 2023), reargument denied (Sept. 26, 2023), appeal granted, 320 A.3d 667 (Pa. 2024) (citing *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972)).³⁹ In *Cicero*, the Commonwealth Court also held that the affirmative public benefits arising from a transaction must “outweigh the harms of the transaction.” *Id.* at 1120. Pennsylvania courts have referred to this required showing as the “affirmative public benefits test.” *Id.* at 1118.

The evidentiary standard used by the Commission in determining whether to issue a CPC is the preponderance of the evidence. *Cicero*, 300 A.3d at 1118. In general, the preponderance

³⁹ *Cicero* was decided by a divided panel, and the action is currently on appeal to the Pennsylvania Supreme Court.

standard simply requires that “one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.” *Id.* (quoting *Energy Conservation Counsel of Pa. v. Pub. Util. Comm’n*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010)). In applying the preponderance standard to the context of Section 1103, the Court opined that the affirmative public benefits test “does not require the Commission to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible.” *Id.* (quoting *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007)) (internal quotations omitted). Under the preponderance of the evidence standard, the Commission is “not required to ensure beyond all doubt that the noted public benefits would accrue.” *Id.* (quoting *Popowsky*, 937 A.2d at 1056 n.18). The affirmative public benefits test likewise does not require that every utility customer benefit from the proposed transaction, nor does it require that the utility’s proposed action be “absolutely necessary.” *Id.* (citations omitted).

ii. The Proposed Transaction Will Benefit the Public Because Beaver Falls is Ill-Equipped to Operate and Maintain the System Going Forward and Needs Revenue to Operate Other Essential Government Functions.

Beaver Falls is a perfect candidate for the sale of its wastewater treatment system under the process established by the General Assembly, because the proposed transaction would confer substantial benefits on the public by relieving the City of performing a task that it simply is not equipped to handle, either financially or logistically. Faced with a looming determination of financial distress by the Commonwealth, the City’s sale of the System will provide much-needed revenue and allow the City to focus its efforts on providing other essential government services to its citizens. The facts here are fundamentally distinct from cases in which applicants seek to purchase a public utility from a financially stable municipality, and as such the Commission should approve the proposed transaction in keeping with the mandate of the Code.

The Commonwealth Court previously held that an applicant (AQUA, the same proposed purchaser as here) proposing to purchase a municipal wastewater system provided sufficient evidence of affirmative public benefits because AQUA “has sufficient expertise to operate the system and has the ability to raise capital to support the system,” and because the proposed transaction comported with the Commission’s “consolidation and regionalization of its wastewater assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities.” *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055, 1065 (Pa. Cmwlth. 2018).

More recently in *Cicero*, the Commonwealth Court held that the applicant (again, AQUA) failed to satisfy the affirmative public benefits test because AQUA and the acquiring township (East Whiteland) failed to show the particular benefits deriving from the specific transaction, as opposed to general benefits deriving from any transaction of a public utility by a for-profit investor. *Cicero*, 300 A.3d 1106, 1118. In particular, the Court observed that the proclaimed benefits did not “affirmatively promote” the statutorily enumerated interests “in some substantial way” because the utility at issue was “already providing and [was] capable of providing the same or similar benefits without the acknowledged rate increase that will occur as a result of the acquisition.” *Id.* at 1118-19.

By way of example, the Court noted that while AQUA committed to spend over \$16 million for capital improvements, made possible by its size and financial strength, “[East Whiteland] Township is likewise capable, and has the funds on hand, to complete the needed improvements and upgrades, without the financial burden of funding AQUA’s purchase.” *Id.* at 1119. Put another way, the Court held that “it is [not] a benefit to provide for upgrades that Township is equally capable of providing.” *Id.*

Here, the record is replete with evidence demonstrating that (1) AQUA has the expertise and ability to operate the System in a way that Beaver Falls is incapable of accomplishing; (2)

AQUA possesses the financial resources to remediate existing problems with the System, perform routine maintenance, and improve and upgrade the System, while Beaver Falls is in severe financial distress; and (3) relieving the City of the burden of keeping the System afloat with limited resources will allow the City to use its resources to perform other essential government functions. These opportunities are sufficient to satisfy the affirmative public benefits test under Section 1103, and further the Commission’s goal of consolidating and regionalizing wastewater treatment systems under the appropriate circumstances.

iii. AQUA Possesses Financial Resources Severely Lacking by the City to Operate an Effective and Safe Wastewater System.

A key component of operating a safe and efficient wastewater system is the ability to fund capital improvements proactively, rather than reactively. Stated differently, citizens of the City would massively benefit from assurances that the System will continue to operate—and do so in an environmentally sound manner—rather than be under the constant pressure of a gradually deteriorating system. The City simply cannot provide that assurance to its citizens. But AQUA can.

The contrast between the financial capabilities of the existing operator (the City) and the proposed acquirer (AQUA) could not be starker. The City is struggling to provide even the most basic government services to its citizens, and is on the verge of being declared as a stressed community by the Commonwealth Department of Community and Economic Development. The City’s financial distress makes it extremely unlikely that it can safely expect to be “reactive” in addressing potential problems with the system. On the other hand, AQUA has abundant financial resources at its disposal. As explained in AQUA’s Main Brief, Aqua has assets exceeding \$490 million and annual revenues of approximately \$70 million. Notably, as a subsidiary of Aqua PA (a Class A water utility with revenues of \$495 million). AQUA has access to its parent company’s financing capabilities, including short-term credit lines.

These circumstances are plainly sufficient to demonstrate an affirmative public benefit under the Commonwealth Court’s decision in *McCloskey*, 195 A.3d at 1065 (holding that “aspirational statements are substantial evidence to support the notion that there is a public benefit for the merger.”). And the facts here are inapposite to the scenario in *Cicero*, where the Court found that the township was “equally capable of providing” the benefits derived from the proposed transaction. *Cicero*, 300 A.3d at 1119.

In addition, the proposed transaction will provide immediate benefits to the public, in addition to the long-term benefit to the public and the environment gained by AQUA overseeing a robust and well-maintained System. Stated another way, the benefits from this proposed transaction go beyond the merely “aspirational.” *McCloskey*, 195 A.3d at 1065. Indeed, the City’s System is over eighty years old and is in a “concern[ing]” state. The City “cannot guarantee that the System will be efficiently and safely run.” “The City likely will not be able to keep up with the growing capital needs of the aging System.” Perhaps of even more concern is the testimony of Zach Martin, who stated that the City’s deteriorating system has caused seepage of wastewater into Beaver River.⁴⁰ Thus, the proposed transaction will facilitate AQUA’s immediate investigation and remediation of issues with the System that are only going to worsen with time, whereas the City has been unable to do so.

Furthermore, from a personnel standpoint, AQUA is far more capable of running an efficient, modern System than is the City. The City’s financial struggles have made it difficult for it to attract and retain professionals capable of operating the System. In contrast, AQUA operates dozens of wastewater treatment plants in the Commonwealth, and provides services to tens of thousands of customers. AQUA’s many employees perform management, regulatory compliance, engineering and other services in nearby Sharon, Pennsylvania. Despite operating dozens of

⁴⁰ Supplement Exhibit W, Supplemental Direct Testimony of Zach Martin, p. 16.

systems, there are no pending legal or regulatory proceedings challenging AQUA's ability to provide safe and reliable services. The proposed transaction would thus provide the immediate benefit of producing a vast array of professionals to oversee and operate an undermanned System.

iv. Approval of the Transaction Will Permit the Struggling City of Beaver to Use the Proceeds to Benefit its Citizens by Providing Essential Government Functions.

Approval of the proposed transaction would also result in many other benefits to the public, aside from AQUA's superior ability to finance and operate a safe and efficient System. Namely, the City will be unable to provide other essential government functions which benefit the public if the proposed transaction is not approved. Conversely, if the proposed transaction is approved, the City can focus on using its existing resources, and the proceeds of the Sale, to operate other government functions efficiently and improve the City in other respects. In particular, the Mayor testified that the over-burdened City staff and the tight City budget are focused on providing the fundamentals like safety, jobs, healthcare, and helping keep small businesses stay open, and keeping the City out of bankruptcy,

Said another way, the ability of the City to run the System should not be viewed in a vacuum. The City does not have the necessary finances to provide the kind of fundamental services to the community that the citizens deserve and expect, nor does the City possess the time or resources required to run the System adequately. The City simply cannot continue to manage an aging, complicated wastewater system.

In sum, there is no doubt that the proposed transaction will provide significant affirmative benefits to the citizens of a City unable to afford even routine maintenance of the System, and that operates the System purely on a "reactive" basis. These plentiful benefits to the public, laid out in the above paragraphs, "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *Cicero*, 300 A.3d at 1117-18. Crucially, the benefits in this

case are *not* limited to those benefits that would be generally applicable to any acquisition by AQUA. Instead, the City's financial distress, the deterioration of the System, the potential harm to the environment, and the widespread poverty in Beaver Falls are all unique to the instant transaction, and dictate a finding that the proposed transaction should be approved.

B. Denying a Transaction Many Years in the Making Would Cause Far More Harm than the Speculative Harm caused by Any Rate Increases, Which are Likely to be Mitigated

AQUA addresses the nature, degree, and impact of potential rate increases in its Main Brief, and the City expressly incorporates those arguments herein.⁴¹ It must not be forgotten that rate impacts are not dispositive in a net benefit analysis, as evidenced by the Commission's approval of multiple transactions where increased costs were present.⁴² Importantly with respect to the proposed transaction at issue here, the harm which would be caused by denying the transaction would result in far greater harm than any potential rate increase (which, to the extent it occurs, can and will be mitigated by other factors). For these reasons, the net benefit analysis clearly yields the conclusion that the proposed transaction should be approved.

The City has invested nearly five years and innumerable resources into consummating the proposed transaction. Perhaps most importantly, AQUA paid to the City a \$2,000,000 deposit pursuant to the Asset Purchase Agreement. If the sale is not approved and the City does not have the proceeds from the sale and instead has to refund the \$2,000,000 deposit to AQUA as required by the APA and pay the remaining expenses related to this transaction, it will be devastating for the City. Much of the deposit money has already been spent by the City to fund its operations. The City is already projecting a \$1.4M deficit in 2025 *without* the sale proceeds, and unless the transaction is approved the City will be unable to make payroll obligations and cover other

⁴¹ See AQUA Main Brief.

⁴² See AQUA Main Brief (citing *McCloskey*, 195 A.3d at 1067).

essential expenses. The cascading effect of denying the proposed transaction is thus evident, as it would prevent the City from investing in vital programs, and addressing the City's aging infrastructure. In short, the proposed transaction will allow the City to divert its limited financial resources to other functions essential for the public benefit, while AQUA will take over the System and operate it more effectively and safely than the City has the ability to do.

Due to these conditions, rate increases are inevitable whether or not the proposed transaction is approved: Sandra Wilkins testified that if the sale is not approved, the City will have to "dramatically" increase rates for it to continue operating the wastewater treatment plant.

Furthermore, AQUA offers financial assistance to low-income individuals struggling to pay their wastewater bills, which, unfortunately, describes a large portion of the City's population. Mr. Jones testified that the median household income in Beaver Falls based on 2022 data was \$39,194. Furthermore, the majority of 2 to 4 person households in the City fall under 200% of the federal poverty guidelines. Based on these statistics, a significant portion of the population of Beaver Falls would qualify for AQUA's low-income program.⁴³ AQUA offers various levels of benefits to customers with varying levels of income compared to the federal poverty guidelines. The financial assistance offered by AQUA to the low-income citizens of Beaver Falls should be considered in construing any harm arising from the proposed transaction because it will help to mitigate the effect of any potential increase in rates. Moreover, the Commission may place conditions on the proposed transactions, such as a rate freeze, that would further mitigate the impact of any potential rate increase.

⁴³ See AQUA Main Brief.

C. Section 1329 Supports the Approval of the Proposed Transaction.

i. Legal Standard.

Section 1329 establishes a voluntary process to establish the ratemaking base predicated on the fair market valuation of the public utility at the time of acquisition, rather than the original cost of construction less depreciation. 66 Pa. C.S.A. §1329. Upon approval by the Commission, the ratemaking base shall be the lesser of the fair market value of the System and the negotiated purchase price of the System. § 1329(c)(2), (g). Under this process, the acquiring public utility and selling municipality each select a utility valuation expert from a list of qualified experts promulgated by the Commission, to appraise the utility. Here, the negotiated purchase price is \$41,250,000, and the average of the appraisals conducted in compliance with Section 1329 is \$42,345,674. Therefore, the ratemaking base is \$41,250,000 because it is the lesser of the negotiated purchase price and fair market value appraised by the utility valuation experts.

The City expressly incorporates AQUA's arguments regarding Section 1329 herein. The City writes separately to address only a few pertinent considerations.

ii. Section 1329 was Enacted to Facilitate Transactions such as the One at Issue Here.

Approval of the proposed transaction here would comport with the manifest intent of the General Assembly in enacting Section 1329. Specifically, by enacting this provision in 2016, the General Assembly evidenced its intent to favor the public policy goal of the regionalization and consolidation of municipal-owned water and wastewater systems by facilitating acquisition by private utilities at fair market value rather than depreciated cost.⁴⁴ As stated elsewhere in this brief, there could not possibly be a more appropriate case to approve a proposed transaction in light of

⁴⁴ *Cicero v. Pennsylvania Pub. Util. Comm'n*, 320 A.3d 667 (Pa. 2024). An excerpt of the relevant portion of the Pennsylvania Pub. Util. Comm'n's brief in that case is attached hereto as Appendix A.

this legislative purpose, given the deteriorating state of the System, and the City’s inability to maintain and operate the System going forward due to its dire financial situation.

iii. The 2024 Final Supplemental Implementation Order, Including the Reasonableness Review Ratio, Should not be Given Any Weight.

Starting in 2016, the Commission issued a series of Implementation Orders to assist in the implementation and administration of Section 1329. The Commission issued its Final Supplemental Implementation Order on July 2, 2024 (“2024 FSIO”).⁴⁵ The 2024 FSIO discusses that each year, the Commission will publish a Reasonableness Review Ration (“RRR”) to be used as a guidepost for the Commission in Section 1329 proceedings. However, the Commission explicitly stated in the 2024 FSIO that “provisions of this Order are not retroactive... For acquisitions where an APA has been executed, including those for which a Section 1329 application has been filed, but not finally accepted, we will consider the unique facts and circumstances of each acquisition and take into account the dates on which the APAs were executed and applications were filed.”⁴⁶

Here, under the unique facts and circumstances of the proposed transaction, the 2024 FSIO, including the RRR, should not be applied. The City first conceived its plan to sell the System nearly five years ago. The APA governing the transaction was entered into on October 20, 2021, roughly three years before the 2024 FSIO was issued. The Application was filed on February 17, 2023, roughly eighteen months before the 2024 FSIO was issued. Since the APA was executed, the City has invested heavily into completing the transaction to the enormous benefit of the public, described *supra*. The City relied for years on the processes established by Section 1329, without regard for the RRR that did not exist prior to 2024. For the reasons described elsewhere in this

⁴⁵ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193. Final Supplemental Implementation Order.

⁴⁶ *Id.* at 114.

brief, the proposed transaction is the only feasible solution to the challenges faced by the City in the administration of a critical service—wastewater services—to its citizens. To apply the 2024 FSIO, including the RRR, at this advanced stage in the process would be manifestly unjust and to the great detriment of the public.

6. CONCLUSION

For the foregoing reasons, the City of Beaver Falls respectfully requests that the Commission enter an Order granting the AQUA Application, and affording all of the relief requested therein, in the form requested in AQUA’s Brief.

Dated: March 18, 2025

/s/ James J. Rodgers

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APPENDIX A – PROPOSED FINDINGS OF FACT

1. Intervenor City of Beaver Falls adopts by reference the proposed Findings of Fact submitted by Applicant, Aqua.

APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. Intervenor City of Beaver Falls adopts by reference the proposed Conclusions of Law submitted by Applicant, Aqua.

APPENDIX C – PROPOSED ORDERING PARAGRAPHS

Intervenor City of Beaver Falls proposed the following ordering paragraphs:

- a. The Commission shall issue Certificates of Public Convenience pursuant to 66 Pa.C.S. §§ 1102 and 1103:
 - a. Authorizing Aqua to acquire, by purchase, the wastewater system assets of Beaver Falls; and
 - b. Authorizing Aqua to begin to offer, render, furnish, and supply wastewater service to the public in the Requested Territory covered by the APW Application.
- b. Aqua is authorized to file tariff revisions, effective upon one day's notice to:
 - a. Include within its territory all the Requested Territory covered by the APW Application;
 - b. Adopt and apply Beaver Falls' rates as set forth in the APW Application as Aqua's Base Rates within the Requested Territory; and
 - c. Apply Aqua's *Rules and Regulations* within the Requested Territory.
- c. The following contracts are approved pursuant to Section 507 of the Public Utility Code: (1) New Wastewater Service Agreements entered into by Aqua, Patterson Heights Borough, Patterson Township, West Mayfield Borough, and White Township, (2) the charitable contribution agreement between Aqua and Beaver Falls, (3) the pro forma meter read agreement between Aqua and the BFMA, and (4) the Settlement Agreement entered into by Aqua, Beaver Falls, Patterson Heights Borough, Patterson Township, West Mayfield Borough, and White Township.
- d. Any and all such other approvals, certificates, registrations, and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of Beaver Falls' wastewater system assets shall be granted.

Appendix D

IN THE SUPREME COURT OF PENNSYLVANIA

Patrick M. Cicero,	:	CASES CONSOLIDATED
Appellee	:	
	:	
v.	:	Docket No. 47 MAP 2024
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Appellant	:	
Patrick M. Cicero	:	
	:	
v.	:	Docket No. 48 MAP 2024
	:	
Pennsylvania Public Utility	:	
Commission	:	
	:	
Appeal of: East Whiteland Township	:	
Patrick M. Cicero	:	
	:	
v.	:	Docket No. 49 MAP 2024
	:	
Pennsylvania Public Utility	:	
Commission	:	
	:	
Appeal of: Aqua Pennsylvania	:	
Wastewater, Inc.	:	

BRIEF OF APPELLANT
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Appeal from an Order of the Commonwealth Court of Pennsylvania Entered July 31, 2023, at Docket No. 910 CD 2022, Reversing the Pennsylvania Public Utility Commission Order Entered July 29, 2022, at Docket No. A-2021-3026132

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own judgment for that of the Commission and ignoring established precedent, the Commonwealth Court’s *July 31st Opinion and Order* promotes legal uncertainty, creates an untenable regulatory scheme that undermines the General Assembly’s intent in enacting Section 1329, and adversely impacts all future Section 1329 transactions.

III. The Commonwealth Court’s Ruling Is In Contravention Of The Intent Of The General Assembly In Enacting Section 1329 Of The Code

When interpreting statutory language, the role of the Court “is to ascertain and effectuate the intention of the General Assembly.”⁸⁷ The intent of the General Assembly is to favor the public interest⁸⁸ and “every statute shall be construed, if possible, to give effect to all of its provisions.”⁸⁹ However, the Commonwealth Court has violated the rules of statutory construction in overturning the Commission’s *July 29th Order*.

A. The Intent Of The General Assembly

In enacting Section 1329, the General Assembly intended to favor the public policy goal of the regionalization and consolidation of municipal-owned water and wastewater systems. To further effectuate and promote the public policy of promoting acquisitions of municipal-owned systems by private utilities, the

⁸⁷ 1 Pa.C.S. § 1921(a); *Colville v. Allegheny Cnty. Ret. Bd.*, 926 A.2d 424 at 431 (Pa. 2007).

⁸⁸ 1 Pa.C.S. § 1922.

⁸⁹ 1 Pa.C.S. § 1921(a).

General Assembly added Section 1329, a new provision to Chapter 13 of the Code. Section 1329 provides a specific FMV method for how municipal-owned water and wastewater systems assets are to be valued for ratemaking purposes when those assets are acquired by investor-owned water and wastewater utilities or entities. Thus, Section 1329 permits both the municipality and the private investor-owned utility the choice of whether to utilize a FMV method for valuing the acquired utility's assets instead of the traditional valuation method under Section 1311 of the original cost of construction of the facilities minus the accumulated depreciation.

Section 1329 seeks to solve the problems created by 66 Pa.C.S. § 1311(b), which often discouraged acquisitions of municipal-owned systems by regulated utilities. Under Section 1311, the value of the system being acquired was defined as original cost of construction less accumulated depreciation. Because many municipal systems were greatly depreciated or constructed using grants, such systems had an extremely low valuation.⁹⁰ The FMV approach of Section 1329 provides a more accurate valuation of the system by establishing a fair price for both the buyer and seller at the time of sale. This approach is but one piece of evidence of a public benefit that the Commission must consider in evaluating a

⁹⁰ *Implementation of Section 1329 of the Public Utility Code—Final Implementation Order*, Docket No. M-2016-2543193 at 2; 2016 WL 3997197 (Order entered October 27, 2016).

private-public acquisition application filed under 66 Pa.C.S. §§ 1102 and 1103 that uses the FMV method under Section 1329.

In its *Supplemental Implementation Order*, the Commission sought to further the General Assembly’s intent to favor the public interest stating:

“[t]he General Assembly promulgated Section 1329 to provide a procedure by which a Seller and Buyer could voluntarily propose a Chapter 13 ratemaking value concurrent with Commission consideration of the public interest benefits of the proposed acquisition under Chapter 11 and established a six-month timeframe under which these considerations would occur. Section 1329 works to: (1) provide certainty as to the value of acquired utility property; (2) remove regulatory barriers to the prudent sale of public water and wastewater assets; (3) protect a Seller from having to offer public assets for sale at below-market rates; and (4) allow a Buyer to recover market-based investment in those public assets through regulated rates.”⁹¹

For all Section 1329 applications, the Commission is charged with evaluating the transaction in detail under 66 Pa.C.S. §§ 1102 and 1103 and pursuant to the standards set forth in *Popowsky, McCloskey* and *City of York*. Recognizing that every Section 1329 transaction must “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way,” and that it must “weigh all factors for an against the transaction, including the impact

⁹¹ *Implementation of Section 1329 of the Public Utility Code—Tentative Supplemental Implementation Order* at 3, Docket No. M-2016-2543193, 2018 WL 4636917 (Order entered September 20, 2018).

on rates, to determine if there is a substantial public benefit,”⁹² the Commission duly considered the many benefits of this transaction and, when weighing them against the harms,⁹³ determined that the benefits of Aqua’s ownership outweighed any purported harms.⁹⁴

The Commonwealth Court, in *McCloskey*, stated that “a policy of consolidation and regionalization” is a reason sufficient to meet the Section 1103 benefit standard.⁹⁵ This policy also furthers the intent of the General Assembly in enacting Section 1329. Identifying the specific benefits of consolidation and regionalization as applied to this particular transaction between Aqua and the Township, the Commission’s *July 29th Order* noted that customers would realize the benefits of better management practices, economies of scale, and greater customer service, environmental and economic benefits.⁹⁶ The policy of consolidation and regionalization improves long-term viability of wastewater systems and promotes economic development and environmental enhancements.⁹⁷

⁹² Appendix B. Order of the Pennsylvania Public Utility Commission at 7-9. (Order entered July 29, 2022), Docket No. A-2021-3026132.

⁹³ *Id.* at 29-44.

⁹⁴ *Id.* at 44.

⁹⁵ *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055 at 1065 (Pa. Cmwlth. 2018). *See also* 66 Pa.C.S. § 1103.

⁹⁶ Appendix B. Order of the Pennsylvania Public Utility Commission at 14, 16-17. (Order entered July 29, 2022), Docket No. A-2021-3026132.

⁹⁷ Final Policy Statement on Acquisitions of Water and Wastewater Systems (Order entered August 17, 2006), Docket No. M-00051926.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing **Brief of Intervenor City of Beaver Falls** upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

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