

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

**Application of Aqua Pennsylvania
Wastewater, Inc.**

Public Meeting of June 18, 2025
3033138-OSA
Docket No. A-2022-3033138

STATEMENT OF VICE CHAIR KIMBERLY BARROW

Aqua Pennsylvania, Inc. (Aqua or Company) submitted an Application requesting Commission approval of the Asset Purchase Agreement (APA) dated October 20, 2021, for acquisition of substantially all of the assets, properties and rights related to the wastewater collection and treatment system (the System) owned by the City of Beaver Falls (City or Beaver Falls),¹ and the right of the Company to provide wastewater service in the areas served by Beaver Falls.

On March 25, 2025, a Joint Petition for Non-Unanimous Settlement of All Issues (Settlement) was filed by Aqua, Beaver Falls, the Commission’s Bureau of Investigation and Enforcement (I&E), and the Office of Consumer Advocate (OCA) (collectively, Settlement Parties). The Office of Small Business Advocate (OSBA) opposes the Settlement.

The Pennsylvania Commonwealth Court recently held that the Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.”² While *McCloskey* held that rate impact must be addressed, it recognized that “the Commission is charged with deciding whether the impact of rates ... is outweighed by ... other positive factors that ... served [as] a substantial public benefit.”³ Even more recently, in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023) (*Cicero*),⁴ the Commonwealth Court upheld prior precedent that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition.

Here, the Administrative Law Judge (ALJ) recommended that the Commission deny the Application because the Settlement is a violation of Section 1329.⁵ While I do not agree with the ALJ’s rationale for recommending denial of the Application, I agree that the Application should be denied.

Aqua originally sought to pay \$41,250,000 for the Beaver Falls System assets that have a depreciated original cost value of approximately \$5,032,210.⁶ While I understand that the

¹ The Beaver Falls assets consist of, *inter alia*, the assets, properties, and rights of Beaver Falls used in the wastewater system; (2) all treatment facilities, pipes, pumping stations, generators, manholes, and pipelines and billing collections-related assets necessary to run the wastewater system; and (3) four contracts to which Beaver Falls is a Party. Application at ¶ 25; *see* APA, Schedule 4.15.

² *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), appeal denied, 207 A.3d 290 (Pa. 2019) (*McCloskey*).

³ *McCloskey*, 195 A.3d at 1067.

⁴ Petition for Allowance of Appeal Granted, 320 A.3d 667 (June 14, 2024)

⁵ 66 Pa. C.S. § 1329

⁶ The Beaver Falls system assets have an original cost of \$12,898,487 with a depreciation reserve of \$7,866,277 [\$12,898,487 – \$7,866,277 = \$5,032,210]. *See* OCA M.B. at 7 (citing Application at ¶ 19).

Settlement rate base of \$29,900,000 is much lower than the originally-sought ratemaking rate base of \$41,250,000 and the amended purchase price of \$37,750,000, the agreed-upon ratemaking rate base is still almost five times higher than the depreciated original cost value of the Beaver Falls System.

More importantly, it does not appear that Aqua's existing wastewater customers will see any material benefit in any form from this transaction. Rather, these customers will bear the cost of the Company's acquisition of the Beaver Falls wastewater system. Specifically, in the recently released annual Reasonableness Review Ratio (RRR),⁷ which serves as a reference for assisting Commission's review of Section 1329 transactions, the Commission identified 1.63 as the reference point formed by its analysis.⁸ While not necessarily determinative or applicable to this transaction because the instant Application was filed in 2023 prior to the issuance of the Commission Implementation Order regarding the RRR in 2024,⁹ the 5.94 ratio of fair market value to depreciated original cost in this transaction is significantly higher than the Commission's 1.63 RRR.¹⁰ In essence, the \$29,900,000 agreed-upon ratemaking rate base in the Settlement is 265% higher than the Commission's RRR. Therefore, I agree with the OCA that while Beaver Falls would receive a premium price for its system, there are no substantiated, quantifiable benefits for the Aqua customer base.¹¹

The City's current rates are approximately \$33.38 a month for residential customers, or \$100.13 per quarter. The Settling Parties argue the Settlement provides a rate gradualism plan to alleviate rate shock for the Beaver Falls customers in that in Aqua's first base rate case that includes the City's Assets, Aqua will limit the average bill increase for a typical residential customer using 3,161 gallons to \$56.00 per month.¹² While I acknowledge the creativity in the Settlement to alleviate rate shock for the City's customers, it is still an approximately 68% increase for the City's customers for a wastewater system that is currently not considered a troubled system.

The record in this case indicates that while Aqua undoubtedly is fit to run the Beaver Falls System, both Aqua and the City can provide the same or similar service to the Beaver Falls' customers. Even with the Settlement rate base, Aqua's service would come at a substantial rate increase to Beaver Falls' consumers and a significant rate increase to Aqua's existing customers.¹³

Aqua's witness testified that the City's wastewater system complies with all Pennsylvania Department of Environmental Protection (DEP) requirements. While the System is currently under a Corrective Action Plan (CAP) with the DEP, there are no physical upgrades required by the CAP. There is also no U.S. Environmental Protection Agency (EPA) violation or corrective

⁷ The RRR is the ratio of a proxy fair market value to the depreciated original cost of similarly-situated investor-owned water utilities.

⁸ See *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2024 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303.

⁹ *Valuation of Acquired Municipal Water and Wastewater Systems – Act 12 of 2016 Implementation*, Final Supplemental Order, M-2016-2543193 (Order entered July 2024).

¹⁰ With the 1.63 RRR, the value of the Beaver Falls system is \$8,202,502 rather than the \$29,900,000 agreed-upon ratemaking rate base in the Settlement.

¹¹ OCA M.B. at 24-26.

¹² Settlement at ¶¶ 43-44.

¹³ OCA St. 1 at 4.

action Plan for the System.¹⁴ Notably, Beaver Falls is currently providing safe, adequate, and reliable service to its customers and is capable to continue to provide such service. Nothing in the record suggests that Beaver Falls would be incapable of continuing to provide safe, adequate, and reliable service to its customers without Aqua's intervention. The record indicates that many of the benefits Aqua proposed in this transaction, *i.e.*, improvements to physical and cyber security, improvements to customer service, are services that Beaver Falls is already providing to its customers in an adequate and efficient manner.

The Commonwealth Court explained that where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction.¹⁵ It further clarified that:

Where ... **there are no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the [Certificate] under Section 1103(a).¹⁶

The Commonwealth Court further explained that providing the same services as are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits consistent with *City of York*, especially if the existing system is already operating safely and reliably.¹⁷

The Legislature enacted Section 1329 as a much-needed tool to be utilized to encourage the consolidation of the water and wastewater companies in this state. Properly implemented Section 1329 has the potential to improve water and wastewater service to millions of Pennsylvania's citizens. But, if not properly constrained, the runaway valuations¹⁸ carried out under the cover of Section 1329 and industry consolidation will eclipse the good that can be done for Pennsylvania's citizens under Section 1329. This sale involves a system with a book value of \$5 million, yet Aqua's ratepayers are being told that it is worth \$41 million, \$37 million, or finally, \$30 million, which is approximately six times greater than the depreciated original cost of the City's System. Granted, the cost of these transactions are allowed to be spread across a larger customer base to diminish the impact of the rate increases arising from the transactions. Yet, we

¹⁴ OCA St. 1 at 5, 10.

¹⁵ *Cicero* at 21.

¹⁶ *Id.* at 20 (emphasis in original).

¹⁷ *Id.* at 19.

¹⁸ In this proceeding Aqua initially sought to establish a ratemaking rate base of \$41,250,000 for the City's System assets based on the negotiated purchase price, as the negotiated purchase price of \$41,250,000 is less than the average of the fair market value appraisals, which is \$42,245,674 (determined by \$40,199,348 presented in the appraisal of ScottMadden, Inc. (ScottMadden) and \$44,292,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming)). [(\$40,199,348+\$44,292,000)/2=\$42,245,674]. *qua M.B.* at 33; Aqua St. 1 at 21.

cannot deny the fact that the rate increases from these transactions are still substantial and increasingly they have a cumulative rate impact.

The goal of regionalization and consolidation is not simply to acquire as many water and wastewater systems as possible and combine them into one system, but to consolidate systems in a way that benefits customers.¹⁹ I note that transactions such as this one can also be conducted through the traditional acquisition process described in Sections 1102 and 1103 of the Code, and the Commission has made provision for incentives for applicable utilities in our Policy Statement under 69 Pa. Code § 69.721 (g).²⁰

Absent a clearer showing of affirmative public benefits, this Application should not be granted, at this price.

June 18, 2025



Kimberly Barrow, Vice Chair

¹⁹ *Application of Pennsylvania-American Water Company, pursuant to Section 1329 for the acquisition of the wastewater collection and conveyance system owned by the Borough of Brentwood, Docket No. A-2021-3024058 (Opinion and Order entered February 22, 2024) (Brentwood).*

²⁰ 69 Pa. Code § 69.721 (g) provides:

Acquisition incentives. In its efforts to foster the acquisitions of smaller, less viable water and wastewater systems by larger more viable systems, the Commission, under 66 Pa.C.S. § 523 (relating to performance factor consideration), has broad latitude to allow the acquiring utility to request a rate of return premium in a subsequent rate case. The allowance of a rate of return premium, as an acquisition incentive for an acquisition that falls outside of the parameters of 66 Pa.C.S. § 1327 (relating to acquisition of water and sewer utilities), may be requested by those utilities that have a demonstrated track record of acquiring and improving the service provided to the customers of smaller and less viable water systems. The allowance of additional rate of return basis points may be awarded based on sufficient supporting data submitted by the utility within its rate case filing.