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March 25, 2025

***VIA ELECTRONIC FILING***

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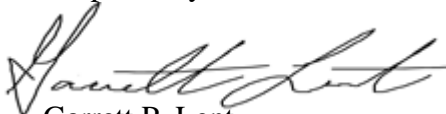
**Re: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 507, 508,  
1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the  
Wastewater System Assets of the City of Beaver Falls  
Docket No. A-2022-3033138**

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Dear Secretary Chiavetta:

Attached for filing is the Reply Brief of Aqua Pennsylvania Wastewater, Inc. ("Aqua PA") for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

  
Garrett P. Lent

GPL/dmc  
Attachment

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

## CERTIFICATE OF SERVICE

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

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Date: March 25, 2025

  
Garret P. Lent

**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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**REPLY BRIEF OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

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Dated: March 25, 2025

*Counsel for Aqua Pennsylvania Wastewater,  
Inc.*

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## I. INTRODUCTION

On March 18, 2025, in accordance with the litigation schedule established in this proceeding, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and the City of Beaver Falls (“Beaver Falls” or the “City”) submitted Main Briefs in this matter. Since Main Briefs were filed, Aqua, the City, I&E and OCA (the “Settling Parties”) reached a settlement in principle. As such, the Settling Parties intend to submit a Joint Petition for Non-Unanimous Settlement of All Issues (“Settlement”) on March 25, 2025. The Settling Parties will also submit Statements in Support of the Settlement, which fully explain why the Settlement should be approved without modification. However, as OSBA is not a party to the Settlement and continues to oppose the above-captioned Application for Aqua to acquire the wastewater system assets of Beaver Falls (the “System”), Aqua submits this Reply Brief that is focused solely on replying to the arguments raised by the OSBA in its Main Brief.

OSBA essentially argues that the proposed acquisition will not result in substantial affirmative public benefits and, therefore, will not “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*”). OSBA also claims that the ratemaking rate base for the acquired assets is “capped” by the Reasonableness Review Ratio (“RRR”) set forth in the Commission’s 2024 Final Supplemental Implementation Order (“2024 FSIO”).<sup>1</sup>

Aqua and the City supported the acquisition in their Main Briefs and, consistent with the record established in this proceeding, demonstrated that (a) the acquisition should be approved

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<sup>1</sup> *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order, at p. 32 (Order entered July 2, 2024).

because it will result in substantial affirmative public benefits for the City, the City’s customers and Aqua’s existing customers, and (b) the ratemaking rate base of the System should be set at the purchase price of \$41,250,000 under Section 1329(c)(2) because this amount is the lesser of the purchase price and the average of the two fair market value (“FMV”) appraisals submitted by the utility valuation experts (“UVEs”) for this proceeding.<sup>2</sup>

As explained herein, OSBA asks the Administrative Law Judge F. Joseph Brady (the “ALJ”) and the Commission to ignore un rebutted evidence of significant health, safety and service reliability risks associated with the current and anticipated future condition and operation of the System, which Aqua has demonstrated it will effectively and efficiently remedy if the acquisition is approved. OSBA also asks the ALJ and the Commission to ignore the dire financial status of the City, and the direct financial benefits that would result to the City and the customers served by the System if the acquisition is approved. In addition, OSBA ignores many recommended conditions that Aqua adopted during the course of this proceeding, including those that are reflected in the Settlement, which memorialize, affirm, and add to the many benefits of the acquisition that were identified by Aqua. Further, OSBA’s assertion that the RRR sets a cap on the ratemaking rate base is contrary to law, and to the Commission’s 2024 FSIO. Therefore, Aqua’s acquisition of the System, subject to the terms and conditions of the Settlement, should be approved, and the arguments against such acquisition that have been advanced by OSBA should be rejected.

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<sup>2</sup> Under the terms of the Settlement, the Settling Parties have agreed to a ratemaking rate base of \$29,900,000, which is an amount between the negotiated purchase price and the OCA’s position on FMV.

## **II. SUMMARY OF ARGUMENT**

Aqua has demonstrated that approval of its acquisition of the Beaver Falls System is “necessary or proper for the service, accommodation, convenience, or safety of the public” as required under Section 1103 of the Code and will provide substantial public benefits. The System is in poor condition, as shown by substantial and unrebutted evidence, and is challenged by a number of deficiencies that put the health and safety of City’s residents, and the surrounding communities at risk. While the City is not equipped to address these issues, Aqua is equipped to address each issue in a proactive manner.

The benefits identified by Aqua and the City are further affirmed and bolstered by the terms and conditions of the Settlement. The Settlement reflects the agreement of Aqua, the City, I&E and OCA that the acquisition should be approved, and that a ratemaking rate base for the System should be set at \$29,900,000, subject to the terms and conditions of the Settlement. Those terms and conditions memorialize a number of operational, service, customer assistance, and rate making commitments that I&E and OCA proposed and Aqua adopted during this proceeding. The terms and conditions of the Settlement also reflect a number of additional commitments—including a lower ratemaking rate base than was supported by Aqua’s evidence—which provide additional affirmative public benefits to the City, the City’s residents, and Aqua’s existing wastewater and water customers.

Despite the benefits of this transaction and the terms and conditions of the Settlement, the OSBA continues to oppose Aqua’s acquisition of the System and continues to contest the ratemaking rate base that should be established for the System. Not only does OSBA fail to rebut any of the affirmative public benefits borne out by the evidence in this case, it appears to advocate that Section 1329 acquisitions should only be used where the system to be acquired presents immediate risks to service reliability and public health and safety. In addition, OSBA takes the

incorrect position that the RRR set forth in the Commission’s 2024 FSIO acts as a cap on the ratemaking rate base that can be established in this proceeding. OSBA is wrong on the law and wrong on the facts, and advocates for an outcome that would be detrimental to the public.

For the reasons set forth below, and as more fully explained in Aqua’s Main Brief and Statement in Support of the Settlement, OSBA’s opposition to Aqua’s acquisition of the System, subject to the terms and conditions of the Settlement, should be rejected.

### **III. ARGUMENT**

#### **A. SECTIONS 1102 AND 1103**

In this case, the Commission must determine whether the record facts and circumstances specific to Aqua’s acquisition of the System demonstrate the acquisition will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York*, 295 A.2d at 828 (Pa. 1972); *see also Cicero v. Pa. PUC*, 300 A.3d 1106, 1119 (Pa. Cmwlth. 2023), *petition for allowance of appeal granted*, 568 MAL 2023, 2024 WL 2988362 (Pa. June 14, 2024) (“*Cicero*”). In making this determination, the Commission must apply “a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.” *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 (Pa. 2007) (“*Popowsky*”). Critically, while the Commission must address rate impact in a “general fashion” when evaluating the public benefits of a Section 1329 acquisition, any alleged rate impact is not dispositive of whether affirmative benefits will result; rather, “the Commission is charged with deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.” *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1067 (Pa. Cwmlth. 2018), *petition for allowance of appeal denied*, No. 703 MAL 2018 (Pa. April 23, 2019) (“*McCloskey*”).

OSBA, however, opposes the acquisition asserting that there is no affirmative public benefit from the proposed transaction because the “harms” outweigh the benefits. OSBA, however, focuses on one alleged harm—the asserted rate impacts of the acquisition on the City’s customers, Aqua’s customers and Aqua Pennsylvania, Inc’s (“Aqua PA”) customers.

While the Company understands and recognizes that the rate impact of an acquisition are a serious issue that must be taken into consideration, the arguments advanced by OSBA myopically focus on this issue to the exclusion of un rebutted evidence that demonstrates (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, (e) the City has no plan in place to address these challenges, and (f) even if the City is able to address these challenges at all, it will only be able to do so in a reactive manner once adverse impacts to service have occurred.<sup>3</sup> Critically, OSBA does not contest these facts. Rather, as explained below, OSBA advances a theory of Section 1329 acquisitions that would, effectively, prevent this statutory mechanism from being applied outside of the limited circumstances where the target system presents immediate safety, health, reliability and service issues that are actively harming the public at the time of the acquisition. These arguments are contrary to the law, advocate for a result in this case that increases the already substantial risks of harm to the City, its customers and the surrounding communities presented by the System, and would constitute poor policy.

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

**1. No Party Disputes That Aqua Is Legally, Financially, And Technically Fit To Acquire The Beaver Falls System**

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>4</sup>

**2. Substantial Affirmative Public Benefits Will Result From Aqua’s Acquisition Of The Beaver Falls System, And Those Benefits Outweigh In Alleged Harms**

**a. Reply To OSBA**

**i. A system need not be “troubled” in order for Section 1329 to be utilized**

OSBA fundamentally argues that the Beaver Falls System is not “troubled” and that all of the improvements that Aqua identified as necessary and beneficial could be completed by the City. Specifically, after asserting that the condition of the to-be-acquired system is a “fundamental issue” under Section 1329, OSBA asserts the System is not in “dire condition” and is not “troubled.”<sup>5</sup> These arguments have no relevance to the proceeding.

Critically, Section 1329 does not require that a water or wastewater system been “troubled,” “non-viable,” or otherwise in poor condition. *See* 66 Pa. C.S. § 1329. The plain language of Section 1329 makes no reference to the condition of the to-be-acquired system, and certainly does not include a requirement that the system be troubled in order for it to be acquired pursuant to this statutory mechanism. Indeed, OSBA points to no language in Section 1329 to support this position.

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<sup>4</sup> Aqua MB, pp. 13-14 (citing undisputed record evidence that Aqua is legally, financially, and technically fit).

<sup>5</sup> OSBA MB, p. 4 (“There is no record evidence demonstrating that the City of Beaver Falls wastewater system is in any way a troubled system.”).

Rather, OSBA appears to be arguing that a system must be “troubled” or otherwise in such poor condition that it qualifies for acquisition via Section 529 (66 Pa. C.S. § 529) or Section 1327 (*id.* § 1327) of the Code. However, neither of these statutory provisions apply to this case. Aqua is not being forced to acquire the System under Section 529; nor is it seeking to acquire the System under Section 1327.

Moreover, as explained in Section III.A.2.iii *infra*, the System faces significant challenges that the City is unable to resolve. OSBA’s attempts to argue about whether the challenges facing the System satisfy irrelevant statutory provisions simply do not matter. As succinctly stated by Aqua witness Mr. Martin:

What does matter is that there are a number of specific conditions that either currently present, or will in the mid- to long-term present, significant risks to the safety and reliability of the service provided on the System. What does matter is that. . . [there are] specific System conditions that currently present risks to its operations and, if left unaddressed, will increase risks to the System’s operations and the public in the future. What does matter is that the City has clearly indicated it cannot and will not be able to address these issues if the acquisition is not approved. And, what does matter is that Aqua has a clear, proactive plan to reduce or remove these risks if the acquisition is approved, which improve the safety and reliability of the service provided by the System.<sup>6</sup>

OSBA’s arguments that the System must be “troubled” or in poor condition for Aqua’s acquisition to be approved should be rejected.

**ii. There are significant short-, mid-, and long-term challenges faced by the System that the City is unable to resolve, but Aqua will resolve**

Even if Aqua was required to demonstrate that the System was troubled, and it is not, Aqua

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<sup>6</sup> Aqua St. No. 3-RJ, p. 4.

demonstrated that there are a number of significant challenges facing the System.<sup>7</sup> These issues were identified on pages 19-23 of Aqua’s Main Brief, and 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>8</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>9</sup>

Neither in its Main Brief nor in its testimony does OSBA seriously grapple with the challenges facing the System, other than to brush them aside,<sup>10</sup> or assert that there are no issues of non-compliance with United States Environmental Protection Agency (“EPA”) or Pennsylvania Department of Environmental Protection (“PADEP”) requirements.<sup>11</sup> However, OSBA’s witness does not have any experience as a wastewater system operator,<sup>12</sup> and its witness did not testify that she has visited or inspected the System. It is all the more telling that OSBA does not attempt to refute any of the evidence or arguments regarding the condition of the System that were identified in Mr. Martin’s supplemental direct testimony, rebuttal testimony, or rejoinder testimony in its

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<sup>7</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. Aqua further notes that OSBA simply ignores the supplemental direct testimony of City Manager Charles Jones, where he stated that he believed the System was troubled. 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 [wastewater treatment plant (“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.”).

<sup>8</sup> Aqua St. No. 3, pp. 1-2.

<sup>9</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>10</sup> See, e.g., OSBA MB, p. 4 (“There is no record evidence demonstrating that the City of Beaver Falls wastewater system is in any way a troubled system. The City’s wastewater system is fully functional and operational.”).

<sup>11</sup> OSBA MB, p. 5.

<sup>12</sup> OSBA St. No. 1, pp. 2-3 and Appendix.

Main Brief. OSBA also fails to address the many operational deficits of the WWTP, which risk the health and safety of the millions of people who reside downstream.

Moreover, OSBA simply ignores the fact that the City is unable to resolve these issues. It lacks the finances to do so.<sup>13</sup> It lacks the experience to do so.<sup>14</sup> And it has no plan to do so.<sup>15</sup> On the other hand, it is undisputed that Aqua is able to resolve these issues. It has the finances, the expertise and a plan to do so.<sup>16</sup>

Ultimately, it appears that OSBA is arguing for a scenario whereby Aqua's acquisition of the System will only provide public benefits if one of the many identified issues results in an immediate, catastrophic event to which the City is forced—and ultimately unable—to react. Aqua witness Mr. Martin explained the problem with forcing the City to continue to operate the System in 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

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<sup>13</sup> Aqua MB, p. 23; Aqua St. No. 4-R, p. 4; Aqua St. No. 8-R, pp. 2-4.

<sup>14</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>15</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.").

<sup>16</sup> Aqua MB, pp. 13-24.

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>17</sup>

The Commission should not adopt arguments that will force a troubled municipality to be forced into the Hobbesian choice of maintaining its finances or maintaining its wastewater System. And it should not do so especially 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>18</sup>

### **3. Any Alleged Rate Impacts Are Outweighed By The Benefits Of The Acquisition**

OSBA focuses intently on the alleged rate impacts of the acquisition, and argue that these rate impacts are a significant harm.<sup>19</sup> As an initial matter, however, there are three reasons why these arguments should not be afforded substantial, if any, weight.

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<sup>17</sup> Aqua St. No. 3-RJ, pp. 6-7 (emphasis added). Aqua notes that Mr. Martin’s testimony did not address testimony of OSBA Witness Forbes because Ms. Forbes offered no substantive testimony address the status of the System.

<sup>18</sup> Aqua St. No. 4-R, pp. 4-5.

<sup>19</sup> OSBA MB, pp. 5-6.

First, OSBA ignores the fact that the percentage rate impact they attempt to highlight is due in part to the very low rates the City is currently charging.<sup>20</sup> The City's current average bill is **\$33.38 per month (\$100 per quarter)**, which is "significantly lower than tariffed rates for major public utilities in the Commonwealth."<sup>21</sup> Focusing on this percentage-based rate impact, therefore, distorts the issue. Second, as explained in Aqua's Main Brief, the Commonwealth Court has made clear that rate impacts are just one part of a net benefits test, and have never been recognized by the Courts or the Commission as a superseding factor over all other benefits.<sup>22</sup> Contrary to this precedent, OSBA asks the Commission to focus upon any perceived rate impacts to the exclusion of all other benefits, or simply ignore the substantial benefits that will result from Aqua's acquisition of the System. Third, if OSBA's 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>23</sup> Indeed, there are differences in costs incurred by investor-owned utilities and municipal systems, which regularly mean that those acquisition would result in an increase in rates for municipal customers.<sup>24</sup> OSBAs appear to take issue with the Section 1329 process generally, to attempt to distract from the specific benefits of this transaction. Therefore, these arguments should be rejected.

OSBA goes on to argue that the increase does not take into account additional Aqua and Aqua PA rate increases.<sup>25</sup> Again, these arguments should be rejected because (a) the ultimate rate impact is not known and a matter of Commission discretion, and (b) are simply taking issue with the Section 1329 process as a general matter.

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<sup>20</sup> Aqua St. No. 1-R, p. 5.

<sup>21</sup> Aqua St. No. 1-R, p. 5.

<sup>22</sup> See Aqua MB, pp. 28-30 (discussing *McCloskey* and the consideration of rate impacts).

<sup>23</sup> Aqua St. No. 1-R, p. 5.

<sup>24</sup> Aqua St. No. 1-R, p. 5; Aqua St. No. 1-RJ, pp. 3-4.

<sup>25</sup> OSBA MB, p. 6.

OSBA also relies on the RRR asserting it is “as a cap on the amount of the purchase price that would be added to the rate base of the acquiring utility.”<sup>26</sup> OSBA’s over-reliance on the RRR should be rejected for the reasons explain in Aqua’s Main Brief<sup>27</sup> and in Section III.B.2. *infra*. The RRR is not a cap on the ratemaking rate base to be established in a Section 1329 acquisition and, at any rate, should not be applied in this proceeding because the acquisition was filed before the 2024 FSIO.

OSBA further argues the City’s existing customers will have their rates increase due to the acquisition.<sup>28</sup> This argument ignores that the percentage increase is due to the already very low bills for City customers. It also ignores the unrebutted financial benefits analysis prepared by Aqua witness Ms. Wilkins that demonstrated the sale would generate annual financial benefits of over \$4.56 million, which when compared to the estimated increase to City customers’ rates of approximately \$4.2 million produced a net annual public benefit of \$362,037.<sup>29</sup>

The ALJ and the Commission should find that none of these alleged rate impacts outweigh the substantial benefits of this acquisition.

#### **4. Conclusion**

This proceeding involves Aqua’s acquisition of a substantially challenged System, which will reap short-, mid- and long-term benefits from the sale. The acquisition will also provide a financial boon to the City and its residents, allowing the City to balance its budget and focus its efforts in supporting other essential services and activities for its residents. The many low-income customers of the System will also benefit from the Company’s low-income programs. In addition, the acquisition will continue to build upon the economies of scale that have resulted from Aqua’s

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<sup>26</sup> OSBA MB, p. 7.

<sup>27</sup> Aqua MB, pp. 30-31.

<sup>28</sup> OSBA MB, p. 6.

<sup>29</sup> Aqua St. No. 8, p. 6 and Appendix A.

acquisition of wastewater systems over the years, to the ultimate long-term benefit of its existing customers. The acquisition also will benefit downstream residents of the Beaver and Ohio River valleys. Therefore, as explained above and in more detail in Aqua’s Main Brief and its testimony, the acquisition will result in substantial affirmative public benefits and should be approved.

**B. SECTION 1329**

OSBA opposes the FMV determined by an average of the appraisal submitted by the two UVEs, Mr. Dylan D’Ascendis of ScottMadden, Inc. (“ScottMadden”) and Mr. Harold Walker, III of Gannett Fleming Valuation and Rate Consultants, Inc. (“Gannett Fleming”). In Aqua’s Main Brief, it anticipated and responded to many of the arguments presented by OSBA. Aqua will endeavor to avoid repeating those responses.

**1. Reply To OSBA**

OSBA states that the RRR “would act as a cap on the amount of the purchase price that would be added to the rate base of the acquiring utility.”<sup>30</sup> This is a clear misstatement of the law. Section 1329 contains no cap on the ratemaking rate base. The law is clear: the ratemaking rate base for an approved Section 1329 acquisition is the lesser of purchase price or the average of the two UVEs’ appraisals using the Cost, Market and Income Methods. The Commission’s statement in the 2024 FSIO is instructive:

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

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<sup>30</sup> OSBA MB, p. 6.

RRR does not replace the Commission's current analysis in Section 1329 proceedings.

2024 FSIO, p. 106. OSBA's reliance upon the RRR to cap the ratemaking rate base is contrary to law and must be rejected.

Furthermore, OSBA's reliance upon the RRR as a cap fails to take into consideration the modifications of the purchase price and ratemaking rate base that are set forth in the Settlement. As will be explained in Aqua's Statement in Support of the Settlement, these modifications directly address the other parties' concerns and further affirm that there are substantial affirmative benefits that will result from the transaction.

## **2. Conclusion**

For the reasons explained above and in Aqua's MB, OSBA's proposed adjustments to FMV and the ratemaking rate base for the acquisition should be rejected. The Commission should approve the ratemaking rate base established in the Settlement.

### **C. RECOMMENDED CONDITIONS TO THE APPROVAL OF THE ACQUISITION AND ESTABLISHMENT OF A RATEMAKING RATE BASE**

OSBA took no position on the conditions to approval that were recommended by the parties to this proceeding. Therefore, Aqua simply reminds the ALJ and the Commission that Aqua made significant concessions where reasonably possible to adopt many of the recommendations proposed by OCA and I&E in this proceeding. In addition, further conditions upon approval of the acquisition have been adopted in the Settlement, which further support approval of the acquisition. Aqua's positions on the recommended conditions should be adopted, and the additional conditions on approval set forth in the Settlement should be approved.

#### **D. SECTION 507 APPROVALS**

Aqua's Main Brief identified several contracts that it has requested be found to be reasonable, legal and valid, and for which the Commission should issue certificates of filing under 66 Pa.C.S. § 507.<sup>31</sup> As noted in its Main Brief, no party addressed these contracts or otherwise opposed the issuance of certificates for these contracts. OSBA did not address Aqua's Section 507 approvals in its Main Briefs.

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<sup>31</sup> Aqua MB, at p. 57. Aqua is withdrawing its request for the PUC to approve the charitable contribution agreement between the City and Aqua.

#### IV. CONCLUSION

For all the foregoing reasons, and the reasons set forth in its Main Brief, Aqua Pennsylvania Wastewater, Inc., respectfully requests that Administrative Law F. Joseph Brady and the Pennsylvania Public Utility Commission approve the Settlement, 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, 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; 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

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Inc.*