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File #: 196374

March 25, 2025

***VIA ELECTRONIC FILING***

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

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

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Dear Secretary Chiavetta:

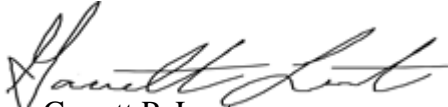
Attached for filing is the Joint Petition for Non-Unanimous Settlement of All Issues and the following associated appendices in the above-referenced proceeding:

Appendix A – APA Amendments  
Appendix B – Aqua Pennsylvania Wastewater, Inc. Statement in Support  
Appendix C – City of Beaver Falls Statement in Support  
Appendix D – Bureau of Investigation and Enforcement Statement in Support  
Appendix E – Office of Consumer Advocate Statement in Support  
Appendix F – *Pro Forma* Tariff

Copies will be provided as indicated on the Certificate of Service. Each of the parties that has submitted a Statement in Support will separately send a Word version of their Statement in Support to the Administrative Law Judge F. Joseph Brady. Please direct any questions regarding this submission to the undersigned.

Rosemary Chiavetta, Secretary  
March 25, 2025  
Page 2

Respectfully submitted,



Garrett P. Lent

GPL/dmc  
Attachments

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

## CERTIFICATE OF SERVICE

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

### VIA E-MAIL

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Date: March 25, 2025

  
Garret P. Lent

**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:** : **Docket No.**  
: **A-2022-3033138**  
:

**(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;** :  
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**(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.** :  
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**Request for Approval of Contracts, between Aqua and the City of Beaver Falls, Pursuant to Section 507 of the Public Utility Code** :  
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**JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

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**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:**

**I. INTRODUCTION**

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), the City of Beaver Falls (“City” or “Beaver Falls”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), and the Office of Consumer Advocate (“OCA”), collectively, “Settlement Parties” or “Joint Petitioners”, hereby submit this Joint Petition for Non-Unanimous Settlement of All Issues (“Settlement”) and respectfully request that the Honorable Administrative Law Judge F. Joseph Brady (the “ALJ”) recommend approval of, and

the Commission approve, the Settlement consistent with the terms and conditions set forth in this Settlement. The Office of Small Business Advocate (“OSBA”) is not a signatory to the Settlement and has indicated that it opposes the Settlement.

As fully set forth and explained below, the Joint Petitioners have agreed to a settlement of all issues among them, related to the above-captioned Application for Aqua to acquire the wastewater system assets of Beaver Falls (the “System”). Among other provisions, the Settlement provides for a ratemaking rate base of \$29,900,000, which is a substantial reduction to the as-filed ratemaking rate base of \$41,250,000, and further contributions by Aqua to its Hardship Fund for low-income customers. In support of the Settlement, the Joint Petitioners state the following:

## **II. BACKGROUND**

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

a rate formula that is inconsistent with the rates charged by the City to the Contributing Municipalities.

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

3. On March 17, 2023, the OSBA filed a Notice of Appearance, as well as a Notice of Intervention & Protest, Public Statement, and Verification.

4. On March 20, 2023, I&E filed a Notice of Appearance.

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

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

7. On April 27, 2023, the OCA filed a Protest and Public Statement.

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

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

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<sup>1</sup> The Municipal Protestants are four of the seven Contributing Municipalities.

10. On March 28, 2024, Aqua filed an Amended Application. In the Amended Application, Aqua explained that the Municipal Protestants, the City and Aqua had negotiated a settlement of the civil complaint proceeding. In that settlement, the Municipal Protestants agreed to withdraw their suit, agreed to withdraw their protests to this Application, and agreed to enter into a wastewater service agreement. The new wastewater service agreements and settlement were included in the Amended Application. The Amended Application also included certain new, revised and/or supplemental exhibits (and supplemental direct testimony), to update certain facts regarding the System since the initial Application was filed.

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

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

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

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

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

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<sup>2</sup> Aqua PA is the parent company of Aqua.

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

17. On December 30, 2024, the Commission issued an Initial Telephonic Prehearing Conference Notice, scheduling a call-in telephonic prehearing conference for January 29, 2025, before the ALJ. Also on December 30, 2024, the Commission issued a Secretarial Letter accepting Aqua's filing of the Application as amended.

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

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

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

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

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

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

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

25. On February 24, 2025, Aqua served rebuttal testimony.

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

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

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

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

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

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

32. On March 18, 2025, Aqua, the City, I&E, OCA and OSBA filed Main Briefs in accordance with the litigation schedule.

33. On March 21, 2025, counsel for Aqua notified the ALJ via e-mail that Aqua, the City, the City, I&E, and OCA had reached a settlement in principle with respect to this matter. Counsel for Aqua further informed the ALJ that Aqua had been advised OSBA would be opposing the settlement.

34. By e-mail on March 24, 2025, the ALJ direct the Settlement and Statements in Support to be submitted on March 28, 2025, and set a deadline for briefs in opposition to the Settlement on March 28, 2025.

35. The Settlement terms are set forth in the following **Section III, *infra***.

### **III. TERMS AND CONDITIONS OF SETTLEMENT**

#### **A. GENERAL**

36. The following terms of this Settlement reflect a carefully balanced compromise of the Settlement Parties' positions on various issues. The Settlement Parties agree that the Settlement is in the public interest.

37. The Settlement Parties agree that the Amended Application should be approved, including the issuance of certificates for filing pursuant to 66 Pa.C.S. § 507 for all municipal

contracts that Aqua has included in the Amended Application, subject to the terms and conditions of this Settlement that are specified below.<sup>3</sup>

**B. CLOSING**

38. If Aqua and the City decide to close on the Transaction in accordance with their respective contractual rights and obligations under the Asset Purchase Agreement (“APA”), as amended, the closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Amended Application.

**C. PURCHASE PRICE AND RATE BASE OF THE ACQUIRED ASSETS**

39. The Settlement Parties agree that the rate base of the “Acquired Assets” (as that term is defined in the APA) that are the subject of the Amended Application will be \$29,900,000.

40. Aqua and Beaver Falls agree that the APA, dated as of October 20, 2021, and attached to the Amended Application as **Exhibit B** will be amended to reflect a purchase price of \$37,750,000 and to remove the contract termination date in the APA. A copy of the amendments to the APA are attached hereto as Appendix A.

41. Any goodwill resulting from this transaction that is included on the balance sheet of Aqua shall be excluded from its rate base and any debt or equity issued to finance the goodwill shall be excluded from the ratemaking capital structure for ratemaking purposes.

42. The difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from Aqua’s existing customers or from Beaver Falls’ current customers.

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<sup>3</sup> The OCA does not join in this paragraph but does not oppose Aqua’s request.

#### **D. RATE GRADUALISM**

43. In the first base rate case that includes the Acquired Assets, Aqua will propose a rate gradualism plan for all of the City's customers to pay their full cost of service over time and will propose to limit the base rate increase for the residential customers located within the City's limits to a 68% rate increase over their existing rates. The current Beaver Falls base rates are reflected in the pro forma tariff supplement included as Appendix F.

44. Consistent with Paragraph 43, the current average bill for the City's residential customers is \$100.13 per quarter or \$33.00 per month at 3,161 gallons; in the first base rate case to include the Acquired Assets, Aqua will propose a rate increase that will increase the average bill for the City's customers not to exceed an average bill of \$168 per quarter or \$56.00 per month at 3,161 gallons. The Settlement Parties acknowledge that absent this Settlement, if the Settlement Parties fully litigated this proceeding, the record evidence demonstrates that:

- a) the average bill of a City residential customer could increase by approximately 166% to \$265.96 per quarter, or \$88.65 per month, under the proposed ratemaking rate base requested in the Amended Application (*see* Aqua Supp. 1, p. 2 at ln. 10-15; OCA St. 1 at 22); and
- b) under the OCA's recommended adjustments to the ratemaking rate base, the average bill of a City residential customer could increase by approximately 60% to \$160.20 a quarter, or \$53.51 per month (*see* OCA St. 1 at 23).

45. In the first base rate case that includes the Acquired Assets, Aqua will propose to limit any Section 1311(c) shift of a revenue requirement deficiency related to the City's operations to no more than is needed to achieve the rate limit stated above in Paragraphs 43 and 44 above.

46. Aqua further agrees that any proposed Section 1311(c) shift of wastewater revenue requirement to water customers proposed in a base rate case after the first base rate case that

includes the Acquired Assets will decline from the Section 1311(c) shift set by the Commission in the first base rate case.

47. All Settlement Parties reserve the right to challenge any rates proposed by Aqua in any future base rate cases, except that the OCA agrees not to challenge Aqua's proposal to the extent consistent with Paragraphs 43, 44 and 45 above in the first base rate case that includes the Beaver Falls System.<sup>4</sup>

#### **E. CUSTOMER ASSISTANCE PROGRAMS**

48. Aqua agrees to contribute a total of \$100,000 to its Hardship Fund either (1) over the next three-year period, or (2) prior to its next base rate case, whichever is sooner. This funding commitment is in addition to Aqua's funding commitment to the Hardship Fund in the Aqua 2024 Base Rate Case settlement at Docket Nos. R-2024-3047822 and R-2024-3047824, et al., which was approved by the Commission by order entered February 7, 2025.

49. Immediately after closing, the City's customers will become eligible for all Aqua payment options and customer programs.

50. Within ten days following closing, Aqua will send a welcome letter to the City's customers that includes information about payment options, low-income customer assistance programs, and any other customer service information. The welcome letter shall include notice language referring customers to Aqua's website (including the link) where a customer can find the rate impact range consistent with Aqua's commitment in the Aqua 2024 Base Rate Case settlement, Paragraph 92, at Docket Nos. R-2024-3047822 and R-2024-3047824, et al., which was approved by the Commission by order entered February 7, 2025. Within 15 days of a final order in this proceeding, Aqua will provide the OCA with a copy of the draft welcome letter; OCA will

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<sup>4</sup> I&E does not join in this paragraph.

provide any suggestions to Aqua within 10 days of receipt; and Aqua, in good faith, will consider incorporation of OCA's suggestions.

51. Every six months, Aqua will track the number of the City's customers that are (1) potentially eligible to enroll in Aqua's customer assistance program ("CAP"); and (2) who are enrolled in Aqua's CAP. Aqua will provide and present this information on a timely basis to the regularly held meetings of the Aqua Assistance Collaborative ("AAC"). Aqua will also present this information in its next base rate case filing in a format showing the potential eligibility and enrollment data broken down by six-month increments starting from the time of closing through and until the time of filing the rate case. Potential eligibility will be based on U.S. Census data.

#### **F. BULK SERVICES AGREEMENTS**

52. The Settlement Parties agree to not object to the terms of the Bulk Services Agreements included as Exhibits F9 through F15 to the Amended Application in this proceeding but the Settlement Parties agree that the parties may submit testimony and challenge these agreements and the rates for the City's bulk customers in future rate cases.

#### **G. OTHER ISSUES**

53. In the first base rate case filed after the closing of the transaction in which Aqua makes a claim for the Acquired Assets in rate base, Aqua will file a cost of service study that removes all costs and revenues associated with the operation of the City's system. Additionally, in that cost of service study, the Contributing Municipalities will be included as a separate rate class.

54. Aqua will not include System-related investments in its distribution system improvement charge ("DSIC") until Aqua collects a DSIC from Beaver Falls customers. Aqua shall be permitted to collect a DSIC from Beaver Falls customers upon (i) Aqua's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") including

the System, which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIP, as may be modified in the discretion of the Commission, and (iii) Aqua's filing of a compliance tariff supplement which incorporates the System and all other systems included in the amended LTIP into Aqua's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIP. The amended LTIP shall be filed within 180 days of closing.

55. The Settlement Parties acknowledge that the Application includes a request that Aqua be permitted to claim transaction and closing costs associated with the acquisition of Beaver Falls. The Settlement Parties agree that they will not contest these requests in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. In a future rate case when these costs are claimed, Aqua agrees that it will clearly set out and identify all transaction and closing costs associated with this matter. The Settlement Parties' assent to this term should not be construed to operate as their preapproval of Aqua's request.

56. The inclusion of outside legal fees, if any, in Aqua's transaction and closing costs under the APA shall be separately identified in Aqua's next base rate case, and all parties shall have the right to challenge the reasonableness, prudence, and basis for such fees.

57. Any claim made by Aqua to recover transaction and closing costs associated with the transaction will not include costs incurred by the City.

58. Aqua should not be permitted to include easement land rights into its rate base until it acquires the easements.

#### **IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

59. This Settlement was achieved by the Settlement Parties after an extensive investigation of Aqua's filing, including informal and formal discovery and the submission of direct, rebuttal, surrebuttal and rejoinder testimony by a number of the Settlement Parties that were admitted into the record, as well as the preparation and submission of Briefs by the Settlement Parties.

60. Acceptance of the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues among the Settlement Parties at what would have been a substantial cost to the Settlement Parties and Aqua's customers.

61. The Settlement Parties are submitting their respective Statements in Support setting forth the basis upon which each believes the Settlement to be fair, just and reasonable and therefore in the public interest concurrently with this Settlement. The Settlement Parties' Statements in Support will be designated as Appendices B through E.

#### **V. PROCEDURAL CONDITIONS OF SETTLEMENT**

62. The Settlement Parties reserve their rights to file Reply Briefs, Exceptions and Reply Exceptions with respect to non-settling parties.

63. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, any Settlement Party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Parties within five (5) business days after the entry of an Order modifying the Settlement.

64. If the Commission does not approve the Settlement and the proceedings continue, the Settlement Parties reserve their respective procedural rights. The Joint Petition for Settlement is made without any admission against, or prejudice to, any position which any Settlement Party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

65. The Settlement Parties acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Settlement Parties had fully litigated these proceedings.

66. This Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

67. The Settlement shall not be construed as approval of any Settlement Party's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement.

68. Each term and condition set forth in this Settlement, whether or not set out in a numbered paragraph, shown in a table or other graphic presentation, bolded, italicized, or otherwise emphasized, or set forth in the body, a footnote, a parenthetical, an appendix, an exhibit, or otherwise, is material consideration to the entry into this Settlement by the signatory parties.

69. Unless otherwise expressly indicated, all terms and conditions contained herein shall take effect upon issuance of a final order in this proceeding, without the need or requirement for additional Commission review or approval.

70. The Settlement Parties acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

71. If the ALJs adopt the Settlement without modification, the Settlement Parties waive their individual rights to file exceptions with regard to the Settlement. Settlement Parties reserve their rights to file briefs, and replies to exceptions as may be necessary in order to support the Settlement.

## **VI. CONCLUSION**

**WHEREFORE**, the Settlement Parties, by their respective counsel, respectfully request that:

1. The Honorable Administrative Law Judge F. Joseph Brady and the Pennsylvania Public Utility Commission approve this Settlement including all terms and conditions thereof, without modification.

2. The Commission enter an Order granting Aqua Pennsylvania Wastewater, Inc. all certificates of public convenience under 66 Pa.C.S. §§ 1102 and 1103 necessary to authorize Aqua to acquire, by purchase, the wastewater system assets of the City of Beaver Falls, and begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory set forth in the Amended Application, and as modified by the terms and conditions of the Settlement;

3. The Commission enter an Order authorizing Aqua to file tariff revisions, effective upon one day's notices to include within its service territory all the Requested Territory set forth in the Amended Application, and adopt and apply the rates of the City of Beaver Falls as set forth in Appendix F as Aqua's base rates, and apply Aqua's Rules and Regulations as set forth in its tariff within the Requested Territory.

4. The Commission enter an order approving the Amended Application and Aqua's acquisition of the System and, as a part of the Order, include the ratemaking rate base of the wastewater system assets of the City of Beaver Falls as \$29,900,000 as set forth in Paragraph 39 of the Settlement and pursuant to 66 Pa.C.S. § 1329(c)(2).

5. The Commission enter an Order approving contracts, including the Asset Purchase Agreement and its related amendments, the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities, the pro forma meter read agreement between Aqua and

the BFMA, and the Settlement Agreement entered into by Aqua, the City and the Plaintiff Municipalities pursuant to Section 507 of the Public Utility Code. Aqua is withdrawing its request for the Commission to approve the charitable contribution agreement between Aqua and the City under Section 507; and

6. The Commission issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the wastewater system assets of the City of Beaver Falls.

Respectfully submitted,

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Dated: March 25, 2025

*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date:

\_\_\_\_\_  
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*Counsel for the Bureau of Investigation and Enforcement*

the BFMA, and the Settlement Agreement entered into by Aqua, the City and the Plaintiff Municipalities pursuant to Section 507 of the Public Utility Code. Aqua is withdrawing its request for the Commission to approve the charitable contribution agreement between Aqua and the City under Section 507; and

6. The Commission issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the wastewater system assets of the City of Beaver Falls.

Respectfully submitted,

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Dated: March 25, 2025

*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: March 25, 2025



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*Counsel for the Bureau of Investigation and Enforcement*

Date:

**/s/Harrison Breitman**

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*Counsel for the Office of Consumer Advocate*

Date: 3/25/2025

**/s/Elizabeth Havey Preate**

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*Counsel for the City of Beaver Falls*

# Appendix A

CITY OF BEAVER FALLS  
BEAVER COUNTY PENNSYLVANIA

RESOLUTION NUMBER 1682

RESOLUTION OF THE CITY OF BEAVER FALLS (THE "CITY"), COUNTY OF BEAVER AND COMMONWEALTH OF PENNSYLVANIA, AMENDING THE ASSET PURCHASE AGREEMENT WITH AQUA PENNSYLVANIA WASTEWATER, INC. PURSUANT TO ORDINANCE NO. 4049

BE IT RESOLVED by the City of Beaver Falls, a Home Rule municipality under the laws of the Commonwealth of Pennsylvania, and it is hereby resolved by virtue of the authority of the same as follows:

SECTION I. That the amendment to the Asset Purchase Agreement between the City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc., a true and correct copy of which is attached, hereto, and by reference made a part hereof, is hereby approved.

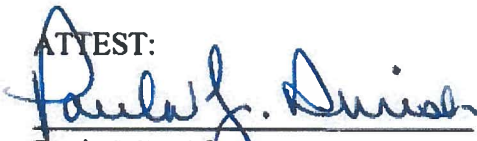
SECTION II. That the Mayor and City Clerk are hereby authorized to execute the attached amendment and to affix the Seal of the City of Beaver Falls.

SECTION IV. This Resolution shall take effect immediately on final passage.


SECTION V. Any Resolution, or parts of any resolution inconsistent herewith are hereby repealed.

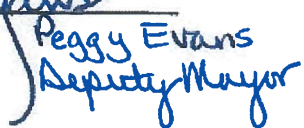
PASSED AND ADOPTED BY THE COUNCIL of the City of Beaver Falls, this 13th day of June, 2023.

ATTEST:

  
Paula J. Durish  
City Clerk

CITY OF BEAVER FALLS:

  
Kenya Johns, Ph.D.  
Mayor

  
Peggy Evans  
Deputy Mayor

**FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT**

**DATED June 13, 2023**

THIS FIRST AMENDMENT TO THE ASSET PURCHASE AGREEMENT (“First Amendment”) is made as of the 13<sup>th</sup> day of June, 2023 between the City of Beaver Falls, Beaver County, a municipality and a city of the Third Class of the Commonwealth of Pennsylvania duly organized and Existing under the Constitution and the laws of said Commonwealth, (the “Seller”), and Aqua Pennsylvania Wastewater Inc. (“Buyer”), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania.

**RECITALS:**

WHEREAS, Buyer and Seller entered into that certain Asset Purchase Agreement dated October 20, 2021 (“APA”);

WHEREAS, Buyer and Seller desire to amend certain provisions of the APA to become effective upon the date of this First Amendment; and

WHEREAS, the parties hereto desire to reaffirm all other provisions of the APA not specifically amended hereby.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The definition of Outside Date in Article I of the APA is deleted in its entirety and replaced with the following definition:

**“Outside Date”** means 365 days after the date the application to the PaPUC is accepted as complete by the PaPUC and the statutory 6-month consideration period is initiated, provided that if there is litigation pending on such date in which a party thereto seeks to prevent the consummation of the transaction described in the APA and any amendment thereto, or to frustrate a material term contained in the APA or any amendment thereto (specifically including, without limitation, litigation involving the proceedings before the PaPUC as contemplated by the APA and any amendment thereto,) the Outside Date will be extended to the date that is sixty (60) days following the unappealable resolution of any such litigation.

2. All other provisions, terms, and conditions of the APA not specifically amended by this First Amendment remain in full force and effect. Buyer and Seller reaffirm the APA as amended hereby.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment on the date first written above.

AQUA PENNSYLVANIA WASTEWATER,  
INC.

CITY OF BEAVER FALLS, BEAVER  
COUNTY

By: Marc A. Lucca

By: Peggy Evans

Printed: MARC A. LUCCA

Printed: Peggy Evans

Its: PRESIDENT

Its: Deputy Mayor

ORDINANCE NO. 4113

**AN ORDINANCE AMENDING ORDINANCE NO. 4049 AUTHORIZING THE EXECUTION BY THE CITY OF BEAVER FALLS, COUNTY OF BEAVER (THE "CITY") OF AN AMENDMENT TO THE ASSET PURCHASE AGREEMENT BETWEEN THE CITY AND AUQA PENNSYLVANIA WASTEWATER, INC.; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE CITY; AND RESCINDING INCONSISTENT ORDINANCES AND RESOLUTIONS.**

**WHEREAS**, on September 28, 2021, the City adopted Ordinance No. 4049 (the "Ordinance") authorizing the sale of its sanitary wastewater collection and treatment system (the "System") including all of the assets, properties and rights of the City (whether tangible, real, personal or mixed) which are exclusively held and used by it in connection with the System (the "System Assets"); and

**WHEREAS**, on October 20, 2021, in accordance with the Ordinance, the City entered into an Asset Purchase Agreement (the "Purchase Agreement") with Aqua Pennsylvania Wastewater, Inc. ("Purchaser") for the sale of the System Assets through a competitive bidding process (the "Assets Sale"); and

**WHEREAS**, the City approved an amendment to the Purchase Agreement (the "First Amendment") by Resolution 1682 on July 13, 2023; and

**WHEREAS**, in accordance with the Purchase Agreement as amended, Aqua filed its application (the "Application") on February 12, 2023 with the Pennsylvania Utility Commission (the "Commission") pursuant to the Public Utility Code for approval of its acquisition of the System Assets; and

**WHEREAS**, on March 28, 2024, Aqua filed an amended application explaining that the City and Aqua had negotiated a settlement of civil complaint proceedings; and

**WHEREAS**, on December 30, 2024, the Commission issued a Secretarial Letter accepting Aqua's filing of the Application as amended; and

**WHEREAS**, after the Application as amended was accepted by the Commission, Aqua, the City, the Office of Consumer Advocate ("OCA"), the Bureau of Investigations and Enforcement ("I&E"), and the Office of Small Business Advocate ("OSBA") entered into settlement discussions; and

**WHEREAS**, Aqua, the City, OCA and I&E have agreed to the terms of a settlement that requires the amendment of the Asset Purchase Agreement to reflect a new purchase price of \$37,750,000.00; and

**WHEREAS**, the City Council believes it is in the best interest of the City to enter into this settlement and execute a Second Amendment to the Purchase Agreement; and

NOW, THEREFORE, the Council of the CITY OF BEAVER FALLS, hereby ordains as follows:

1. Approval of the Second Amendment to the Purchase Agreement

The Council hereby authorizes and approves the execution, delivery, and performance of the Second Amendment to the Purchase Agreement (the "Second Amendment") substantially in the form attached hereto as Exhibit A. The Mayor and City Manager are hereby authorized and directed on behalf of the City to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to execute the Second Amendment.

2. Severability

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

3. Effective Date

This Ordinance shall take effect and be in force from and after its enactment as required by the law.

4. Repealer

All other ordinances and resolutions or parts thereof inconsistent with this Ordinance are hereby repealed.

**ORDAINED** and **ENACTED** at the public meeting of the Beaver Falls City Council held on March 24, 2025.

CITY OF BEAVER FALLS

By: Peggy Evans  
(Dr. Kenya Johns, Mayor) Peggy Evans  
Deputy Mayor

Attest: Paula J. Durish  
Paula Durish, City Clerk

EXHIBIT A

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

**SECOND AMENDMENT TO**  
**ASSET PURCHASE AGREEMENT**

**By and Between**  
**City of Beaver Falls, Beaver County,**  
**As Seller**

**and**

**Aqua Pennsylvania Wastewater, Inc.,**  
**As Buyer**

**Dated as of March 24, 2025**

## SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT (this “Second Amendment”), dated as of March 24, 2025 (the “Effective Date”), is made and entered into by and between the City of Beaver Falls, Beaver County, a municipality and a city of the Third Class of the Commonwealth of Pennsylvania duly organized and existing under the Constitution and laws of said Commonwealth, (the “Seller”), and Aqua Pennsylvania Wastewater, Inc., (the “Buyer”), a Pennsylvania corporation.

### RECITALS:

**WHEREAS**, the Seller and Buyer have entered into an Asset Purchase Agreement dated October 20, 2021, as amended by that certain First Amendment to Asset Purchase Agreement dated June 13, 2023 (together, the “Asset Purchase Agreement”), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, the Acquired Assets of the Seller, all upon the terms and conditions as set forth in the Asset Purchase Agreement; and

**WHEREAS**, Seller and Buyer wish to further amend the Asset Purchase Agreement on the terms and conditions hereinafter set forth; and

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual representations, warranties, covenants, and agreements contained in this Second Amendment, the receipt and sufficiency of which are acknowledged, intending to be legally bound, the Parties agree as follows:

1. **Recitals and Defined Terms**. The Recitals of this Second Amendment, above, are hereby incorporated within and forms a part of the agreements contained in this Second Amendment. Unless otherwise defined in this Second Amendment, all terms defined in the Asset Purchase Agreement shall have the same meanings when used in this Second Amendment.

2. **Second Amendment**. The Parties agree to amend the Asset Purchase Agreement:

(a) by striking the below language:

Section 3.01. **Purchase Price**

The purchase price for the Acquired Assets is ~~Forty-One Million, Two Hundred and Fifty Thousand Dollars (\$41,250,000.00)~~ (the “Purchase Price”) which shall be paid as follows:

(b) and replacing it with the following language:

Section 3.01. **Purchase Price**

The purchase price for the Acquired Assets is Thirty-Seven Million, Seven Hundred and Fifty Thousand Dollars (\$37,750,000.00) (the “Purchase Price”) which shall be paid as follows:

(c) all other provisions of the Asset Purchase Agreement shall remain the same.

3. The provisions of this Second Amendment modify and form a part of the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of this Second Amendment and the remaining terms of the Asset Purchase Agreement, the terms of this Second Amendment shall govern and control.

4. This Second Amendment may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which shall together constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

**IN WITNESS WHEREOF**, intending to be legally bound, the Parties hereto have duly executed this Second Amendment as of the date first above written.

CITY OF BEAVER FALLS, BEAVER  
COUNTY

By: *Peggy Evans*  
Printed: (Dr. Kenya Johns) Peggy Evans  
Its: (Mayor) Deputy Mayor

ATTEST:

By: *Paula J. Durish*  
Name: Paula J. Durish  
Its: City Clerk

AQUA PENNSYLVANIA WASTEWATER, INC.

By: \_\_\_\_\_  
Printed: Marc A. Lucca  
Its: President

ATTEST:

By: \_\_\_\_\_  
Name:  
Its:

(c) all other provisions of the Asset Purchase Agreement shall remain the same.

3. The provisions of this Second Amendment modify and form a part of the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of this Second Amendment and the remaining terms of the Asset Purchase Agreement, the terms of this Second Amendment shall govern and control.

4. This Second Amendment may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which shall together constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

**IN WITNESS WHEREOF**, intending to be legally bound, the Parties hereto have duly executed this Second Amendment as of the date first above written.

CITY OF BEAVER FALLS, BEAVER COUNTY

AQUA PENNSYLVANIA WASTEWATER, INC.


By: \_\_\_\_\_  
Printed: Dr. Kenya Johns  
Its: Mayor

By:  \_\_\_\_\_  
Printed: Marc A. Lucca  
Its: President

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
Name:  
Its:

By:  \_\_\_\_\_  
Name: Frances P. Orth  
Its: Assistant Secretary

# Appendix B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania Wastewater, Inc. : Docket No.**  
**(hereinafter referred to as “Aqua” or “Applicant”) pursuant : A-2022-3033138**  
**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. :**

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

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**STATEMENT OF AQUA PENNSYLVANIA WASTEWATER, INC. IN SUPPORT OF  
THE JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

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**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:**

**I. INTRODUCTION**

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), the City of Beaver Falls (“City” or “Beaver Falls”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), and the Office of Consumer Advocate (“OCA”), collectively, “Settlement Parties” or “Joint Petitioners”, hereby submit this Joint Petition for Non-Unanimous Settlement of All Issues (“Settlement”) and respectfully request that the

Honorable Administrative Law Judge F. Joseph Brady (the “ALJ”) recommend approval of, and the Commission approve, the Settlement consistent with the terms and conditions set forth in this Settlement.

The Settlement, if approved, will resolve all issues raised by the Joint Petitioners in this proceeding. The Settlement will allow Aqua’s acquisition of the wastewater system assets of Beaver Falls (the “System”), which will result in substantial and important improvements to the condition and operations of the System. The above-captioned application, subject to the terms and conditions of the Settlement, is in the best interest of the City and its customers, Aqua, Aqua’s existing customers, and the Joint Petitioners, and is in the public interest. Accordingly, it should be approved.

**II. THE SETTLEMENT WILL RESULT IN SUBSTANTIAL AFFIRMATIVE PUBLIC BENEFITS, IS IN THE PUBLIC INTEREST, AND SHOULD BE APPROVED**

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

In order to approve an acquisition, the Commission must find that the acquisition will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (“*City of York*”). The “substantial public interest” standard can be met by showing a likelihood or probability of public

benefits that need not be quantified or guaranteed. *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 (Pa. 2007) (“*Popowsky*”). In *Popowsky*, the Supreme Court of Pennsylvania explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make fact-based determinations (which may include predictive determinations informed by the Commission’s expert judgment) to determine whether public benefits will result from a transaction. *Id.* Further, the substantial public benefit test does not require that every customer receive a benefit from the Transaction. *Id.* at 1061. Moreover, it is well recognized that the Commission can impose conditions that it deems just and reasonable under Section 1103. 66 Pa. C.S. § 1103(a).

With specific respect to Section 1329 acquisitions, the Commonwealth Court recently held that the substantial public benefits standard was met through Commission findings that: (i) Aqua, as the owner of numerous water and wastewater systems, has sufficient operational expertise and ability to raise capital to support system operations; and (ii) the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities. *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied*, No. 703 MAL 2018 (April 23, 2019) (“*McCloskey*”). Specifically, the Court noted, “[a]s per [*Popowsky*] these aspirational statements are substantial evidence to support the notion that there is a public benefit for the merger.” *McCloskey*, 195 A. 3d at 1065. Although *McCloskey* also explained that the Commission, in a “general fashion,” must consider rate impacts when deciding whether there is substantial public benefit for a Section 1329 acquisition, it further recognized that rate impact is not dispositive of the Commission’s affirmative benefits determination. *Id.* at 1067. Indeed, “the

Commission is charged with deciding whether the impact of rates . . . is outweighed by . . . other positive factors that . . . served [as] a substantial public benefit.” *Id.*

The Commonwealth Court later acknowledged in *Cicero* that:

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

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

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

*Id.* at 1120.

Aqua’s acquisition of the Beaver Falls System, as conditioned by the Settlement, will affirmatively promote the public interest in a substantial way as required by *City of York*, *McCloskey*, and *Cicero*. The Amended Application,<sup>1</sup> and Aqua’s direct,<sup>2</sup> supplemental direct,<sup>3</sup>

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<sup>1</sup> Aqua Exhibit 2 is the Amended Application dated March 28, 2024. The Amended Application contains updated, new and revised information and exhibits.

<sup>2</sup> Aqua admitted the following pieces of direct testimony into the record, which accompanied the original Application dated February 17, 2023 (Aqua Exhibit 1): Exhibit U - Aqua Statement No. 1 - The Direct Testimony of William C. Packer (including Appendix A); Exhibit V - Aqua Statement No. 2 - The Direct Testimony of Mark. J. Bubel, Sr. (including Appendix A); Exhibit W - Aqua Statement No. 3 - The Direct Testimony of Zach Martin (Public and CONFIDENTIAL versions); Exhibit X - Aqua Statement No. 4 - The Direct Testimony of Charles R. Jones, Jr.; Exhibit Y - Aqua Statement No. 5 - The Direct Testimony of Dylan W. D’Ascendis (including Attachment A); and Exhibit Z - Aqua Statement No. 6 - The Direct Testimony of Harold Walker, III (including Appendix A). Aqua’s direct testimony also includes the following pieces of additional direct testimony that were submitted on December 23, 2024: Exhibit DD - Aqua Statement No. 7 - The Direct Testimony of Dr. Kenya Johns; Exhibit EE - Aqua Statement No. 8 - The Direct Testimony of Sandra Wilkins (including Appendices A and B).

<sup>3</sup> Aqua admitted the following pieces of supplement direct testimony into the record, which accompanied the original Amended Application dated March 28, 2024 (Aqua Exhibit 2): Supplemental Exhibit U - Aqua Statement No. 1 Supp - The Supplemental Direct Testimony of William C. Packer (including Appendix A); Supplemental Exhibit W - Aqua Statement No. 3 Supp - The Supplemental Direct Testimony of Zach Martin (Public, CONFIDENTIAL with CONFIDENTIAL Appendix A, and HIGHLY CONFIDENTIAL versions); Supplemental Exhibit X - Aqua Statement No. 4 Supp - The Supplemental Direct Testimony of Charles R. Jones, Jr.

rebuttal,<sup>4</sup> and rejoinder<sup>5</sup> testimony admitted into the record in this proceeding contain substantial evidence demonstrating the numerous public benefits of the acquisition. The same foundational benefits exist in this case that existed in *McCloskey*, where an Aqua Section 1329 acquisition was upheld because Aqua, based on its longstanding ownership of water and wastewater systems, can provide operational expertise and the ability to raise capital to support the system's operations and infrastructure, and the Commission has a policy of consolidation/regionalization of wastewater systems that allows for improvements to municipally-owned sewer and water facilities. In addition, the facts demonstrate that: (a) the City does not desire to continue operating the System, (b) the System faces substantial short-, mid- and long-term operation and investment challenges, (c) the City lacks the expertise and resources to address these challenges, (d) the City does not have the financial ability to obtain the expertise and resources to address these challenges, and (e) the City has no plan in place to address these challenges.<sup>6</sup> If it is able to address them at all, it will only be able to do so in a reactive manner once adverse impacts to service have occurred.<sup>7</sup> Aqua's acquisition of the System will enable these challenges to be proactively addressed by an experienced operator with the necessary technical and financial resources.<sup>8</sup> Moreover, Aqua's acquisition of the System will provide the City with a desperately needed financial infusion that

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<sup>4</sup> Aqua admitted the following pieces of rebuttal testimony into the record: Aqua Statement No. 1-R - The Rebuttal Testimony of William C. Packer (and Aqua Exhibit WCP-1R); Aqua Statement No. 2-R - The Rebuttal Testimony of Mark J. Bubel, Sr. (and Aqua Exhibits MJB-1R and MJB-2R); Aqua Statement No. 3-R - The Rebuttal Testimony of Zach Martin (Public and HIGHLY CONFIDENTIAL versions); Aqua Statement No. 4-R - The Rebuttal Testimony of Charles R. Jones, Jr.; Aqua Statement No. 5-R - The Rebuttal Testimony of Dylan W. D'Ascendis; Aqua Statement No. 6-R - The Rebuttal Testimony of Harold Walker, III (and Aqua Exhibit HW-1R); Aqua Statement No. 8-R - The Rebuttal Testimony of Sandra Wilkins; and Aqua Statement No. 9-R - The Rebuttal Testimony of Rita F. Black (and Aqua Exhibit RFB-1R).

<sup>5</sup> Aqua admitted the following pieces of rejoinder testimony into the record: Aqua Statement No. 1-RJ - The Rejoinder Testimony of William C. Packer; Aqua Statement No. 3-RJ - The Rejoinder Testimony of Zach Martin (Public and CONFIDENTIAL versions); Aqua Statement No. 5-RJ - The Rejoinder Testimony of Dylan W. D'Ascendis; and Aqua Statement No. 6-RJ - The Rejoinder Testimony of Harold Walker, III.

<sup>6</sup> Aqua MB, Section V.A.3.

<sup>7</sup> Aqua MB Section V.A.3.b.i.

<sup>8</sup> Aqua MB, Section V.A.3.b.i.

will benefit the City and its residents on multiple fronts.<sup>9</sup> In addition, Aqua's acquisition will benefit its existing customers, by increasing its customer base and allowing future infrastructure investments across the state to be shared more widely.<sup>10</sup>

Furthermore, Aqua detailed the number of commitments and conditions that it would accept as additional conditions to the Commission's approval of this acquisition in Section V.C. of its Main Brief. Aqua made significant concessions where reasonably possible to adopt many of the recommendations proposed by OCA and I&E in this proceeding. Reviewed as a whole, Aqua's Main Brief, testimony and exhibits demonstrate that, even without the additional, beneficial conditions contemplated by the Settlement, Aqua's proposal to acquire the System is in the public interest and should be approved.

However, in addition to these numerous, substantial public benefits identified by Aqua, the conditions contained in the Settlement will provide additional affirmative public benefits that further support approval of Aqua's acquisition of the Beaver Falls System. As detailed below, the conditions contemplated by the Settlement in many cases affirm the public benefits identified in Aqua's testimony and exhibits, affirm the additional beneficial conditions Aqua identified that it would accept as conditions to the approval of the acquisition during the course of its testimony, and build upon these commitments to create additional benefits for the public. Therefore, and for the reasons set forth below, the Settlement should be approved without modifications.

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<sup>9</sup> Aqua MB, Section V.A.3.c.

<sup>10</sup> Aqua MB, Section V.A.3.d.

### **III. DISCUSSION**

#### **A. AQUA IS AN EXPERIENCED AND FIT OPERATOR, AND ITS ACQUISITION OF THE SYSTEM WILL BENEFIT THE CITY, THE CITY'S CUSTOMERS, AQUA'S CUSTOMERS AND THE PUBLIC**

Aqua is clearly fit to acquire, own and operate the System, and no party to this case has argued otherwise. Aqua is presumed fit and, nevertheless, has presented substantial evidence that it is legally, financially, and technically fit to acquire the System.<sup>11</sup> Moreover, the transaction will easily fold into Aqua's existing wastewater operations.<sup>12</sup>

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

The System is located nearby Aqua's Western Division office, and its operation as a standalone system will be managed from this office in Sharon, PA.<sup>13</sup> Aqua's Western Division currently oversees nine water and four wastewater systems serving 30,031 customers in 34 municipalities in Western Pennsylvania.<sup>14</sup> The integration of the System into Aqua's operations will provide the System with access to beneficial support services that it currently does not have today.<sup>15</sup> Importantly, "Aqua will immediately incorporate the equipment and facilities acquired from the City into the established asset management programs to include preventative maintenance programs and corrective maintenance management."<sup>16</sup> Aqua has substantial experience

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<sup>11</sup> Aqua MB, pp. 13-14 (citing undisputed record evidence that Aqua is legally, financially, and technically fit).

<sup>12</sup> Aqua St. No. 3, p. 4.

<sup>13</sup> Aqua St. No. 3, pp. 3-4.

<sup>14</sup> Aqua St. No. 3, p. 3.

<sup>15</sup> Aqua St. No. 3, pp. 5-6.

<sup>16</sup> Aqua St. No. 3, p. 8.

integrating wastewater systems into its Western Division, regardless of the current condition of the System's operations and infrastructure.<sup>17</sup>

As described by Aqua Witness Packer, "Aqua has acquired 14 wastewater systems over the past 10 years. Many of these systems required significant investment to correct service and environmental issues. Other systems did not need substantial capital investment."<sup>18</sup> Each of these acquisitions diversified the systems, which provided increased stability to customers by allowing for capital improvements to be made to each system at different times, thereby spreading the financial impacts of improving each system over the long-term operations of the utility.<sup>19</sup>

Importantly, no party disputed that Aqua will be able to successfully integrate the System into its operations, and no party disputed that Aqua's integration will result in the System being operated at a higher standard than it is today. Therefore, it is clear that Aqua will be able to integrate the System into its overall operations—as it has with numerous other wastewater systems over the years—and that this integration will elevate the operations and service provided by the System over its existing levels, including needed improvements to the Beaver Falls wastewater treatment plant ("WWTP").

Aqua also demonstrated that there are a number of significant challenges facing the System.<sup>20</sup> In summary, these include:

- Lack of Licensed Operators, Access to Training, and Redundancy of Operators;
- Limited or Lacking Process Control Testing;
- Inadequate Laboratory Sample System Management;
- Permit Compliance Issues;

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<sup>17</sup> Aqua St. No. 3, pp. 7-8.

<sup>18</sup> Aqua St. No. 1, p. 13.

<sup>19</sup> Aqua St. No. 1, p. 13.

<sup>20</sup> See Aqua MB, pp. 18-23; Aqua St. No. 3 Supp, pp. 10-36; Aqua St. No. 4 Supp, pp. 2-4; Aqua St. No. 3-R, pp. 6-11; Aqua St. No. 3-RJ, pp. 4-8. See also Aqua St. No. 4 Supp., p. 5 ("Q. Do you believe the System is a troubled system? A. Yes. For the reasons set forth in Mr. Martin's Supplemental Direct Testimony and as I explained above regarding the City unable to fill positions at the WWTP, the lack of capital planning, and the deficiencies in the System operations, Beaver Falls does not have the financial, managerial or technical ability to operate the System.").

- Lack of Emergency Preparedness Planning;
- Lack of Safety & Security Equipment & Training;
- Hazardous Chemical Storage, Labeling, and Safety Concerns;
- Compliance with Federal EPA Risk Management Program regulations for extremely hazardous chemicals;
- WWTP Ventilation Issues creating health and safety risk for employees;
- WWTP physical safety measures;
- WWTP Security deficiencies;
- Inadequate SCADA and operator alarm systems;
- Use of homemade patchwork of physical assets;
- Insufficient emergency/standby power generation; and
- Lack of Asset Management or Compliance Management Software Systems.<sup>21</sup>

These issues were discussed in detail throughout the direct, supplemental direct, rebuttal, and rejoinder testimony of Aqua Witness Mr. Zach Martin. Mr. Martin is the Western Pennsylvania Area Manager for Aqua, and Mr. Martin has over 19 years experience operating water and wastewater systems.<sup>22</sup> It bears repeating that, in the words of Mr. Martin: “I did not feel safe, and we would not allow Aqua employees to work at the WWTP under the current conditions.”<sup>23</sup> Moreover, many of the treatment issues identified at the WWTP present risks to the millions of downstream users in the Beaver and Ohio River Valleys.<sup>24</sup>

Critically, the City is unable to resolve these issues. It lacks the finances to do so.<sup>25</sup> It lacks the experience to do so.<sup>26</sup> And it has no plan to do so.<sup>27</sup> On the other hand, it is undisputed

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<sup>21</sup> Aqua St. No. 3 Supp, pp. 12-39.

<sup>22</sup> Aqua St. No. 3, pp. 1-2.

<sup>23</sup> This statement was based upon approximately 10 visits that Mr. Martin took to visit the System over various seasons. Aqua St. No. 3 Supp, p. 11.

<sup>24</sup> Aqua St. No. 3, p.12.

<sup>25</sup> Aqua MB, p. 23; Aqua St. No. 4-R, p. 4; Aqua St. No. 8-R, pp. 2-4.

<sup>26</sup> Aqua St. No. 3-R, pp. 13-16 (noting that the City lacked qualified personnel, could not simply hire them, and would benefit from Aqua’s existing expertise and resources) and 16 (specifically noting that its current plant manager does not have PADEP certification); Aqua St. No. 4-R, p. 3 (noting the City’s lack of expertise and personnel).

<sup>27</sup> Aqua St. No. 4 Supp, p. 3; Aqua St. No. 3-R, at p. 8 (“I should repeat that the City has no capital plan – not a limited capital plan, not a plan for the next three years, nor a plan for the upcoming year. There is no document, memo or strategy to deal with replacing or maintaining wastewater infrastructure it is currently charged with overseeing and operating.”).

that Aqua is able to resolve these issues. It has the finances, the expertise and a plan to do so.<sup>28</sup>

Moreover, Aqua witness Mr. Martin explained the problem with forcing the City to continue to operate the System such a reactive manner, rather than allowing Aqua to acquire the System so that the issues could be proactively resolved. He explained:

I have supplied testimony to document the continued disrepair of the System with specific equipment failures, deterioration of facilities, and continued operational shortfalls that continue to remain unaddressed. Mr. DeMarco's opinions, which ignore these conditions, are dangerous with respect to the operation of utilities as such opinions suggest that entire systems should be allowed to fall into complete and total disrepair before he would support an acquisition. Such reactive management and operation will actually require a significant capital investment in a short period of time to remedy the issues. What Mr. DeMarco should consider is that Aqua's testimony makes clear that the Company is prepared to start addressing this growing list of issues now, while they are still manageable. Such proactive management and operation will be more cost effective than waiting until the adverse conditions become more severe.

Early, proactive intervention allows for preventive maintenance, which can extend the System's lifespan, improve efficiency, and reduce long-term operational costs. By investing in improvements now, we can prevent minor problems from escalating into major failures that would require significantly more resources to fix. Moreover, addressing these deficiencies promptly mitigates the risk of catastrophic failures, which could lead to service interruptions, regulatory penalties, and higher costs for emergency repairs. Acting now minimizes these risks and ensures the continued safety and reliability of the System.

Timely, proactive improvements will also enhance service quality and reliability for customers, leading to higher satisfaction and potentially lower costs in the long run. This proactive approach aligns with industry best practices and expert recommendations, further supporting the case for early intervention.<sup>29</sup>

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<sup>28</sup> Aqua MB, pp. 13-24.

<sup>29</sup> Aqua St. No. 3-RJ, pp. 6-7 (emphasis added).

The Commission recognize that this acquisition will prevent a municipal operator from having to react to an emergent system issue, where that municipality has clearly indicated in such a situation “where the City would be forced to decide how to spend inadequate resources to address multiple critical problems, needed repairs and improvements to the System identified by Mr. Martin will likely be unaddressed and we cannot guarantee that the System will be efficiently and safely run.”<sup>30</sup>

Aqua’s ownership of the System will also enhance the physical and cybersecurity protections applicable to the System.<sup>31</sup> Aqua’s ownership of the System will bring additional benefits to the customers of the System through enhanced customer service. Aqua explained in its Main Brief that its ownership will provide the City’s customers with access to its customer service representatives, call center and receive prompt responses to service issues.<sup>32</sup> City customers will have access to payment plan options and Aqua’s customer assistance programs.<sup>33</sup> Moreover, they will have enhanced communication regarding customer service questions and additional payment options.<sup>34</sup>

The acquisition also will produce economies of scale that will benefit Aqua’s existing customers. The acquisition of the System will increase Aqua’s customer base by about 5%. This increase means that future infrastructure investments across the state will be shared more widely, resulting in a lower incremental cost per customer for all of Aqua’s customers.<sup>35</sup>

For the foregoing reasons, Aqua’s acquisition of the System, as conditioned by the Settlement, will result in substantial, affirmative public benefits. For the City and its residents, Aqua’s acquisition of the System will provide a desperately needed infusion of funds, which can

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<sup>30</sup> Aqua St. No. 4-R, pp. 4-5.

<sup>31</sup> Aqua MB, pp. 21-22.

<sup>32</sup> Aqua MB, pp. 22-23.

<sup>33</sup> Aqua MB, p. 23.

<sup>34</sup> Aqua MB, p. 23.

<sup>35</sup> Aqua MB, pp. 26-27.

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

**B. SPECIFIC SETTLEMENT TERMS AND CONDITIONS OF THE SETTLEMENT**

The specific terms and conditions of the Settlement provide further evidence of affirmative public benefits from Aqua’s acquisition of the System. As explained in detail below, each of these provisions and the Settlement as a whole, demonstrate further that the Settlement, and the above-captioned Application subject to the terms and conditions of the Settlement, should be approved.

**1. General (Settlement, Section III.A.)**

Paragraph 36 of the Settlement states that the Settlement “reflect[s] a carefully balanced compromise of the Settlement Parties’ positions on various issues.” (Settlement ¶ 36.) It also reflects that the Settlement Parties agree that the Settlement is in the public interest. (Settlement ¶ 36.) Relatedly, Paragraph 37 provides for the approval of the Amended Application, including certificates of filing pursuant to 66 Pa. C.S. § 507 for all municipal contracts that Aqua included

in the Amended Application, subject to the terms and conditions of the Settlement (Settlement ¶ 37.)

The Settlement was achieved only after a comprehensive investigation of Aqua's request to acquire the System. In addition to informal discovery, Aqua responded to hundreds of formal discovery requests, not including subparts. The parties filed multiple rounds of testimony and accompanying exhibits, including direct, rebuttal, surrebuttal and rejoinder testimony. Moreover, the Settling Parties in this proceeding, and their counsel and experts, have considerable experience in in these proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong foundation upon which to build a consensus on the settled issues. Furthermore, the Settlement reflects a carefully balanced compromise of the interests of the Settling Parties. The Settling Parties participated in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement; each of the Settling Parties made significant concessions as compared to their litigation positions to achieve this Settlement. The fact that the Settlement is supported by parties representing a diversity of constituents and interests, in and of itself, provides substantial evidence that the Settlement is reasonable and in the public interest, particularly given the active role of the parties in this proceeding as well as the many negotiations required to achieve the Settlement.

For these reasons and the reasons set forth below, the Settlement should be approved.

## **2. Closing (Settlement, Section III.B.)**

Paragraph 38 of the Settlement provides that, if Aqua and City decide to close on the acquisition, the closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Amended Application. While testimony was not offered on the issue addressed by this provision of the Settlement, Aqua notes that the timing of closing on a Section 1329 acquisition related to the appeal period for the Commission's final

order approving such acquisition was a material issue in recent base rate cases.<sup>36</sup> Indeed, it remains an issue on reconsideration in the *Aqua 2024 Base Rate Case Order*, related to its acquisition of the East Whiteland Township system.<sup>37</sup> Paragraph 38 of the Settlement is reasonable and provides an additional public benefit because it avoids any confusion or additional litigation surrounding a decision by Aqua and Beaver Falls related to the timing of closing. In particular, it avoids the need to litigate this issue in a future base rate proceeding. Therefore, this provision of the Settlement is in the public interest and should be approved.

### **3. Purchase Price And Rate Base Of The Acquired Assets (Settlement, Section III.C.)**

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

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

With respect to Aqua’s acquisition of the System, the negotiated purchase price as set forth in the Asset Purchase Agreement (“APA”) was \$41,250,000.<sup>38</sup> The average of the two FMV

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<sup>36</sup> See *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047822, R-2024-3047824, et al. (Opinion and Order entered Feb. 7, 2024) (“*Aqua 2024 Base Rate Case Order*”) (litigating the issue of whether the rate base from an acquisition that closed prior to an appeal being taken can be included in base rates while the appeal remains pending); *Pa. PUC, et al., v. Pennsylvania-American Water Company*, Docket Nos. R-2023-3043189, et al. (Opinion and Order entered July 22, 2024) (litigating the issue of whether rate base from an acquisition not closed at the time of a rate case could be included in base rates).

<sup>37</sup> See *Aqua 2024 Base Rate Case Order*, pp. 136-143. Aqua PA and Aqua filed for partial reconsideration and/or clarification of the *Aqua 2024 Base Rate Case Order* on February 14, 2025. The Commission granted reconsideration subject to review on the merits of this request by Order entered February 20, 2025.

<sup>38</sup> Aqua Exhibit 2, Amended Application, ¶ 21.

appraisals was \$42,245,674.<sup>39</sup> Therefore, in accordance with Section 1329, the ratemaking rate base claimed by Aqua was \$41,250,000, being the lesser of the two amounts.

I&E did not oppose the ratemaking rate base amount of \$41,250,000.<sup>40</sup> However, OCA challenged the two FMV appraisals submitted by the UVEs. OCA argued that, if the Commission approved the proposed acquisition, then the FMV should be \$19,628,354.<sup>41</sup> If accepted by the Commission, this would reduce the ratemaking rate base to \$19,628,354. Under the Settlement, the Settlement Parties agree that the ratemaking rate base of the Acquired Assets that are the subject of the Amended Application will be \$29,900,000. (Settlement ¶ 39.)

If the case were fully litigated, the Settlement Parties recognize that the Commission might accept some, but not necessarily all, of the FMV adjustments proposed by OCA. In particular, several of the proposed adjustments offered by OCA Witness Garrett have been previously considered and rejected by the Commission. See, e.g., *Application of Aqua Pennsylvania Wastewater, Inc. – East Whiteland Township*, Docket No. A-2021-3026132, pp. 81-83 (Opinion and Order entered July 29, 2022) (“*East Whiteland*”) (rejecting Mr. Garrett’s Income Approach); *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3927268, p. 71 (Order entered July 8, 2022) (“*Willistown*”) (approving Gannett Fleming’s Cost valuation approach, and rejecting Mr. Garrett’s proposed adjustment); *Willistown* p. 123 (accepting Gannett Fleming’s weighting of Selected Transactions for its Market Approach, based upon comparability of the transactions to the system being acquired). The Settlement ratemaking rate base of \$29,900,000 is slightly less than the average (\$30,439,000) of Aqua’s and the OCA’s litigation positions. The

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<sup>39</sup> Aqua Exhibit 2, Amended Application, ¶ 56.

<sup>40</sup> I&E St. No. 2, p. 5.

<sup>41</sup> OCA St. No. 2, p. 5.

compromise amount is in the public interest, particularly in the context of the other substantial public benefits that are provided by the transaction, and should be adopted.

In light of the substantial reduction to the ratemaking rate base established under the Settlement, Aqua and Beaver Falls agreed that the APA, dated as of October 20, 2021, and attached to the Amended Application as **Exhibit B**, will be amended to reflect a purchase price of \$37,750,000 and to remove the contract termination date in the APA. (Settlement ¶ 40.) A copy of the amendments to the APA are attached to the Settlement as Appendix A. As part of the approval of the amended Application, Aqua and the City request that the Amended APA be approved under the provisions of Section 507 of the Code. Because the amended purchase price is above the ratemaking rate base agreed to in the Settlement, it has no affect upon the Settlement, but it does represent a sharing, as between Aqua and the City, of the cost of agreeing to a lower ratemaking rate base. The amendment to amend the contract outside date in the APA recognizes that substantial time has passed since the APA was executed, and avoids concerns that the outside date would expire before Closing.<sup>42</sup>

Any goodwill resulting from this transaction that is included on the balance sheet of Aqua shall be excluded from its rate base and any debt or equity issued to finance the goodwill shall be excluded from the ratemaking capital structure for ratemaking purposes. (Settlement ¶ 41.) Goodwill represents the difference between payment for Acquired Assets and the value of those assets included in rate base. This provision removes from ratemaking capital structure in future proceedings any capital, whether debt or equity, issued to finance that difference. Settlement Paragraph 42 further affirms that the difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from Aqua's existing customers or

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<sup>42</sup> The contract outside date in the original APA was December 31, 2025.

from Beaver Falls' current customers. These paragraphs further confirm the Settlement Parties' agreement regarding the future ratemaking effects of the Settlement, are in the public interest, and should be approved.

#### **4. Rate Gradualism (Settlement, Section III.D.)**

One of the primary points of focus between the Settlement Parties was the purported rate impact of Aqua's acquisition of the System.<sup>43</sup> I&E raised this issue for consideration,<sup>44</sup> and OCA in particular raised concerns regarding rate impacts upon the City's customers as well as Aqua's existing customers.<sup>45</sup>

The Company understands and recognizes that the rate impact of an acquisition are a serious issue that must be taken into consideration. However, it presented testimony that demonstrated the alleged rate impacts of the acquisition were outweighed by substantial affirmative public benefits. It also showed that the rate impact was due in part to the very low rates the City is currently charging.<sup>46</sup> Aqua further explained that the rate impact of the acquisition cited by the OCA was based on 100% of the revenue deficiency being borne by the City customers, which as the Commission has stated, the outcome in a rate case will likely be somewhere between the two extremes of an impact of \$0 and full allocation of costs.<sup>47</sup> Moreover, and importantly, Aqua explained that if certain parties' position on rate impacts were accepted, it "would mean that no certificate of public convenience should ever be granted for a sale of a municipal system to an investor-owned utility."<sup>48</sup>

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<sup>43</sup> See Aqua MB, pp. 28-30.

<sup>44</sup> I&E St. No. 1, pp. 7-10.

<sup>45</sup> OCA St. No. 1, pp. 14-21.

<sup>46</sup> Aqua St. No. 1-R, p. 5.

<sup>47</sup> Aqua MB, pp. 28-29.

<sup>48</sup> Aqua St. No. 1-R, p. 5.

Paragraphs 43-47 of the Settlement collectively address the issue of rate impacts, and provide a roadmap for the Settlement Parties, the ALJ and the Commission to be assured that the impacts of the acquisition on rates have been accounted for consistent with *McCloskey*. Indeed, these provisions of the Settlement benefit the City's customers that will be acquired by Aqua, Aqua's existing wastewater customers, and Aqua Pennsylvania, Inc.'s ("Aqua PA")<sup>49</sup> existing water customers.

Regarding the City's customers, Paragraph 43 requires Aqua to propose a rate gradualism plan that will make sure that the City's customers gradually move toward paying their full cost of service over time, while mitigating the initial rate increase that Aqua will propose in its first base rate case after the acquisition. (Settlement ¶ 43.) Relatedly, Paragraph 44 memorializes the average bill effect of the rate increase in the first base rate case that it will propose in compliance with Paragraph 43. (Settlement ¶ 44.) Each of these two paragraphs further affirm the benefits of the acquisition by mitigating future rate impacts upon the City's customers and should be approved.

Regarding Aqua's wastewater customers, and Aqua PA's water customers, Paragraph 45 of the Settlement establishes a limit of any Section 1311(c) shift of revenue requirement deficiencies to no more than is needed to achieve the rate limits set in Paragraphs 43-44. (Settlement ¶ 45.) Relatedly, Paragraph 46 confirms that any proposed Section 1311(c) shift of wastewater revenue requirement to water customers proposed in a base rate case after the first base rate case that includes the Acquired Assets will decline from the Section 1311(c) shift set by the Commission in the first base rate case. (Settlement ¶ 46.) Each of these provisions mitigates the impacts of the acquisition, which will result in a revenue deficiency related to the City's operations

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<sup>49</sup> Aqua is a subsidiary of Aqua PA.

that can be shifted to existing Aqua PA water customers. In addition, Paragraph 46 affirms Aqua's and Aqua PA's position that Section 1311(c) shifts are not meant to be permanent, but should decrease as the acquired system begins to pay its full cost of service. Therefore, these paragraphs are in the public interest and should be approved.

Finally, Paragraph 47 confirms that the Settlement Parties reserve the right to challenge any rates proposed by Aqua in any future base rate cases, except that the OCA agrees not to challenge Aqua's proposal to the extent consistent with Paragraphs 43, 44 and 45 above in the first base rate case that includes the Beaver Falls System.<sup>50</sup> As with the other provisions in this Section of the Settlement, this paragraph provides a roadmap for the mitigation of rate impacts related to the acquisition on a going forward basis, which is an additional benefit to the acquisition.

#### **5. Customer Assistance Programs (Settlement, Section III.E.)**

Aqua and the City identified the fact that access to Aqua's Customer Assistance Program ("CAP") and other low-income programs represented a positive benefit of the acquisition.<sup>51</sup> OCA advanced a number of recommendations related to Aqua's assistance programs, as a part of its direct testimony, including:

- within 30 days after closing Aqua should be required to provide a letter to acquired customers about Aqua's low-income programs which would include eligibility requirements, a description of benefits and information on how to apply, and this information should be included within bills to Beaver Falls customers within 90 days of closing;<sup>52</sup>
- Aqua should report the number of eligible customers from the Beaver Falls service area who are enrolled in Aqua's CAP, and that the report should be provided to parties every six months until the conclusion of Aqua's next base rate case; and<sup>53</sup>

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<sup>50</sup> I&E does not join in this paragraph.

<sup>51</sup> Aqua St. No. 4, p. 3; Aqua St. No. 9-R, pp. 2-4.

<sup>52</sup> OCA St. No. 1, p. 31.

<sup>53</sup> OCA St. No. 1, p. 32.

- Aqua should make contribution to its hardship fund of \$100,000 per year for the next five years after closing.<sup>54</sup>

In rebuttal, Aqua stated that it accepted OCA's conditions with respect to its assistance programs, except that the Company would agree to funding \$30,000 per year for three years, starting where the year 1 contribution amount would be within 60 days following closing. The Company also agreed that any unused funds from this amount at the end of the program year should be rolled over and added to the budget of the hardship grant program in the following year(s).<sup>55</sup> OCA agreed to these proposals in surrebuttal.<sup>56</sup>

Paragraphs 48-51 effectively adopt the conditions advanced by OCA, which were agreed to by Aqua with certain modifications, during the course of this proceeding. These provisions of the Settlement affirm the benefits that Aqua and the City maintained would result from the acquisition with respect to the low-income customers in the City. In addition, the additional Hardship Fund contribution set forth in Paragraph 48 of the Settlement provides an additional benefit to both the City's low-income customers and Aqua's existing low-income customers. These provisions of the Settlement are in the public interest and should be approved.

## **6. Bulk Service Agreements (Settlement, Section III.F.)**

Paragraph 52 of the Settlement provides that the Settling Parties do not object to the terms of the Bulk Services Agreements, included as Exhibits F9 through F15 to the Amended Application, in this proceeding but the Settling Parties agree that the parties may submit testimony and challenge these agreements and the rates for the City's bulk customers in future rate cases. (Settlement ¶ 52.) The Amended Application asks that the Commission approve, if necessary, the

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<sup>54</sup> OCA St. No. 1, p. 39.

<sup>55</sup> Aqua St. No. 9-R, p. 7.

<sup>56</sup> OCA St. No. 1SR, p. 2.

Agreement between Aqua and the City (**Exhibit B**)<sup>57</sup>, as well as the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities (i.e., **Exhibits F9-F15**), the pro forma meter read agreement between Aqua and the BFMA (**Exhibit F17**), and the Settlement Agreement entered into by Aqua, the City and the Municipal Protestants (**Exhibit F18**).<sup>58</sup> These contracts are necessary for the operation of the System. No party opposed the issuance of certificates for these contracts. In addition, the reservation of rights reflected in Paragraph 52 makes clear and confirms that the Commission's issuance of certificates of filing in this matter do not constitute an approval of the agreements and rates for ratemaking purposes in the future. Therefore, this provision of the Settlement reflects that these contracts are reasonable, legal and valid, and certificates of filing should issue under 66 Pa. C.S. § 507. Paragraph 52 of the Settlement should be approved.

Aqua further notes that, at this time, it is withdrawing its request for the Commission to approve the charitable contribution agreement between Aqua and the City under Section 507. Therefore, approval of the agreement is no longer sought or required.

#### **7. Other Issues (Settlement, Section III.G.)**

Paragraph 53 of the Settlement provides that in the first base rate case filed after the closing of the transaction in which Aqua makes a claim for the Acquired Assets in rate base, Aqua will file a cost of service study ("COSS") that removes all costs and revenues associated with the operation of the City's system, and that the Contributing Municipalities will be included as a separate rate class in that cost of service study. (Settlement ¶ 53.) Both OCA and I&E made proposals to require Aqua to submit a separate COSS for the System in Aqua's next base rate

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<sup>57</sup> As amended through this Settlement.

<sup>58</sup> See Aqua St. No. 1, at pp. 22-24; Aqua St. No. 1 Supp., at p. 4; see also Aqua Exhibit 2, Amended Application, ¶¶ 5, 25, 69-70.

proceeding.<sup>59</sup> I&E further proposed that the Contributing Municipalities be included as a separate rate class in the COSS.<sup>60</sup> Aqua Witness Packer testified that Aqua agreed to submit a separate COSS for the System, in a similar manner to what it submitted for Section 1329 systems in the Company's 2021 and 2024 base rate proceedings.<sup>61</sup> Mr. Packer also indicated that he saw merit in a separate class for the Contributing Municipalities, but that he would reserve his final opinion as to rate design until the next base rate proceeding.<sup>62</sup> He further clarified in his rejoinder testimony that "The Company agrees that the COSS that Aqua will present in the first base rate case that includes the Beaver Falls System would show the Contributing Municipalities as a separate rate class."<sup>63</sup> This provision of the Settlement memorializes Aqua's agreement to adopt a condition advanced by OCA and I&E and, therefore, is in the public interest and should be approved.

Paragraph 54 of the Settlement relates to Aqua's distribution system improvement charge ("DSIC") and the time at which Aqua will include System-related investments in the DSIC. (Settlement ¶ 54.) It requires that before Aqua first collects a DSIC from Beaver Falls customers, that Aqua must file (within 180 days of closing) and obtain relevant approvals of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP"). (Settlement ¶ 54.) OCA and I&E also proposed certain conditions related to the Company's LTIIIP and DSIC.<sup>64</sup> Aqua Witness Martin explained that the Company is not under any obligation to update its LTIIIP within a certain time following closing, but agreed to submit an update within 180 days of closing (rather than 90 days as proposed by OCA and I&E). This will allow Aqua sufficient time to integrate the

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<sup>59</sup> OCA St. No. 1, p. 39; I&E St. No. 2, pp. 10-11.

<sup>60</sup> I&E St. No. 2, pp. 10-11.

<sup>61</sup> Aqua St. No. 1-R, p. 12.

<sup>62</sup> Aqua St. No. 1-R, p. 12.

<sup>63</sup> Aqua St. No. 1-RJ, p. 4.

<sup>64</sup> OCA St. No. 1, p. 39; I&E St. No. 2, p. 10.

assets into Aqua's overall operations.<sup>65</sup> In addition, Mr. Packer confirmed that the Company will not include incremental investments in the System in the DSIC until Beaver Falls customers are subject to the DSIC.<sup>66</sup> Paragraph 54 memorializes Aqua's agreement with OCA's and I&E's proposals related to the LTIP and DSIC, but adopts the Company's proposal to file an amended LTIP within 180 days of closing. This provision reflects unity amongst the Settling Parties regarding the appropriate timing for LTIP and DSIC related investments in the System, and provides Aqua with sufficient time to integrate the System and its assets into Aqua's operations. Therefore, this provision is in the public interest and should be approved.

Settlement Paragraph 55 relates to Aqua's request that Aqua be permitted to claim transaction and closing costs associated with the acquisition of the System. (Settlement ¶ 55.) The Settling Parties have reserved their rights to litigate their positions in future rate cases, and Aqua agrees to clearly set out and identify all transaction and closing costs from this matter. (Settlement ¶ 55.) Similar to Paragraph 55, Paragraph 56 provides that the inclusion of outside legal fees, if any, in Aqua's transaction and closing costs under the APA shall be separately identified in Aqua's next base rate case, and all parties shall have the right to challenge the reasonableness, prudence, and basis for such fees. (Settlement ¶ 56.) In addition, Paragraph 57 of the Settlement states that any claim made by Aqua to recover transaction and closing costs associated with the transaction will not include costs incurred by the City. (Settlement ¶ 57.)

OCA recommended that Aqua separately identify all of its closing costs by category, including any outside legal fees, when it makes a claim for recovery in its next base rate case, and not be permitted to claim any transaction and closing costs incurred by the City.<sup>67</sup> Aqua confirmed

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<sup>65</sup> Aqua St. No. 3-R, p. 3.

<sup>66</sup> Aqua St. No. 1-R, p. 19.

<sup>67</sup> OCA St. No. 1, p. 38.

that as a matter of its normal business and accounting, it would track all closing costs and claim them in the next base rate case, where all parties would be able to review, and that it would not seek recovery of costs incurred by the City.<sup>68</sup> Paragraphs 55-57 of the Settlement effectively memorialize Aqua's adoption of certain conditions recommended by OCA, which are already a part of Aqua's normal business and accounting practices. Therefore, these provisions of the Settlement should be approved.

Finally, Paragraph 58 of the Settlement provides that Aqua should not be permitted to include easement land rights into its rate base until it acquires the easements. (Settlement ¶ 58.) OCA and I&E both made a number of recommendations related to missing easements associated with the acquisition.<sup>69</sup> Aqua Witness Packer explained that Section 6.05(c) of the APA already protects Aqua and its customers from bearing costs associated with missing easements.<sup>70</sup> He further explained that Section 6.05(e) of the APA includes a provision creating an escrow amount out of the purchase price for costs related to acquiring the missing easements, and that if maintenance or repair is needed for an asset when there is no easement, Aqua can enter into a temporary construction easement as needed until a permanent easement can be obtained, or can enter a property on an emergency basis as necessary.<sup>71</sup> Nevertheless, OCA maintained that Aqua not be permitted to include Beaver Falls assets in rate base until it acquires all outstanding easements.<sup>72</sup> Although the APA and Aqua's existing practices provide appropriate protections related to missing agreements, Paragraph 58 of the Settlement is a reasonable compromise of

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<sup>68</sup> Aqua St. No. 1-R, p. 12.

<sup>69</sup> OCA St. No. 1, p. 39; I&E St. No. 1, p. 5.

<sup>70</sup> Aqua St. No. 1-R, p. 15.

<sup>71</sup> Aqua St. No. 1-R, pp. 14-15.

<sup>72</sup> OCA St. No. 1, p. 38.

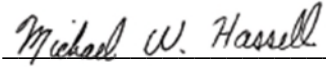
competing litigation interests. In addition, it fully resolves OCA's concerns regarding missing easements. Therefore, this provision of the Settlement is reasonable and should be approved.

#### **IV. CONCLUSION**

The Settlement is the result of a detailed examination of Aqua's proposals, substantial discovery requests, multiple rounds of testimony, numerous settlement discussions, and compromises by the Settlement Parties. Aqua believes that fair and reasonable compromises have been achieved on all of the issues between the Settlement Parties in this case, particularly given the fact that the Settlement Parties have such diverse and competing interests in this proceeding and have reached a Settlement on these issues. Aqua fully supports this Settlement and respectfully requests that the Administrative Law Judge F. Joseph Brady and the Pennsylvania Public Utility Commission approve the Settlement and approve the above-captioned Application, subject to the terms and conditions of the Settlement, and:

1. Issue all certificates of public convenience under 66 Pa. C.S. §§ 1102 and 1103 necessary to authorize Aqua to acquire, by purchase, the wastewater system assets of the City of Beaver Falls, and begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory set forth in the Application;
2. Authorize Aqua to file tariff revisions, effective upon one day's notices to include within its service territory all the Requested Territory set forth in the Application, and adopt and apply the rates of the City of Beaver Falls as set forth in Appendix F to the Settlement as Aqua's base rates, and apply Aqua's Rules and Regulations as set forth in its tariff within the Requested Territory;
3. Enter an order approving the Application and Aqua's acquisition of the System and, as a part of the Order, include the ratemaking rate base of the wastewater system assets of the City of Beaver Falls as \$29,900,000 as set forth in the Settlement and pursuant to 66 Pa. C.S. § 1329(c)(2);
4. Approve Contracts, including the amended Asset Purchase Agreement, New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities, the pro forma meter read agreement between Aqua and the BFMA, and the Settlement Agreement entered into by Aqua, the City and the Plaintiff Municipalities pursuant to Section 507 of the Public Utility Code. Aqua is withdrawing its request for the Commission to approve the charitable contribution agreement between Aqua and the City under Section 507; and
5. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the wastewater system assets of the City of Beaver Falls.

Respectfully submitted,



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Dated: March 25, 2025

*Counsel for Aqua Pennsylvania Wastewater,  
Inc.*

# Appendix C

**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**

**STATEMENT OF INTERVENOR CITY OF BEAVER FALLS IN SUPPORT OF THE  
NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

Intervenor City of Beaver Falls (“Beaver Falls” or “the City”), by and through its counsel, Dilworth Paxson, LLP, submits its Statement in in Support of the Non-Unanimous Settlement of

All Issues with respect to Aqua Pennsylvania Wastewater, Inc.’s (“Aqua”) Amended Application (the “Aqua Application”).

## **I. Introduction**

This proceeding concerns Aqua’s Application, filed with the Public Utility Commission (“Commission”) on February 17, 2023 and amended on March 28, 2024, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”), for approval of its acquisition of the wastewater system assets of the City of Beaver Falls (“Beaver Falls” or “the City”). On March 25, 2025, the Joint Petitioners<sup>1</sup> filed a Joint Petition for Approval of Non-Unanimous Settlement of All Issues (“Joint Petition”) proposing a resolution of all issues in the proceeding. The City supports the Joint Petition and submits that it should be approved without modification because it will further the public interest.

## **II. Settlement — Legal Principles**

Pursuant to 52 Pa. Code § 5.231(a), the stated policy of the Commission is to encourage parties to resolve contested proceedings through settlement. The Commission has further stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401. Settlements lessen the time and expense of litigating a case and, therefore, directly benefit all interested parties. Beaver Falls supports the Joint Petition and submits that it should be approved without modification because it resolves all of the issues raised in this proceeding and will further the public interest.

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<sup>1</sup> Aqua, OCA, I&E and the City are, hereinafter, referred to collectively as “Joint Petitioners.”

### **III. The Proposed Settlement is in the Public Interest.**

The proposed Settlement is in the public interest because, (1) Aqua will run a proactive, efficiently managed, and safe System for Beaver Falls customers - something the City has been unable to provide and cannot guarantee in the future if Aqua's Application is not approved; 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. These opportunities are sufficient to satisfy the affirmative public benefits test under Section 1103, 66 Pa. C.S. § 1103(a), and further the Commission's goal of consolidating and regionalizing wastewater treatment systems under the appropriate circumstances.

#### **A. Aqua is Fit to Own and Operate the System.**

When considering a transaction like the one before the Commission at present, the party receiving the assets and service obligation must be technically, legally, and financially fit. See Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). There is no dispute that Aqua has the requisite technical, financial and legal fitness to own and operate the System. Indeed, Aqua's fitness is presumed because it is a certificated provider of utility service. See *Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

Aqua is a public utility operating under certificates of public convenience granted by the Commission, and there are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service. Based upon the testimony and statements submitted by Aqua and the information obtained by the City, the City is confident that Aqua would be well qualified to own and operate the System and can do so much better than the City has been able to or will be able to in the future. Given the fact that there are serious operational issues with the System and urgent

safety and environmental concerns raised in Aqua’s testimony, the System’s customers will benefit greatly from Aqua’s technical experience and fitness in deploying resources towards these issues and the future needed capital improvements that the City would likely not be able to fund if Aqua’s Application is not approved.

**B. The Public Will Benefit as a Result of the Settlement.**

There is substantial evidence in support of settlement and the public benefits resulting from the Proposed Acquisition.

**i. Benefits to the System from the Proposed Transaction**

A key component of operating a safe and efficient wastewater system is the ability to operate and fund capital improvements to the System proactively, rather than running a reactive system like the City has done. Customers of the System would significantly 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 associated with having an old deteriorating system. The City stated if the sale is not approved it cannot provide assurance that that the System will be efficiently and safely run.<sup>2</sup> But Aqua can.

The contrast between the financial capabilities of the City and Aqua to run the System could not be starker. The City is struggling to run the System and provide even the most basic governmental services to its citizens. It is on the verge of being declared a “distressed” community by the Commonwealth Department of Community and Economic Development under Act 47. The City cannot simply borrow money to run the System as the City is struggling to make debt payments to bondholders on its existing debt, and the cost to the City of a loan would likely

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<sup>2</sup> Aqua Statement 4-R, Rebuttal Testimony of Charles R. Jones, Jr., p. 5.

increase if the sale of the System is not approved because of the negative impact on its bond rating.<sup>3</sup> The “City would have to raise rates dramatically just to keep the wastewater treatment plant operating at the current level, which [is] significantly lacking.”<sup>4</sup>

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.

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. And the City hiring independent contractors is not realistic. 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.”<sup>5</sup>

In contrast, Aqua operates dozens of wastewater treatment plants and distribution systems 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 systems, there are no pending legal or regulatory proceedings challenging Aqua’s ability to provide safe and reliable services. The

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<sup>3</sup> Exhibit EE, Aqua Statement 8-R, Direct Testimony of Sandra Wilkins, p. 4

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* p. 5.

proposed Settlement would thus provide the immediate benefit of producing a vast array of professionals to oversee and operate an undermanned aging System.

Those professionals and the infusion of funds into the System by Aqua is urgently needed. Of particular concern to the City is the testimony of Zach Martin, who identified several safety issues with the treatment plant and found that the City's deteriorating system has caused seepage of wastewater into Beaver River.<sup>6</sup> Approval of the Settlement 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.

In addition to providing those immediate and long-term operational benefits to the public, Aqua will provide "enhanced customer service, expanded customer service hours, additional payment options (including by phone and online), enhanced customer information and education programs, access to Aqua's customer assistance program and Aqua's team of experienced water and wastewater professionals."<sup>7</sup> Aqua's ownership of the System will also enhance the physical and cybersecurity protections applicable to the System.<sup>8</sup>

Furthermore, 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.<sup>9</sup>

**ii. Benefits to the Community of Beaver Falls and Surrounding Municipalities**

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<sup>6</sup> Supplement Exhibit W, Supplemental Direct Testimony of Zach Martin, p. 16.

<sup>7</sup> Exhibit X, AQUA Statement 4, Direct Testimony of Charles R. Jones Jr., p. 9.

<sup>8</sup> Aqua MB, pp. 21-22.

<sup>9</sup> Supplement Exhibit X, Aqua Statement 4 Supp, Supplemental Direct Testimony of Charles R. Jones, Jr., p. 3.

Approval of the Settlement would also result in many other benefits to the public than those discussed above. Namely, the City will be freed up to provide other essential government functions which benefit the public if the Settlement 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.

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.<sup>10</sup> The Mayor testified that Beaver Falls 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.<sup>11</sup> 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."<sup>12</sup> Additionally, the City needs to address its aging infrastructure, including roads and streetscapes and will do so with a portion of the proceeds.<sup>13</sup>

Moreover, in addition to the 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 and tax increases that the City otherwise would have to make, (iv) and City employee pay increases.<sup>14</sup>

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<sup>10</sup> Exhibit DD, Aqua Statement 7-R, Direct Testimony of Dr. Kenya Johns, p. 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, p. 4-5.

<sup>13</sup> *Id.*, p. 5.

<sup>14</sup> Aqua Statement 8-R, Direct Testimony of Sandra Wilkins p. 6.

Not only will the community of Beaver Falls experience the significant public benefits if the sale to Aqua is approved as set forth in the Settlement, millions of downstream users in the Beaver and Ohio River Valleys will be protected from the issues raised by Zach Martin in his testimony regarding problems with the treatment plant.<sup>15</sup>

Finally, as settlement of litigation, the neighboring municipalities that send wastewater to the City's sewage treatment plant will receive a portion of the sale proceeds if the sale to Aqua is approved.

#### **IV. Conclusion**

As set forth in this Statement, Aqua not only has the requisite technical, legal and financial fitness to own and operate the System and serve the acquired customers, but this particular proposed transaction and the Joint Petitioners' Settlement provides numerous substantial affirmative benefits to the City and surrounding communities in accordance with the requirements of the Public Utility Code. The affirmative 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 Settlement should be approved. As a result, the City respectfully submits that the Commission approve the Settlement without modification.

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<sup>15</sup> Aqua St. No. 3, p.12.



# Appendix D

**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    | : |                           |

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**BUREAU OF INVESTIGATION AND ENFORCEMENT  
STATEMENT IN SUPPORT OF  
JOINT PETITION FOR NON-UNANMIOUS SETTLEMENT OF  
ALL ISSUE**

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**TO ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Carrie B. Wright, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), and the City of Beaver Falls (the “City”) (collectively, the “Joint Petitioners”)

## **I. INTRODUCTION**

### **A. Procedural History**

I&E adopts the procedural history as set forth in paragraphs 1-35 of the Joint Petition for Non-Unanimous Settlement.

I&E now submits this Statement in Support of Settlement and avers that the Settlement meets the requisite standards for approval and that it is in the public interest for the reasons explained below.

## **II. SETTLEMENT TERMS**

It is the policy of the Commission to encourage settlements.<sup>1</sup> For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that subject to all of the Settlement's terms and conditions, Aqua's Application satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the

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<sup>1</sup> 52 Pa. Code § 5.231.

settlement terms be approved by the Administrative Law Judge (“ALJ”) and the Commission without modification.

**A. Approval of the Application and Acquisition**

**1. Legal Standards**

**(i) Section 1102 Approval**

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.<sup>2</sup> The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103<sup>3</sup> of the Code. 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.”<sup>4</sup> 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.<sup>5</sup> Additionally, pursuant to 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.<sup>6</sup> In addition to assessing fitness, the Commission should consider the benefits and detriments

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<sup>2</sup> 66 Pa. C.S. § 1102(a).

<sup>3</sup> 66 Pa. C.S. § 1103.

<sup>4</sup> 66 Pa. C.S. § 1103(a).

<sup>5</sup> *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

<sup>6</sup> *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmmw. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

of the transaction “with respect to the impact on all affected parties”<sup>7</sup> 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.<sup>8</sup>

**(ii) Legal Standard for Section 1329 Approval**

Section 1329 of the Public Utility Code is a statute which 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.”<sup>9</sup>

**(iii) Legal Standard for Section 507 Approval**

Aqua’s request to assume enumerated municipal contracts currently held by the City 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

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<sup>7</sup> *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

<sup>8</sup> 66 Pa. C.S. § 1103(a).

<sup>9</sup> 66 Pa. C.S. § 1329 (d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

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.

## **2. Conclusion**

Subject to all of terms and conditions of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue Aqua a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). The goal of regionalizing water systems, benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits will be achieved as a result of this settlement. Importantly, through this settlement, the value of the public benefits will be better realized because the Settlement contains numerous terms to protect Aqua's ratepayers, both existing and those who will become Aqua's ratepayers through this transaction. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that Aqua's Application, as modified by the settlement, now meets the requisite standards for approval.

### **B. Rates (Joint Petition ¶¶ 43-47)**

The Settlement also provides that Aqua will propose a rate gradualism plan to the City's customers in the first base rate case that includes the Beaver Falls assets. This term is in the public interest because a goal of ratemaking is to charge customers rates

equal to the cost to serve those customers while being mindful of rate shock.

Furthermore, the settlement preserves the rights of I&E to challenge any rates proposed by Aqua in future rate case filings to ensure that the public interest is protected.

**C. Purchase Price and Ratemaking Rate Base of the Acquired Assets (Joint Petition ¶¶ 39-42)**

Per the Settlement Aqua will be permitted to use \$29,900,000 for the ratemaking rate base of the acquired assets. Ultimately, through use of both the formal and informal discovery process and its extensive investigation, I&E was able to determine that this proposed value of, comported with the valuation standards and requirements of Section 1329. The proposed ratemaking rate base is \$11.35 million less than what was requested in the Application. As a result, I&E avers that approval of \$29,900,000 million for the ratemaking rate base is both warranted and in the public interest. Further, this \$29,900,000 million is lower than the purchase price of \$37,750,000 agreed to by Aqua and Beaver Falls and is within the range of possible outcomes if this case were to be litigated to its full conclusion.

**D. Cost of Service Study (Joint Petition ¶ 53)**

In the first base rate case filed after the closing of the transaction in which Aqua makes a claim for the Acquired Assets in rate base, Aqua will file a cost of service study that removes all costs and revenues associated with the operation of the City's system. Additionally, in that cost of service study, the Contributing Municipalities will be included as a separate rate class.

I&E submits that the cost of service study will protect Aqua, its customers, the parties to this proceeding and the Commission. Specifically, the results of the cost of

service study that Aqua has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit Aqua's ratepayers as well, because if Aqua's Application is approved, Aqua's existing customers will also bear the rate impact. 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.

Additionally, in testimony 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 reasonable rate can be determined.<sup>10</sup> 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.<sup>11</sup> 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. By agreeing to include the Contributing Municipalities as a separate rate class in this settlement, I&E's concerns in this regard have been mitigated.

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<sup>10</sup> I&E St. No. 2, p. 11.

<sup>11</sup> I&E St. No. 2, pp. 13-14.

The Company's commitment to file a cost of service study that removes all costs and revenues associated with the operation of the City's system and include the Contributing Municipalities as a separate rate class will ensure that parties have the appropriate information upon which to base these customer's rates.

**E. Distribution System Improvement Charge ("DSIC") and Long-Term Infrastructure Improvement Plan ("LTIIIP") (Joint Petition ¶ 54)**

Per the Settlement, Aqua will not include System-related investments in its DSIC until Aqua collects a DSIC from Beaver Falls customers. Aqua shall be permitted to collect a DSIC from Beaver Falls customers upon Aqua's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") including the System, which is then approved by the Commission. Aqua has committed to file this LTIIIP within 180 days of closing.

I&E agrees that this term serves the public interest because it allows acquired Beaver Falls customers to benefit from improved water infrastructure, promoting safer and more reliable service. Therefore, I&E opines that this term is in the public interest.

**F. Transaction and Closing Costs (Joint Petition ¶¶ 55-57)**

I&E submits that Aqua's commitment to separately identify any legal fees included in its transaction and closing costs Aqua and Beaver Falls is consistent with ensuring that Aqua will only be permitted to recover prudently incurred costs from ratepayers. These terms are in the public interest because they protect ratepayers from paying unwarranted costs and promote rate affordability. Through these terms, the public interest is protected because I&E has preserved its ability to challenge the permissibility

of any claims that Aqua may make regarding transaction and closing costs in its next base rate case, which is consistent with I&E's obligation to enforce the Code.

**G. Easements (Joint Petition ¶ 58)**

Per the settlement, Aqua will not be permitted to include any easements into rate base until such easements are acquired. This will ensure that ratepayers are not paying for missing easements. Accordingly, this term of the Joint Petition is in the public interest and it should be approved without modification.

**H. Remaining Terms of the Settlement**

I&E does not oppose the remaining terms of the settlement as those terms present reasonable compromise on various issues. When considered in totality with the remainder of the settlement, these terms are in the public interest.

**III. CONCLUSION**

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation if the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

**WHEREFORE**, the Commission's Bureau of Investigation and Enforcement represents that it supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judge F. Joseph Brady and, thereafter, the Commission, approve the terms and conditions contained in the foregoing Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



Carrie B. Wright

Prosecutor

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Dated: March 25, 2025

# Appendix E

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 :

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OCA STATEMENT IN SUPPORT OF  
JOINT PETITION FOR APPROVAL OF SETTLEMENT

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The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Settlement (Settlement) also joined by Aqua Pennsylvania, Inc., the Bureau of Investigation and Enforcement, and the City of Beaver Falls, respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

**I. INTRODUCTION AND 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). Application ¶ 3. As part of its Application, Aqua requested approval

of the Asset Purchase Agreement (APA) dated October 20, 2021. Application ¶ 3. Additionally, Aqua requested approval of other municipal agreements pursuant to Section 507 of the Public Utility Code, to the extent necessary. Application ¶¶ 69-70. Finally, Aqua requested 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 (Amended Application or the Transaction). 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, Administrative Law Judge (ALJ) F. Joseph Brady held the Prehearing Conference as scheduled, where the litigation schedule and discovery modifications were discussed. On February 4, 2025, ALJ Brady issued a Prehearing Order establishing a litigation schedule and procedures to be followed in this case.

On February 14, 2025, the OCA served the direct testimony of Nicholas A. DeMarco<sup>1</sup> (OCA Statement 1) and David J. Garrett<sup>2</sup> (OCA Statement 2). I&E and OSBA also served direct

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<sup>1</sup> 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.

<sup>2</sup> 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

testimony that same date. On February 20, 2025, telephonic public input hearings were held. Aqua and Beaver Falls served rebuttal testimony on February 24, 2025. On February 26, 2025, in-person public input hearings were held. 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 18, 2025, the parties filed Main Briefs in this matter.

On March 21, 2025, counsel for Aqua informed the ALJ that a settlement in principle had been reached between Aqua, the City of Beaver Falls, OCA, and I&E (Settlement Parties), and that the OSBA expressed its opposition to the Settlement.

On March 25, 2025, Aqua filed a Joint Petition for Non-Unanimous Settlement.

The OCA, one of the signatory parties to the Joint Petition for Settlement (Settlement), finds the terms and conditions of the Settlement to be in the public interest.

## **II. THE SETTLEMENT IS A REASONABLE ALTERNATIVE TO LITIGATION**

### **A. Approval of the Amended Application (¶¶ 36-37)**

The OCA submits that the terms and conditions of the proposed Settlement provide a reasonable resolution of the issues raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into Aqua's revenue requirement, the rate impact for existing Aqua customers and the acquired customers, Aqua's rate gradualism plan, Aqua's application of the Distribution System Improvement Charge (DSIC) to acquired customers, the treatment of post-acquisition infrastructure improvements, transaction and closing costs, Aqua's contribution to its Hardship Fund, Aqua's tracking of potential low-income Beaver Falls' customers, and Aqua's outreach and assistance to low income customers, as discussed below.

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Society of Utility and Regulatory Financial Analysts. Mr. Garrett's background and qualifications are attached as Exhibit DJG-1 to OCA Statement 2.

**B. Ratemaking Rate Base and Purchase Price (¶¶ 39-42)**

Based on appraisals presented by Aqua and Beaver Falls (\$44,291,793 and \$40,199,348, respectively), Aqua sought a \$41,250,000 ratemaking rate base for the Beaver Falls wastewater system, which was the price Aqua originally agreed to pay for the System. Amended Application at ¶56; OCA St. 2 at 3. According to the engineer's report, the original cost less depreciation for the system is \$5,032,210. OCA St. 1 at 15.

The OCA's expert witness, David Garrett, recommended that \$19,628,354 be used for ratemaking rate base based on his recommended adjustments to the UVE valuation results. OCA St. 2 at 6.

Under the Settlement, the parties agree that for ratemaking purposes, the ratemaking rate base for the Beaver Falls wastewater system pursuant to Section 1329 will be \$29,900,000. Settlement ¶ 39. The proposed ratemaking rate base is \$11.35 million less than requested in the Amended Application and approximately \$10.3 million more than the OCA's litigation position. In the OCA's view, the Settlement's \$29.9 million ratemaking rate base represents an amount that is within the range of possible outcomes in a Commission final order in the event of full litigation of the case based on substantial record evidence. At the same time, the Settlement provides mitigation of the rate impact of the transaction for existing Aqua customers and the acquired Beaver Falls customers by reducing overall costs (Settlement ¶¶ 39-42) while simultaneously establishing a rate gradualism outcome that is overall consistent with the OCA's litigation position in this matter. Settlement ¶¶ 43-45.

Importantly, the OCA views the instant proceeding and the Settlement outcome as distinguishable from other Section 1329 acquisitions which the Company may seek approval of in future application proceedings. This is because the Commission's Reasonableness Review Ratio

(RRR) guidance likely does not apply in this proceeding, and it will likely apply in future proceedings. Under the Commission’s Final Supplemental Implementation Order (FSIO), the Commission stated that “in considering the RRR in a particular proceeding, we clarify that we will look to the RRR that was in place at the time the selling utility and acquiring utility executed an APA.” *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation*, Final Supplemental Implementation Order, M-2016-2543193, at 106 (July 2, 2024) (FSIO). Here, the Asset Purchase Agreement was executed by Aqua and the City of Beaver Falls on October 21, 2021, which is approximately three years before the FSIO established the RRR guidance on July 2, 2024.

Aqua and Beaver Falls also agreed that the Asset Purchase Agreement (APA) will be amended to reflect a purchase price of \$37,750,000. Settlement ¶ 40. That means Aqua and Beaver Falls reduced the purchase price and therefore reduced the amount of goodwill (*i.e.*, the difference between the purchase price and the ratemaking rate base value) to an amount equal to \$7,850,000. However, under the Settlement, the goodwill resulting from the transaction that Aqua PA includes on its balance sheet must be excluded from its rate base and any debt or equity issued to finance the goodwill must be excluded from the ratemaking capital structure for ratemaking purposes. Settlement ¶ 41. The difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from Aqua’s existing customers or from Beaver Falls’ current customers. Settlement ¶ 42.

Cumulatively, these provisions will help to protect Pennsylvania customers from further rate increases resulting from the proposed merger. Ratepayers will experience approximately \$11.35 million of rate mitigation compared to Aqua’s \$41.25 million requested ratemaking rate base. Additionally, the settlement ensures that both Aqua’s rate base and ratemaking capital

structure will not be impacted by intangible goodwill as a result of the difference between the adjusted purchase price and the ratemaking rate base. Accordingly, the OCA submits that these provisions provide a benefit to consumers and the public interest overall.

**C. Rate Gradualism (Settlement ¶¶ 43-47, 53)**

In the first base rate case that includes the Acquired Assets, Aqua will propose a rate gradualism plan for all the City's customers to pay their full cost of service over time and will propose to limit the base rate increase for the residential customers located within the city limits to a 68% rate increase over their existing rates. Settlement ¶ 43. Consistent with the Settlement, the current average bill for the City's residential customers is \$100.13 per quarter or \$33.00 per month at 3,161 gallons. Settlement ¶ 44. In the first base rate case to include the Acquired Assets, Aqua will propose a rate increase that will increase the average bill for the City's customers not to exceed an average bill of \$168 per quarter or \$56.00 per month at 3,161 gallons. *Id.*

The parties also acknowledge that absent this settlement, if the parties fully litigated this proceeding, the record evidence demonstrates that: (a) the average bill of a City residential customer could increase by approximately 166% to \$265.96 per quarter, or \$88.65 per month, under the proposed ratemaking rate base requested in the Joint Application (citing Aqua Supp. 1, p. 2 at ln. 10-15; OCA St. 1 at 22); and (b) under the OCA's recommended adjustments to the ratemaking rate base, the average bill of a City residential customer could increase by approximately 60% to \$160.20 a quarter, or \$53.51 per month (citing OCA St. 1 at 23). Settlement ¶ 44. Paragraph 44 of the Settlement cites to substantial record evidence showing that the Settlement outcome as to the rate impact on the Beaver Falls customers is consistent with the OCA's litigation position in this case. Additionally, the Settlement provides that, the first base rate case that includes the Acquired Assets, Aqua will propose to limit any Section 1311(c) shift of a

revenue requirement deficiency related to the City's operations to no more than is needed to achieve the rate limit noted above. Settlement ¶ 45. As stated above, in the OCA's view, the Settlement provides mitigation of the rate impact of the transaction for existing Aqua customers and the acquired Beaver Falls customers by reducing overall costs (Settlement ¶¶ 39-42) while simultaneously establishing a rate gradualism outcome for the City's customers that is overall consistent with the OCA's litigation position in this matter (Settlement ¶¶ 43-45).

In the Settlement, Aqua further agrees that any proposed Section 1311(c) shift of wastewater revenue requirement to water customers proposed in a base rate case after the first base rate case that includes the Acquired Assets will decline from the Act 11 shift set by the Commission in the first base rate case. Settlement ¶ 46. The OCA views Aqua's commitment in paragraph 46 regarding the gradual decline of the Section 1311(c) shift along with Aqua's commitment in paragraph 43 to propose a rate gradualism plan for all the City's customers to pay their full cost of service over time as benefiting the interests of Aqua's existing customers as well as the to-be-acquired Beaver Falls customers.

In the Settlement, all parties reserve the right to challenge any rates proposed by Aqua in any future base rate cases, except that the OCA agrees not to challenge Aqua's proposal to the extent consistent with Paragraphs 43, 44, and 45 of the Settlement in the first base rate case that includes the Beaver Falls System.<sup>3</sup> Settlement ¶ 47.

Furthermore, in paragraph 53 of the Settlement, the parties agree that in the first base rate case filed after the closing of the transaction in which Aqua makes a claim for the Acquired Assets in rate base, Aqua will file a cost of service study that removes all costs and revenues associated with the operation of the City's system, and in that cost of service study, the Contributing

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<sup>3</sup> I&E did not join in this paragraph.

Municipalities will be included as a separate rate class. Settlement ¶ 53. These settlement terms will provide a means for the parties to use the cost-of-service data to set rates for those customers that differ, as appropriate, from rates established for other sewer customers. This will help to mitigate the potential level of subsidy by Aqua's other customers and applies the ratemaking principle of gradualism to rates set for customers in the Beaver Falls service area.

**D. Hardship Contribution (Settlement ¶ 48)**

The Settlement provides that Aqua agrees to contribute a total of \$100,000 to its Hardship Fund either (1) over the next three-year period, or (2) prior to its next base rate case, whichever is sooner. Settlement ¶ 48. This funding commitment is in addition to Aqua's funding commitment to the Hardship Fund in the Aqua 2024 Base Rate Case settlement at Docket Nos. R-2024-3047822 and R-2024-3047824, et al., which was approved by the Commission by order entered February 7, 2025. *Id.* Additional funding for the program by Aqua's shareholders will assist customers in need throughout Aqua's service territory, including the acquired Beaver Falls customers. Aqua's commitment to a \$100,000 increase in hardship funding is in the public interest and should be adopted by the Commission.

**E. Welcome Letter, Low-Income Program Outreach (Settlement ¶¶ 49-50)**

To ensure that Beaver Falls customers can avail themselves of Aqua's Customer Assistance Program (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. Moreover, the OCA recommended 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.

OCA M.B. at 51-52 *citing Pa. PUC v. Aqua Pa., Inc.*, Docket Nos. R-2024-3047822 (water) and R-2024-3047824 (wastewater), Order at 35 (Feb. 7, 2025).

The Settlement provides that, immediately after closing, the City’s customers will become eligible for all Aqua payment options and customer programs. Settlement ¶ 49. Within ten days following closing, Aqua will send a welcome letter to the City’s customers that includes information about payment options, low-income customer assistance programs, and any other customer service information. Settlement ¶ 50. The welcome letter will include notice language referring customers to Aqua’s website (including the link) where a customer can find the rate impact range consistent with Aqua’s commitment in the Aqua 2024 Base Rate Case settlement, Paragraph 92, at Docket Nos. R-2024-3047822 and R-2024-3047824, et al., which was approved by the Commission by order entered February 7, 2025. *Id.* Within 15 days of a final order in this proceeding, Aqua will provide the OCA with a copy of the draft welcome letter; OCA will provide any suggestions to Aqua within 10 days of receipt; and Aqua, in good faith, will consider incorporation of OCA’s suggestions. *Id.*

The Settlement adopts the OCA’s recommendations. The information in the welcome letter will provide important information to the acquired customers as customers will be able to more

easily determine the rate impact from the transaction at more individualized usage levels. These enhancements to Aqua’s welcome letter are in the public interest and should be adopted by the Commission.

**F. Low-Income Tracking (Settlement ¶ 51)**

The OCA recommended that Aqua should report the number of eligible customers from the former Beaver Falls service area who are enrolled in Aqua’s CAP. OCA St. 1 at 30. The OCA recommended that 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.*

The Settlement provides that, every six months, Aqua will track the number of the City’s customers that are (1) potentially eligible to enroll in Aqua’s CAP; and (2) who are enrolled in Aqua’s CAP. Settlement ¶ 51. Aqua will provide and present this information on a timely basis to the regularly held meetings of the Aqua Assistance Collaborative (“AAC”). *Id.* Aqua will also present this information in its next base rate case filing in a format showing the potential eligibility and enrollment data broken down by six-month increments starting from the time of closing through and until the time of filing the rate case. *Id.* Potential eligibility will be based on U.S. Census data. *Id.*

This Settlement provision is a reasonable compromise regarding the issue of tracking low-income customers. Tracking this important information regarding low-income customers will enhance interested stakeholders’ overview of low-income customer participation in Aqua’s CAP, increases transparency regarding important metrics, and is in the public interest.

**G. Cost of Service Study (Settlement ¶ 53)**

In this proceeding, the OCA identified the need for Aqua to provide, in the first base rate case in which it includes Beaver Falls assets in rate base, a cost-of-service study that removes all costs and revenues associated with the operations of the Beaver Falls wastewater system. 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.*

The settlement adopts the OCA's recommendation. In the first base rate case filed after the closing of the transaction in which Aqua makes a claim for the Acquired Assets in rate base, Aqua will file a cost-of-service study that removes all costs and revenues associated with the operation of the City's system. Settlement ¶ 53. Additionally, in that cost-of-service study, the Contributing Municipalities made up of North Sewickley Township, Patterson Township, West Mayfield Borough, White Township, Patterson Heights Borough, Big Beaver Municipal Authority, and Eastvale Borough will be included as a separate rate class. *Id.*

These settlement terms will provide a means for the parties to use the cost-of-service data to set rates for Beaver Falls customers that reflect the cost of service under Aqua ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other water customers. This will help to mitigate the potential level of subsidy by Aqua's other water customers and applies the ratemaking principle of gradualism to rates set for customers in Beaver Falls' service area for existing Aqua customers and the acquired Beaver Falls customers by reducing overall costs.

#### **H. DSIC and LTIP (Settlement ¶ 54)**

Under the terms of the settlement, Aqua will not include System-related investments in its distribution system improvement charge (“DSIC”) until Aqua collects a DSIC from Beaver Falls customers. Aqua shall be permitted to collect a DSIC from Beaver Falls customers upon (i) Aqua’s filing of an amended wastewater Long-Term Infrastructure Improvement Plan (“Amended LTIP”) including the System, which does not re-prioritize other existing commitments in other service areas, (ii) the Commission’s approval of the Amended LTIP, as may be modified in the discretion of the Commission, and (iii) Aqua’s filing of a compliance tariff supplement which incorporates the System and all other systems included in the amended LTIP into Aqua’s DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIP. Settlement ¶ 54. The amended LTIP shall be filed within 180 days of closing. *Id.* This responds to a concern raised by OCA witness DeMarco that Aqua does not commit to when it will file an amended LTIP. OCA St. 1 at 35.

The settlement places deadlines on when Aqua will file the amendment and when Aqua will file to apply the DSIC to customers of the acquired system. As discussed by OCA witness DeMarco, 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. *Id.* at 35-36. The Settlement adopt the OCA’s recommendations and is in the public interest.

## I. Transaction and Closing Costs (Settlement ¶¶ 55-57)

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.

The OCA recommended that 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. The OCA also recommended that Aqua should be barred from claiming any transaction and closing costs incurred by the seller. *Id.* at 34. The OCA's recommendations regarding transaction and closing costs are necessary to ensure that ratepayers do not pay imprudent and unreasonable transaction and closing costs if the Commission determines to approve Aqua's Application.

Under the Settlement, the parties acknowledge that the Application includes a request that Aqua be permitted to claim transaction and closing costs associated with the acquisition of Beaver Falls. Settlement ¶ 55. The Settlement Parties agree that they will not contest these requests in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. *Id.* In a future rate case when these costs are claimed, Aqua agrees that it will clearly set out and identify all transaction and closing costs associated with this matter. *Id.* The Settlement Parties' assent to this term should not be construed to operate as their preapproval of Aqua's request. *Id.* Additionally, the inclusion of outside legal fees, if any, in Aqua's transaction and closing costs under the APA shall be separately identified in Aqua's next base rate case, and all parties shall have the right to challenge the reasonableness, prudence, and basis for such fees.

Settlement ¶ 56. Any claim made by Aqua to recover transaction and closing costs associated with the transaction will not include costs incurred by the City. Settlement ¶ 57.

The Settlement adopts the OCA's recommendations. As such, these Settlement provisions are in the public interest and should be adopted by the Commission.

**J. Easements (Settlement ¶ 58)**

The OCA recommended that, 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.*

Under the Settlement, Aqua will not be permitted to include easement land rights into its rate base until it acquires the easements. Settlement ¶ 58. This Settlement provision ensures ratepayers are protected from paying for missing easements in rates. Given that Aqua stated through testimony that it is not aware of any missing easements, this Settlement provision is a reasonable approach towards any potentially missing easements in this proceeding and is in the public interest.

### III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement should be approved.

Respectfully Submitted,

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Counsel for:  
Darryl A. Lawrence  
Acting Consumer Advocate

Dated: March 25, 2025

# Appendix F

AQUA PENNSYLVANIA WASTEWATER, INC.  
(hereinafter referred to as the "Company")

RATES, RULES, AND REGULATIONS

GOVERNING THE COLLECTIONS OF

WASTEWATER

IN PORTIONS OF

ADAMS, BEAVER, BERKS, BUCKS, CARBON, CHESTER, CLARION, CLEARFIELD,  
DELAWARE, LACKAWANNA, LUZERNE, MERCER, MONROE, MONTGOMERY, PIKE,  
SCHUYLKILL, VENANGO, AND WYOMING COUNTIES

IN THE COMMONWEALTH OF PENNSYLVANIA

ISSUED: MMMM DD, 202X

EFFECTIVE: MMMM DD, 202X

By:

Marc Lucca, President  
Aqua Pennsylvania, Inc.  
762 Lancaster Avenue  
Bryn Mawr, Pennsylvania 19010

## **NOTICE**

**THIS TARIFF ESTABLISHES WASTEWATER RATES FOR CUSTOMERS OF THE  
CITY OF BEAVER FALLS SITUATED WITHIN BEAVER COUNTY,  
PENNSYLVANIA.**

LIST OF CHANGES MADE BY THIS TARIFF

Changes: This tariff makes changes to the reflect the acquisition of the wastewater assets of the City of Beaver Falls located in Beaver County, Pennsylvania. Closing on the acquisition took place on XX/XX/XXXX, with the effective date of ownership occurring at 12:01AM on XX/XX/XXXX. (See page XXX)

This tariff is made pursuant to the Commission's Order adopted at Docket No. A-2022-3033138, which authorizes the issuance of the Certificate of Public Convenience.

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**SCHEDULE OF RATES:**

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DESCRIPTION OF TERRITORIES SERVED

|                        | <u>Township</u>        | <u>County</u> |
|------------------------|------------------------|---------------|
| <b>RATE ZONE 8</b>     |                        |               |
| Greenville Division    | Borough of Greenville  | Mercer        |
| Greenville Division    | Hempfield              | Mercer        |
| Greenville Division    | West Salem             | Mercer        |
| <b>RATE ZONE 9</b>     |                        |               |
| Beaver Falls Division* | City of Beaver Falls   | Beaver        |
| Beaver Falls Division* | Eastvale Borough       | Beaver        |
| Beaver Falls Division* | West Mayfield Township | Beaver        |

\*All Divisions and Subdivisions above are billed on a per EDU basis, with the exception of the **Beaver Falls Division**, Media Division, Plumsock Division, Treasure Lake Division, and Village of Valley Forge Division

SCHEDULE OF RATES

RATE ZONE 9 – METERED

The rates under this schedule apply to all customer classes in the territories served subject to Rate Zone 9 rates as noted in the Description of Territories Served section under this tariff unless otherwise specifically identified below.

QUARTERLY SERVICE & CONSUMPTION CHARGES (\$)

|                                  |         | Gallons per Quarter | Rate Zone<br>9<br>Quarterly |
|----------------------------------|---------|---------------------|-----------------------------|
| <u>RESIDENTIAL</u>               | Base    | 0 to 3,000 Gallons  | \$43.64                     |
|                                  | Block 1 | Over 3,000 Gallons  | \$8.71 per 1,000 gallons    |
| <u>COMMERCIAL</u>                | Base    | 0 to 3,000 Gallons  | \$43.64                     |
|                                  | Block 1 | Over 3,000 Gallons  | \$8.71 per 1,000 gallons    |
| <u>Bulk Rates</u> <sup>(1)</sup> |         |                     | \$4.68 per 1,000 gallons    |
| <u>Bulk Rate Other (Dalton)</u>  |         |                     | \$4.68 per 1,000 gallons    |

MONTHLY SERVICE & CONSUMPTION CHARGES (\$)

|                                    |         |                    |                          |
|------------------------------------|---------|--------------------|--------------------------|
| <u>COMMERCIAL &amp; INDUSTRIAL</u> | Base    | 0 to 1,000 Gallons | \$14.54                  |
|                                    | Block 1 | Over 1,000 Gallons | \$8.71 per 1,000 gallons |

The DSIC surcharge shall not be applied to bills of wastewater customers in the Beaver Falls division; this will remain effective until an amended Long-Term Infrastructure Improvement Plan (LTIIP) is filed and approved which includes Beaver Falls. Following the approval of an amended LTIIP, the DSIC surcharge shall be applicable to wastewater customers in the Beaver Falls division.

<sup>(1)</sup> Bulk Rate service is available to municipalities and municipal authorities that provide their own wastewater collection system but obtain conveyance and treatment service from the Beaver Falls division and do not have a wastewater service agreement with Aqua.

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SCHEDULE OF RATES

## RATE ZONE 9 – CONTINUED

Industrial Pretreatment Program-Beaver Falls (IPP-Beaver Falls)A. Introduction

1. This Section applies to Industrial and Commercial customers served under Rate Zone 9 of this Tariff. All customers subject to this section (“Users”) shall comply with the Wastewater Control Regulations and Industrial and Commercial Service Limitations as set forth in Section H and M, respectively, of the Company’s Tariff, as amended from time to time, except as such rules and regulations are modified by this Section.
2. The Users shall be responsible for the charges and fees set forth below for the administration of the IPP-Beaver Falls. IPP fees are in addition to any other charges set forth in this Tariff.
3. Specific limitations and prohibitions applicable to Industrial and Commercial Users under this Section are set forth on Aqua’s website regarding IPP-Beaver Falls.
4. Users shall be required to enter into a separate pretreatment agreement to govern specific limitations; prohibitions; conditions; duties and responsibilities; and sampling, monitoring and reporting requirements.

B. Charges

1. Industrial Wastewater Discharge Contract Application/Renewal Fee: \$300.00
2. Specific Fees to be applied to quarterly flow, if the quarterly average results from samples collected from the discharge exceeds 300 ppm for BOD<sub>5</sub> or 275 ppm for TSS:
  - a. BOD<sub>5</sub> Rate per 1,000 gallons =  $0.00834 \times \$0.25 \times (\text{BOD}_5 \text{ Sample} - 300)$
  - b. TSS Rate per 1,000 gallons =  $0.00834 \times \$0.15 \times (\text{TSS Sample} - 275)$
3. Industrial Surcharge Rate: \$0.01 per gallon.