

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held June 18, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement  
Kimberly Barrow, Vice Chair, Statement, Dissenting  
Kathryn L. Zerfuss, Statement  
John F. Coleman, Jr.  
Ralph V. Yanora

Application of Aqua Pennsylvania Wastewater, Inc. Wastewater, Inc. 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 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; (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; and (4) request for Approval of Contracts, between Aqua and the City of Beaver Falls, Pursuant to Section 507 of the Public Utility Code

A-2022-3033138

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company), the Exceptions of the City of Beaver Falls, Pennsylvania (the City or Beaver Falls), and the Exceptions of the Office of Consumer Advocate (OCA), each filed on April 22, 2025, in the above-captioned proceeding.<sup>1</sup> The Exceptions and Exceptions Letter were filed in response to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, issued on April 10, 2025.<sup>2</sup> Also, before the Commission for consideration and disposition is the Joint Petition for Non-Unanimous Settlement of All Issues (Joint Petition or Settlement or Non-Unanimous Settlement) filed by Aqua, Beaver Falls, I&E, and the OCA (collectively, Joint Petitioners or Settlement Parties) on March 25, 2025.<sup>3</sup> For the reasons stated, *infra*, we shall: (1) grant, in part, and render moot, in part, the Exceptions of Aqua, Beaver Falls, and the OCA; (2) vacate the Recommended Decision; (3) adopt the Settlement, without modification; and (4) approve the Application, as amended by the Settlement, consistent with this Opinion and Order.<sup>4</sup>

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<sup>1</sup> A Letter in Lieu of Exceptions (Exceptions Letter) was filed by the Commission's Bureau of Investigation and Enforcement (I&E) on April 22, 2025. Also, on April 22, 2025, the Office of Small Business Advocate (OSBA) filed a letter stating that it would not be filing Exceptions.

<sup>2</sup> On April 29, 2025, the OSBA filed Reply Exceptions. Also, on April 29, 2025, Aqua, Beaver Falls, and the OCA each filed a letter stating that they would not be filing Reply Exceptions.

<sup>3</sup> On March 28, 2025, the OSBA filed a Brief in Opposition to the Joint Petition (Brief in Opposition).

<sup>4</sup> This Opinion and Order does not cite to any confidential materials identified by the Parties. Accordingly, it is being issued without any proprietary designation.

## I. History of the Proceeding

On June 17, 2022, Aqua filed a letter with the Commission indicating that the Company has been engaged concerning the acquisition of Beaver Falls (Aqua Letter). The Commission acknowledged receipt of Aqua's Letter by Secretarial Letter issued June 21, 2022.

On February 17, 2023, Aqua filed an Application with the Commission, pursuant to Sections 507, 1102, and 1329 of the Public Utility Code (Code), 66 Pa.C.S. §§ 507, 1102, and 1329 (as amended, the Application).<sup>5</sup> In its Application, Aqua requested that the Commission: (1) approve Aqua's acquisition of the wastewater system assets of Beaver Falls (System or System Assets); (2) approve the Company's request for the right to begin to offer, render, furnish, and supply wastewater service to the public in Beaver Falls; (3) approve the ratemaking rate base of the System Assets, pursuant to Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2); (4) to the extent necessary, issue certificates for filing, pursuant to Section 507 of the Code, 66 Pa.C.S. § 507, for certain municipal contracts that Aqua included in its Application, including new service agreements that Aqua will negotiate and enter into with Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough (collectively, the Contributing Municipalities) prior to Closing of the proposed transaction, and which will replace any prior agreements; and (5) to the extent necessary, allow the modification of certain existing agreements between Aqua and the Contributing Municipalities (which are identified in Paragraph 25 of the Application) because the agreements contain a rate formula that is inconsistent with the rates charged by Beaver Falls to the Contributing

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<sup>5</sup> Between March 20, 2023, and May 7, 2024, Aqua petitioned the Commission seven times for extensions of the Commission's internal review period of the instant Application. During this period, Aqua provided updated information contained in the initial filing to resolve the filing's deficiencies.

Municipalities. Application at ¶¶ 3, 25, 70, 72-73; 66 Pa.C.S. § 507, 1102, 1329; R.D. at 2-3.

On March 17, 2023, the OSBA filed: (1) a Notice of Appearance; (2) a Notice of Intervention and Protest; and (3) a Public Statement. On March 20, 2023, I&E filed a Notice of Appearance. R.D. at 3.

In accordance with the Commission's Bureau of Technical Utility Services' (TUS) requests during its completeness review of the Application, between March 17, 2023, and June 26, 2024, Aqua filed the requested information deemed deficient by the Commission in its review of the Application.

On April 5, 2023, Patterson Township, Patterson Heights Borough, West Mayfield Borough, and White Township (collectively, the Municipal Protestants) each filed a Protest. Also, on April 5, 2023, the Municipal Protestants filed a Joint Verified Letter Request to Reject the Application as Incomplete or Hold in Abeyance and Request for Expedited Response (Request to Reject). On April 11, 2023, Aqua filed a Response to the Municipal Protestants' Request to Reject. R.D. at 3.

On April 28, 2023, the OCA filed a Protest.

By Secretarial Letter issued June 28, 2023, the Commission notified Aqua that the Application had been conditionally accepted for filing, contingent upon certain service and notice requirements. R.D. at 3.

On February 13, 2024, each of the Municipal Protestants filed a Notice of Withdrawal of Protest and a Letter of Consent to the Sale of the Beaver Falls Wastewater Collection and Treatment Systems to Aqua. R.D. at 3.

On March 29, 2024, Aqua filed an Amended Application (Amended Application).<sup>6</sup> By Secretarial Letter issued April 4, 2024, the Commission notified Aqua that the conditional acceptance of the Application was withdrawn. R.D. at 3.

On April 17, 2024, the OCA filed a Notice of Appearance.<sup>7</sup> R.D. at 4.

By Secretarial Letter issued June 27, 2024 (June 2024 Secretarial Letter), the Commission notified Aqua that the Amended Application had been conditionally accepted for filing, contingent upon certain service and notice requirements. On August 21, 2024, Aqua filed a letter advising the Commission that it had begun providing individualized notice of the proposed acquisition to the Company's water and wastewater customers. R.D. at 4.

On September 23, 2024, Chris Perkins filed a Protest. On October 10, 2024, Mr. Keith Gabage filed a Protest. R.D. at 4.

On December 23, 2024, Aqua filed a Letter and Certificate of Service verifying service of the Amended Application.

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<sup>6</sup> Although the Recommended Decision indicates that the Amended Application was received on March 28, 2024, the Commission's case management system indicates that it was received on March 29, 2024. *See* R.D. at 3. For reference purposes, we shall cite to the Amended Application as the "Application" unless the context indicates otherwise.

<sup>7</sup> On May 23, 2024, Aqua filed a general base rate increase request for its water and wastewater operations. *See Pa. PUC v. Aqua*, Docket Nos. R-2024-3047822 (Water) and R-2024-3047824 (Wastewater) (*Aqua 2024 Base Rate Case*). By Opinion and Order entered February 7, 2025, the Commission approved a Joint Petition for Non-Unanimous Partial Settlement, as modified, in the *Aqua 2024 Base Rate Case*.

On December 30, 2024, by way of a Secretarial Letter (December 2024 Secretarial Letter), the Commission accepted the Amended Application for filing. R.D. at 4.

On January 6, 2025, Beaver Falls filed a Notice of Appearance. R.D. at 4.

The Commission published notice of the Application in the *Pennsylvania Bulletin* on January 11, 2025, with a protest deadline of January 27, 2025. 55 Pa.B. 426 (January 11, 2025).

On January 17, 2025, Beaver Falls filed a Petition to Intervene.

On January 28, 2025, Aqua, Beaver Falls, I&E, the OCA, and the OSBA each filed a Prehearing Memorandum. R.D. at 5.

On January 29, 2025, a Prehearing Conference was held, as scheduled.<sup>8</sup> Aqua, Beaver Falls, I&E, the OCA, and the OSBA appeared and were represented by counsel. Additionally, protestant Mr. Gabage appeared *pro se*.<sup>9</sup> R.D. at 5.

On January 30, 2025, Aqua filed a Motion for Protective Order. On February 3, 2025, the Commission issued the ALJ's Order Granting Petition for

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<sup>8</sup> By Telephonic Prehearing Conference Notice dated December 30, 2024, a Telephonic Prehearing Conference was scheduled for January 29, 2025, and the instant matter was assigned to ALJ Brady. On January 14, 2025, the ALJ issued a Prehearing Conference Order, which advised the Parties of the date and time of the scheduled Prehearing Conference and informing them of the procedures applicable to the proceeding. R.D. at 4-5.

<sup>9</sup> Subsequently, on February 13, 2025, Mr. Gabage notified the Parties, via email, that he no longer wished to be an active party. R.D. at 5.

Protective Order (Protective Order), which granted Aqua’s Petition for Protective Order.<sup>10</sup> R.D. at 5.

On February 4, 2025, the Commission issued the ALJ’s Prehearing Order (Prehearing Order).<sup>11</sup> The Prehearing Order adopted the litigation schedule, and the other procedural matters agreed upon at the prehearing conference.<sup>12</sup> R.D. at 5.

Telephonic Public Input Hearings and In-Person Public Input Hearings were held on February 20, 2025, and February 26, 2025, respectively, as scheduled.<sup>13</sup> No members of the public participated or provided testimony during any of the hearings. R.D. at 5.

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<sup>10</sup> Although the Recommended Decision indicates that the Protective Order was issued on February 4, 2025, the Commission’s case management system indicates that it was issued on February 3, 2025. *See* R.D. at 5.

<sup>11</sup> Although the Recommended Decision indicates that the Prehearing Order was issued on February 3, 2025, the Commission’s case management system indicates that it was issued on February 4, 2025. *See* R.D. at 5.

<sup>12</sup> The litigation schedule, set forth in the ALJ’s Prehearing Order, provided for the filing of testimony, hearings, and briefs, as follows:

Direct Testimony of other Parties:	February 14, 2025
Rebuttal Testimony:	February 24, 2025
Surrebuttal Testimony:	March 4, 2025
Rejoinder Testimony:	March 7, 2025
Evidentiary Hearing:	March 10, 2025
Main Briefs:	March 18, 2025
Reply Briefs:	March 25, 2025

Prehearing Order at 4.

<sup>13</sup> By Notice dated February 5, 2025, Telephonic Public Input Hearings and In-Person Public Input Hearings were scheduled for February 20, 2025, and February 26, 2025, respectively.

On March 7, 2025, counsel for Aqua notified the ALJ, via email, 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 for entry into the record by stipulation and verification. The ALJ granted these requests via further email. R.D. at 6.

On March 10, 2025, the Commission issued a Cancellation Notice, which cancelled the scheduled evidentiary hearing.<sup>14</sup> R.D. at 6.

On March 14, 2025, Aqua, Beaver Falls, I&E, the OCA, and the OSBA filed a Joint Stipulation for Admission of Evidence. R.D. at 6.

Main Briefs were filed on March 18, 2025, by Aqua, I&E, the OCA, and the OSBA. Also, on March 18, 2025, Beaver Falls filed a Brief in Support of the Application. R.D. at 6.

On March 21, 2025, counsel for Aqua notified the ALJ, via email, that the Joint Petitioners had reached a settlement in principle with respect to the instant matter and that the OSBA would be opposing the settlement. R.D. at 6.

On March 25, 2025, the Joint Petitioners filed the Settlement.<sup>15</sup> In the Settlement, the Joint Petitioners requested approval of the Application and disposing of all the issues in this proceeding consistent with the terms and conditions therein. Aqua, Beaver Falls, I&E, and the OCA also filed Statements in Support, which were attached to

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<sup>14</sup> On February 7, 2025, the Commission issued a Telephonic Hearing Notice, scheduling an evidentiary hearing for March 10, 2025.

<sup>15</sup> Also, on March 25, 2025, Aqua filed a Reply Brief, which was focused solely on replying to the OSBA's Main Brief. *See* Aqua R.B. at 1. Additionally, on March 25, 2025, the OCA filed a letter stating that it would not be filing a Reply Brief.

the Settlement. On March 28, 2025, the OSBA filed a Brief in Opposition to the Settlement (OSBA Brief). R.D. at 6.

Also, on March 28, 2025, the Commission issued the ALJ's Order Granting the Joint Stipulation for Admission of Evidence. R.D. at 6.

In the Recommended Decision issued on April 10, 2025, the ALJ recommended that the Commission deny the Application, finding that Paragraph 39 of the Joint Petition is a violation of Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2), and is, therefore, illegal and unenforceable. R.D. at 2, 10-11.

As discussed, *supra*, Aqua, Beaver Falls, and the OCA each filed Exceptions on April 22, 2025. Also, on April 22, 2025, I&E filed its Exceptions Letter. On April 29, 2025, the OSBA filed Reply Exceptions.<sup>16</sup>

## II. Discussion

### A. Transaction Overview

Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua provides wastewater service to approximately 60,000 customer accounts in Adams, Berks, Bucks, Carbon, Chester, Clarion, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, Venango, and Wyoming Counties. Aqua is a subsidiary of Aqua Pennsylvania, Inc. (Aqua PA), the second largest investor-owned water utility in the Commonwealth of Pennsylvania, providing water and wastewater service to

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<sup>16</sup> Also, on April 29, 2025, Aqua, Beaver Falls, and the OCA each filed a letter stating that they would not be filing Reply Exceptions.

approximately 508,000 customers (448,000 water and 60,000 wastewater). In turn, Aqua PA is a subsidiary of Essential Utilities, Inc. (Essential Utilities). Application at ¶ 7; Aqua Sts. 1 at 7, 2 at 5.

Beaver Falls is a duly organized and validly existing city under a Home Rule Charter in Beaver County, Pennsylvania, served by a public sewer system. Beaver Falls owns the wastewater collection and treatment system, which provides: (1) sanitary wastewater service to approximately 3,190 customers in the City; and (2) transmission and treatment service for the seven Contributing Municipalities. Application at ¶ 8; Aqua Sts. 1 at 7, 2 at 5. The Beaver Falls wastewater treatment plant (WWTP) receives flow from the Contributing Municipalities from one force main and gravity sewers.<sup>17</sup> Flow from the one force main discharges to the gravity sewer approximately mid-way through the collection system. Aqua St. 2 at 6.

On October 20, 2021, Aqua and Beaver Falls entered into an Asset Purchase Agreement (APA) for the sale of the System Assets (or Acquired Assets, as defined in Section 2.01 of the APA).<sup>18</sup> Application at ¶ 24. On March 24, 2025, Aqua and Beaver Falls entered into a Second Amendment of the APA, in which

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<sup>17</sup> The wastewater from North Sewickley and Eastvale is pumped via the Eastvale pump station into Beaver Falls and then flows by gravity sewers to the City-owned WWTP. The flow of the other Contributing Municipalities is pumped via pump stations owned by those municipalities and flows into Beaver Falls via gravity sewers to the WWTP. Aqua St. 2 at 5-6.

<sup>18</sup> The “Acquired Assets” include: (1) 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.

Section 3.01 was amended to reflect a purchase price of \$37,750,000.<sup>19</sup> *See* Application at Appendix A. According to the APA, Aqua agreed to the following:

- Establish an Easement Escrow Fund, which will be funded by \$2,000 for each missing easement at the time of Closing; and
- Adopt, upon Closing, Beaver Falls’ wastewater rates then in effect and its then-existing miscellaneous fees and charges in the Company’s Tariff.

Aqua St. 1 at 10; Application at ¶ 33; *see also* APA, Sections 6.05(e) and 7.04(a).

As required by Section 1329(a)(4) of the Code, 66 Pa.C.S. § 1329(a)(4), Aqua and Beaver Falls jointly retained the services of Gannett Flemming, Inc. to complete the engineering assessment and determination of the original cost of the System Assets. Aqua St. 1 at 20; *see* Application at Exh. D. Aqua selected ScottMadden, Inc. (ScottMadden), and Beaver Falls selected Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Flemming, LLC), as their respective Utility Valuation Experts (UVEs) to prepare Fair Market Value (FMV) appraisals of the System Assets. Aqua St. 1 at 20; *see* Application at Exhs. Q and R. The Aqua-sponsored appraisal performed by ScottMadden concluded that the value of the System was \$40,199,348. The Beaver Falls-sponsored appraisal performed by Gannett Flemming, LLC concluded that the value of the System Assets was \$44,292,000. Both appraisals were prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards. The FMV, as defined in Act 12 of 2016, is the average of these two

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<sup>19</sup> On June 13, 2023, Aqua and Beaver Falls entered into an Amendment of the APA, where the definition of “Outside Date” in Article I of the APA was replaced in its entirety. *See* Application at Appendix A.

appraisals.<sup>20</sup> Here, the average of the two FMVs is \$42,245,674. Aqua M.B. at 33; Aqua St. 1 at 21. As previously noted, pursuant to Section 1329 of the Code, 66 Pa.C.S. § 1329(c)(2), the ratemaking rate base is the lesser of the purchase price or the FMV. According to the APA, the agreed-upon purchase price is \$37,750,000. Settlement at ¶ 40, Appendix A. Under the Settlement, the Joint Petitioners agreed to a ratemaking rate base for the System Assets of \$29,900,000.<sup>21</sup> Settlement at ¶ 39.

## **B. Legal Standards**

### **1. Burden of Proof, 66 Pa.C.S. § 332(a)**

As the proponent of a rule or order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Applicant's evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

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<sup>20</sup> Then-Governor Tom Wolf signed into law Act 12 of 2016 (Act 12) on April 14, 2016. Act 12 amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2019. 66 Pa.C.S. § 1329 (Section 1329).

<sup>21</sup> Prior to the Settlement, the ratemaking rate base was \$41,250,000. Aqua St. 1 at 21; *see* Application at ¶ 21.

## 2. Certificate of Public Convenience, 66 Pa.C.S. §§ 1102, 1103

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate of Public Convenience (Certificate) prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa.C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a Certificate from the Commission prior to a utility or an affiliated interest of a utility to acquire or transfer to any person or corporation by any method, property used or useful in the public service. 66 Pa.C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a Certificate required under Section 1102:

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*. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa.C.S. § 1103(a) (emphasis added); *see also Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 763, 764-65 (Pa. Cmwlth. 1985) (*Seaboard Tank Lines*).

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will

affirmatively benefit the public.” *Id.* (overruling in part, *Northern Pennsylvania Power Co. v. Pa. PUC*, 5 A.2d 133, 134 (Pa. Super. 1939)).

The Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies 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*).

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, 937 A.2d at 1061. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

One of the factors that the Supreme Court identified in *City of York* for the Commission to consider in determining whether there is an affirmative public benefit is:

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general

effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.

*City of York*, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court 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.” *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). 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.” 195 A.3d at 1067.

The Commission and the courts have held that granting a certificate need not be “absolutely necessary” in order to be in the public interest. *See Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014) (*Hess*). The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.” *Id.* In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “*all affected parties*, and not merely one particular group or geographic subdivision.” *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis in original); *see also Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967), *aff’d*, 252 A.2d 589 (Pa. 1969) (where public benefit included companies and customers other than the proponent utility).

Recently, in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, 320 A.3d 667 (Table) (Pa. 2024) (*Cicero*), the Commonwealth Court held

that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. The 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. *Cicero* at 1119. Furthermore, the Court stated 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).

*Id.* (emphasis in original). The Court 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. *Id.* at 1118. Moreover, the public benefits arising from aspirational statements or benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms. *Id.* at 1120.

In order to obtain a Certificate, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service. *McCloskey*, 195 A.3d at 1058. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992) (*South Hill Movers*). It is the protestant's burden to rebut that presumption. *Lehigh Valley Transp.* at 58. Where an Applicant is

both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

### **3. Ratemaking Rate Base Value, 66 Pa.C.S. § 1329**

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. 66 Pa.C.S. § 1329. Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility's rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the "fair market value" of the selling utility's system. 66 Pa.C.S. § 1329(c)(2).

The fair market valuation process under Section 1329 where the acquiring utility and the seller must elect and agree to have the fair market value of the seller's assets established through separate, independent appraisals conducted by UVEs is voluntary. 66 Pa.C.S. § 1329(a). The Commission maintains a list of qualified UVEs from which the acquiring utility and seller must choose their respective appraisers. 66 Pa.C.S. §§ 1329(a)(1), (2).

The UVEs must prepare an appraisal of the seller's system assets in compliance with the USPAP, employing the cost, market, and income approaches. 66 Pa.C.S. § 1329(a)(3). The FMV of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3). 66 Pa.C.S. § 1329(g).

The Applicant must provide to the Commission copies of the appraisals; the purchase price; the ratemaking rate base; the closing costs; and, if applicable, a tariff and rate stabilization plan. 66 Pa.C.S. § 1329(d)(1).

#### **4. Utility-Municipal Contracts, 66 Pa.C.S. § 507**

Section 507 of the Code provides, as follows, regarding a utility's contract with a municipal corporation:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof.

66 Pa.C.S. § 507.

Thus, pursuant to Section 507, the Commission has discretionary power to institute proceedings to determine the reasonableness, legality, and validity of the contracts between a municipality and a public utility. *Id.*; *see also County of Allegheny v. Pa. PUC*, 159 A.2d 227, 233 (Pa. Super. 1960).

#### **5. Settlements in the Public Interest**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort, and expense of litigating a case. A settlement, whether whole or partial, benefits not only the

named parties in this proceeding directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Opinion and Order entered December 3, 2015) (*Columbia Gas*) at 6-7. Despite this policy, the Commission does not simply rubber stamp settlements without determining whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

## **6. General Standards**

In the Recommended Decision, the ALJ reached five Conclusions of Law. *See* R.D. at 10-11. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

## **C. Joint Petition for Non-Unanimous Settlement**

### **1. Terms and Conditions of the Non-Unanimous Settlement**

The Joint Petitioners agreed to the Non-Unanimous Settlement, covering all issues related to the Application of Aqua to acquire the wastewater system assets of Beaver Falls. Among other provisions, the Settlement provides for a ratemaking rate base of \$29,900,000, representing a reduction of \$11,350,000 to the as-filed ratemaking rate base of \$41,250,000. The OSBA was not a signatory to the Settlement and has indicated that it opposes the Settlement. Joint Petition at 1-2.

The Joint Petition consisted of a seventeen-page document outlining the terms and conditions of the Non-Unanimous Settlement. Additionally, six appendices, labeled appendices A through F, were attached, as follows:

Appendix A – Amendments to the APA between Aqua and the City  
Appendix B – Aqua’s Statement in Support  
Appendix C – Beaver Falls’ Statement in Support  
Appendix D – I&E’s Statement in Support  
Appendix E – The OCA’s Statement in Support  
Appendix F – A *Pro Forma* Tariff Establishing Wastewater Rates for  
Customers of Beaver Falls

#### **a. Essential Terms**

The essential terms of the Joint Petition for Non-Unanimous Settlement were contained in Section III of the Joint Petition, in Paragraphs 36 through 58. Joint Petition at 6-11. The essential terms are set forth below and are printed, *verbatim*, and for ease of reference, maintain the paragraph numbers and formatting that appear in the Non-Unanimous Settlement.

## **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>[22]</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.

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<sup>22</sup> The OCA does not join in this paragraph but does not oppose Aqua's request.

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.

#### **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>[23]</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

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<sup>23</sup> I&E does not join in this paragraph.

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 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 LTIIIP, 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 LTIIIP 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 LTIIIP. The amended LTIIIP 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.

Joint Petition at 6-11, ¶¶ 36-58.

**b. Additional Terms**

In addition to the specific essential terms to which the Joint Petitioners have agreed, as set forth above, the Settlement contained certain additional general terms typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Settlement is conditioned upon the Commission's approval of the terms and conditions therein, without modification. The Settlement established the procedure by which any of the Joint Petitioners may withdraw from the Non-Unanimous Settlement and proceed to litigate this case, if the Commission should act to modify the Settlement. In addition, the Joint Petitioners asserted that although the Settlement is proffered to settle the instant proceeding, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners. Further, the Joint Petitioners submitted that the Settlement was made without prejudice to any position which any of the Joint Petitioners might adopt in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to in the Settlement before us. Finally, the Joint Petitioners explained that they have waived their right to file Exceptions regarding the issues in the Settlement if the ALJ recommended that the Commission adopt the Settlement, without modification. However, the Joint Petitioners stressed that each Joint Petitioner retained the right to file briefs, exceptions, and replies to exceptions as may be necessary in order to support the Settlement. Joint Petition at 12-14, ¶¶ 59-71.

## **2. Statements in Support of the Non-Unanimous Settlement**

### **a. Support for Approval of the Application, as Modified by the Settlement**

As noted above, each of the Joint Petitioners individually filed a Statement in Support of the Non-Unanimous Settlement. Each Joint Petitioner submitted that the Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners; that the Settlement is in the best interest of the Company, its existing customers, and the customers of Beaver Falls; that the Settlement is in the public interest; and that the Settlement should be approved, without modification.

Aqua submitted that the Application, as modified by the Settlement, will result in substantial affirmative public benefits and is in the public interest, consistent with the requirements of *City of York* and *Cicero, supra*. Aqua Statement in Support at 2, 5. Additionally, Aqua pointed to the Commonwealth Court's finding that, with respect to previous Section 1329 acquisitions by Aqua, the substantial public benefits standard was met through Commission findings that: (1) Aqua, as the owner of numerous water and wastewater systems, has sufficient operational expertise and ability to raise capital to support system operations; and (2) the Commission has a policy of consolidation and/or regionalization of wastewater system assets that allows for increased maintenance, upgrade, and expansion of public sewer and water facilities. *Id.* at 3 (citing *McCloskey*). According to Aqua, the same foundational benefits that were present in *McCloskey* are present in the instant proceeding. Aqua Statement in Support at 5.

Aqua also argued that the Company has substantial experience with successfully acquiring, integrating, and improving municipally-owned wastewater systems such that its fitness, finances, and expertise to own and operate the Beaver Falls System is "unquestionable." In contrast, Aqua noted the following with regard to the

City: (1) the City does not desire to continue operating the System; (2) the System faces substantial short-term, mid-term, and long-term operational and investment challenges; (3) the City lacks the expertise and resources to address these challenges; (4) the City does not have the financial ability to obtain the expertise and resources to address these challenges; and (5) the City has no plan in place to address these challenges. Therefore, Aqua submitted that the Company's acquisition of the System will enable these challenges to be proactively addressed by an experienced operator with the necessary technical and financial resources. Aqua further submitted that its acquisition of the System will provide the City with a financial infusion that will benefit the City and its residents on multiple fronts. Aqua added that its acquisition will also benefit the Company's existing customers by increasing Aqua's customer base and allowing future infrastructure investments across the state to be shared across a wider base of customers. Finally, Aqua asserted that approval of the Application, as amended by the Settlement, will benefit the general public because the acquisition will permit the Company to make substantial improvements to the System, especially the WWTP, that will decrease risks to the public and will further the Commonwealth's interest in regionalization of wastewater systems. Aqua Statement in Support at 5-12.

The City argued that it currently operates the System in a reactive manner because it has been unable to provide even the most basic governmental services to its citizens. Beaver Falls represented that it is on the verge of being declared a "distressed" community by the Commonwealth Department of Community and Economic Development (DCED) under the Municipalities Financial Recovery Act of 1987, P.L. 246, No. 47 (Act 47). As such, Beaver Falls claimed that: (1) its financial struggles have made it difficult for the City to attract and retain professionals capable of operating the System such that it has been unable to provide a safe System for its customers; and (2) it cannot guarantee it will be able to provide a safe System in the future if Aqua's Application is not approved. Beaver Falls added that the City is struggling to make debt payments to bondholders on its existing debt, and that the cost to the City of a loan would

likely increase if the sale of the System is not approved, given the City's poor bond rating. Beaver Falls further posited that the City would "have to raise rates dramatically just to keep the wastewater treatment plant operating at the current level, which [is] significantly lacking." Beaver Falls Statement in Support at 3-5.

Conversely, the City highlighted that because Aqua currently has a Certificate in Pennsylvania to provide water and wastewater service, there is no dispute that Aqua has the requisite technical, financial and legal fitness to own and operate the System. Beaver Falls noted that Aqua has "abundant financial resources at its disposal," operates dozens of WWTPs and distribution systems in the Commonwealth, and currently provides service to tens of thousands of customers. Additionally, Beaver Falls noted that Aqua has many employees that perform management, regulatory compliance, engineering, and other services in nearby Sharon, Pennsylvania. Accordingly, Beaver Falls submitted that the Settlement is in the public interest because: (1) Aqua will run a proactive, efficiently managed, and safe System for Beaver Falls' customers; (2) Aqua has the ability to provide extensive financial assistance to lower income customers struggling to pay their wastewater bills, and such assistance will be available to current customers of Beaver Falls that are in need; and (3) the proceeds from the sale of the System will aid the City in overcoming its "dire financial difficulties," resulting in long-term stability and the ability to deliver essential services to its residents. According to the City, the Application, as modified by the Settlement, satisfies the affirmative public benefits test under Section 1103 of the Code, 66 Pa.C.S. § 1103(a), and will further the Commission's goal of consolidating and regionalizing wastewater treatment systems under the appropriate circumstances. Beaver Falls Statement in Support at 3, 5-8.

I&E argued that Aqua's Application, as modified by the Settlement, 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. Therefore, I&E took the position that the Settlement is in the public interest and that the Commission should

issue Aqua a Certificate to operate in the current territory of Beaver Falls, pursuant to 66 Pa.C.S. §1102(a). Similar to the Company and the City, I&E submitted that the Settlement will meet the public policy goal of regionalizing water systems and will yield the benefits of better management practices, economies of scale, and the resulting greater customer, environmental, and economic benefits. I&E added that the Settlement contains numerous terms to protect both existing and new Aqua ratepayers. I&E Statement in Support at 2-5.

As discussed more fully below, the OCA submitted that the terms and conditions of the Settlement are in the public interest and should be approved. OCA Statement in Support at 4.

**b. Statements in Support of Specific Settlement Provisions**

This section of this Opinion and Order provides an overview of the Positions of the Parties, outlined in their respective Statements in Support, regarding the major issues resolved by the Non-Unanimous Settlement.<sup>24</sup> The Joint Petitioners agreed that the specific terms and conditions of the Settlement provide further evidence of affirmative public benefits from Aqua's acquisition of the System.

**(1) General Provisions (¶¶ 36-37)**

In its Statement in Support, Aqua stressed that the Settlement Parties in this proceeding, including their counsel and experts, have considerable knowledge and experience in Section 1329 proceedings, and that their ability to evaluate the strengths

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<sup>24</sup> We note that in its Statement in Support, the City did not include a discussion of the individual provisions of the Settlement. Therefore, the following is an overview of the remaining Joint Petitioners' positions on each of the individual Settlement provisions.

and weaknesses of their respective litigation positions provided a strong foundation upon which to build a consensus on the settled issues. Aqua touted Paragraph 36 of the Settlement, which reflects the Joint Petitioners' agreement that the Settlement represents a carefully balanced compromise of the interests of the Settlement Parties. Aqua argued that because the Settlement is supported by Parties representing a diverse group of constituents and interests, this demonstrates that the Settlement is reasonable and in the public interest. Aqua Statement in Support at 12-13.

In its Statement in Support, I&E explained that it does not oppose these terms of the Settlement. In I&E's view, these terms represent a reasonable compromise among the Joint Petitioners. According to I&E, when considered in totality with the remainder of the Settlement, these terms are in the public interest. I&E Statement in Support at 9.

In its Statement in Support, the OCA submitted that the terms and conditions of the Settlement provide a reasonable resolution of the issues raised by the OCA in its testimony. OCA Statement in Support at 4.

## **(2) Closing (¶ 38)**

In its Statement in Support, Aqua submitted that this provision 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. According to the Company, the Joint Petitioners' agreement under the Settlement that, if Aqua and the 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, will prevent the need to litigate this issue in a future base rate proceeding. Therefore, Aqua argued

that this provision of the Settlement is in the public interest and should be approved. Aqua Statement in Support at 13-14.

In its Statement in Support, I&E explained that it does not oppose Paragraph 38 of the Settlement. In I&E's view, this Settlement term represents a reasonable compromise among the Joint Petitioners. According to I&E, when considered in totality with the remainder of the Settlement, this term is in the public interest. I&E Statement in Support at 9.

**(3) Purchase Price and Rate Base of the Acquired Assets  
(¶¶ 39-42)**

In its Statement in Support, Aqua touted the agreed upon ratemaking rate base of \$29,900,000 under the Settlement, in contrast to the as-filed ratemaking rate base of \$41,250,000. According to Aqua, this agreed upon rate base amount represents a compromise and is in the public interest, especially in the context of the other substantial public benefits that are provided by the transaction. Additionally, Aqua highlighted the Settlement Parties' agreement that given the substantial reduction to the ratemaking rate base established under the Settlement, 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. Aqua reasoned that the agreement 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. Aqua further pointed to the Joint Petitioners' agreement that: (1) any goodwill resulting from this transaction that is included on Aqua's balance sheet shall be excluded from its rate base; and (2) the difference between the purchase price and the allowed rate base will not be recovered in either the rate base or via amortization from Aqua's existing customers or those of the City. In the Company's view, these provisions demonstrate that the future ratemaking

effects of the Settlement are in the public interest and should be approved. Aqua Statement in Support at 14-17.

In its Statement in Support, I&E averred that approval of the agreed-upon ratemaking rate base of \$29,900,000 under the Settlement is both warranted and in the public interest. I&E highlighted that this agreed-upon rate base 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 proceeding were to be litigated to its full conclusion. I&E Statement in Support at 6.

Similarly, the OCA noted that 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.<sup>25</sup> The OCA further observed the Company's initial request was that this original purchase price of \$41,250,000 be approved in its entirety as the ratemaking rate base. Therefore, the OCA, likewise, touted the agreed-upon ratemaking rate base under the Settlement. The OCA highlighted that this ratemaking rate base is \$11,350,000 less than the as-filed rate base in the Amended Application, and approximately \$10,300,000 more than the OCA's litigation position of \$19,628,354 that the OCA's witness, Mr. David Garrett, used for the ratemaking rate base. In the OCA's view, the ratemaking rate base of \$29,900,000 agreed to under the Settlement represents an amount that is within the range of possible outcomes had this been a fully litigated proceeding. The OCA further opined that the Settlement provides mitigation of the rate impact of the transaction for Aqua's existing customers and the customers the Company will acquire from Beaver Falls, by reducing overall costs, while simultaneously establishing a rate gradualism outcome that is overall consistent with the OCA's litigation

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<sup>25</sup> 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).

position in this matter. Accordingly, the OCA submitted that this ratemaking rate base should be approved. OCA Statement in Support at 5-6.

The OCA also noted its support for the agreement between the Company and the City that the APA will be amended to reflect a purchase price of \$37,750,000. The OCA explained that as a result of the Settlement, the Company and the City agreed to a reduced purchase price and a corresponding reduction in the amount of goodwill (*i.e.*, the difference between the purchase price and the value of the ratemaking rate base) to an amount equal to \$7,850,000.<sup>26</sup> The OCA further echoed the Company as to the Settlement provisions regarding, *inter alia*, the exclusion of this goodwill amount from the Company's rate base and the agreement that the difference between the purchase price and the allowed rate base will not be recovered in rate base, nor via amortization from either Aqua's or the City's existing customers. According to the OCA, the provisions in Paragraphs 40 to 42 of the Settlement will help to protect ratepayers in Pennsylvania from further rate increases, noting that ratepayers will experience approximately \$11,350,000 in rate mitigation, when compared to Aqua's as-filed ratemaking rate base of \$41,250,000. Therefore, the OCA submitted that these Settlement provisions will provide affirmative public benefits to consumers and will serve the public interest. OCA Statement in Support at 6-7.

#### **(4) Rate Gradualism (¶¶ 43-47)**

In its Statement in Support, Aqua explained that one of the primary points of focus between the Joint Petitioners was the purported rate impact of Aqua's acquisition of the Beaver Falls System. Aqua insisted that it understands and recognizes that the rate impacts of an acquisition are a serious issue that must be taken into consideration. Therefore, Aqua submitted that Paragraphs 43-47 of the Settlement

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<sup>26</sup> [\$37,750,000 – \$29,900,000 = \$7,850,000]

collectively address the issue of rate impacts, and provide a roadmap for the Joint Petitioners, the ALJ, and the Commission to be assured that the impacts of the acquisition on rates have been accounted for, consistent with *McCloskey*. According to the Company, these provisions of the Settlement affirm the benefits of the acquisition by, *inter alia*: (1) mitigating future rate impacts upon the City’s customers; (2) mitigating the impacts of the acquisition, which will result in a revenue deficiency related to the City’s wastewater operations, and that can be shifted to Aqua’s existing water customers; (3) providing a roadmap for the mitigation of rate impacts related to the acquisition on a going forward basis; and (4) preserving the Joint Petitioners’ right to challenge any rates proposed by Aqua in any future base rate proceedings, except for the OCA’s agreement not to challenge Aqua’s proposal, to the extent that it is consistent with Paragraphs 43, 44, and 45 of the Settlement, in the first base rate case that includes the Beaver Falls System. Aqua Statement in Support at 17-19.

In its Statement in Support, I&E argued that these terms of the Settlement are in the public interest because a goal of ratemaking is to charge rates to customers that are equal to the cost to serve those customers, while being mindful of rate shock. I&E also trumpeted the fact that the Settlement preserves the rights of the Joint Petitioners to challenge any rates proposed by Aqua in future rate case filings to ensure that the public interest is protected. I&E Statement in Support at 5-6.

In its Statement in Support, the OCA restated its position that the Settlement provides mitigation of the rate impact of the transaction, while simultaneously establishing a rate gradualism outcome for the City’s customers that is “overall consistent with the OCA’s litigation position.” The OCA specifically highlighted the Company’s commitment in Paragraph 46 of the Settlement regarding the gradual decline of the Section 1311(c) shift of the wastewater revenue requirement to Aqua’s water customers, along with Aqua’s commitment in Paragraph 43 to propose a rate gradualism plan for all of the City’s customers to pay their full cost of service over time. In the OCA’s view,

these commitments will benefit the interests of both Aqua's existing customers and the customers the Company will acquire from Beaver Falls. OCA Statement in Support at 7-8.

**(5) Customer Assistance Programs (¶¶ 48-51)**

In its Statement in Support, Aqua argued that the provisions of the Settlement related to the Company's Customer Assistance Programs (CAPs) affirm the benefits that, Aqua and the City maintained, would result from the acquisition, with respect to the low-income customers in the City. Aqua also opined that its agreed-upon additional contribution of \$100,000 to the Hardship Fund will provide an additional benefit to both the City's low-income customers and to Aqua's existing low-income customers. Therefore, Aqua claimed that these provisions of the Settlement are in the public interest and should be approved. Aqua Statement in Support at 19-20.

In its Statement in Support, I&E explained that it does not oppose these terms of the Settlement. In I&E's view, these terms represent a reasonable compromise among the Joint Petitioners. According to I&E, when considered in totality with the remainder of the Settlement, these terms are in the public interest. I&E Statement in Support at 9.

In its Statement in Support, the OCA submitted that the Company's commitments under the Settlement regarding its CAP programs are in the public interest and should be approved. First, the OCA highlighted Aqua's commitment, as set forth in Paragraph 48 of the Settlement, to contribute an additional \$100,000 to the Hardship Fund. The OCA took the position that this increase in funding by Aqua's shareholders will assist customers "in need" throughout Aqua's service territory, including the customers acquired from Beaver Falls. Next, the OCA noted that, as set forth in Paragraph Nos. 49 and 50 of the Settlement: (1) the City's customers will become

eligible for all Aqua payment options and customer programs immediately after the closing of the transaction; and (2) 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. In the OCA's view, the information in the welcome letter will provide important information to Aqua's acquired customers, as these customers will be able to more easily determine the rate impact from the transaction at more individualized usage levels. According to the OCA, these enhancements to Aqua's welcome letter are in the public interest. OCA Statement in Support at 9-10.

The OCA also touted the Company's commitment under Paragraph 51 of the Settlement to track the number of the City's customers that are: (1) potentially eligible to enroll in Aqua's CAP; and (2) currently enrolled in Aqua's CAP. The OCA opined that this Settlement provision is a reasonable compromise regarding the issue of tracking low-income customers. In this regard, the OCA argued that tracking information regarding low-income customers will enhance interested stakeholders as to low-income customer participation in Aqua's CAP and will increase transparency regarding important metrics. Therefore, the OCA opined that this provision of the Settlement is in the public interest. OCA Statement in Support at 10-11.

#### **(6) Bulk Services Agreements (§ 52)**

In its Statement in Support, Aqua highlighted that while no Party opposed the issuance of certificates for the bulk services agreements contracts, Paragraph 52 of the Settlement 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. According to Aqua, this provision of the Settlement reflects that these contracts are reasonable, legal, and valid, and that Paragraph 52 of the Settlement should be approved. Aqua also explained that, at present, it is withdrawing its request for the

Commission to approve the charitable contribution agreement between Aqua and the City under Section 507 of the Code, 66 Pa.C.S. § 507. Therefore, Aqua explained that approval of this agreement is no longer sought or required. Aqua Statement in Support at 20-21.

In its Statement in Support, I&E explained that it does not oppose this term of the Settlement. In I&E's view, this term represents a reasonable compromise among the Joint Petitioners. According to I&E, when considered in totality with the remainder of the Settlement, this term is in the public interest. I&E Statement in Support at 9.

**(7) Other Issues (¶¶ 53-58)**

In its Statement in Support, Aqua noted that under Paragraph 53 of the Settlement, the Joint Petitioners 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 (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 COSS. According to Aqua, this provision of the Settlement memorializes Aqua's agreement to adopt a condition advanced by the OCA and I&E, and is in the public interest. Aqua Statement in Support at 21-22.

Aqua also argued that Paragraph 54 of the Settlement reflects unity amongst the Settlement Parties regarding the appropriate timing for the Company's Long-Term Infrastructure Improvement Plan (LTIIP) and distribution system improvement charge (DSIC) related investments in the Beaver Falls System, and provides Aqua with sufficient time to integrate the System and its assets into Aqua's operations. Therefore, Aqua asserted that this Settlement provision is in the public interest and should be approved. Aqua Statement in Support at 22-23.

Aqua further submitted that Paragraphs 55-57 of the Settlement memorialize Aqua's adoption of certain conditions recommended by the OCA, which are already a part of Aqua's normal business and accounting practices. Aqua added that Paragraph 58 of the Settlement represents a reasonable compromise of competing litigation interests. According to Aqua, these provisions of the Settlement are reasonable and should be approved. Aqua Statement in Support at 23-25.

In its Statement in Support, I&E submitted that the COSS agreed to under Paragraph 53 of the Settlement will protect Aqua, its customers, the Settlement Parties, and the Commission. In this regard, I&E reasoned that the results of the COSS that Aqua has committed to perform will provide the Company with the necessary information to determine an appropriate level of rates in the future. I&E argued that the COSS will benefit Aqua's ratepayers because, if Aqua's Application is approved, Aqua's existing customers will also bear the rate impact. According to I&E, without a COSS, the Commission's ability to evaluate the rate impact of the acquisition upon existing Aqua customers and its options to address that impact to provide any appropriate relief to existing customers could be compromised. I&E Statement in Support at 6-7.

I&E also noted that in its testimony, it 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. I&E Statement in Support at 7 (citing I&E St. 2 at 11). Therefore, I&E asserted that because the Company has agreed under the Settlement to include the Contributing Municipalities as a separate rate class, I&E's concerns in this regard have been mitigated. In I&E's view, the Company's commitment to file a COSS that removes all costs and revenues associated with the operation of the City's system, and which includes the Contributing Municipalities as a separate rate class, will ensure that interested parties have the appropriate information upon which to base these customers' rates. I&E Statement in Support at 7-8.

Next, I&E asserted that the provision of the Settlement relating to Aqua's LTIP and DSIC serves the public interest because it allows acquired Beaver Falls customers to benefit from improved water infrastructure, promoting safer and more reliable service. Additionally, I&E argued that Paragraphs 55-57 of the Settlement, relating to Transaction and Closing Costs, are in the public interest because they will protect ratepayers from paying unwarranted costs and will promote rate affordability. I&E reasoned that 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. Finally, I&E argued that the Joint Petitioners' agreement under Paragraph 58 of the Settlement, that Aqua will not be permitted to include any easements into its rate base until such easements are acquired, will ensure that ratepayers are not paying for missing easements. Accordingly, I&E asserted that this term of the Settlement is in the public interest and that it should be approved without modification. I&E Statement in Support at 8-9.

In its Statement in Support, the OCA, likewise, highlighted the Company's agreement to file a COSS in its first base rate case filed after the closing of the transaction, in which Aqua makes a claim for the Acquired Assets in its rate base. The OCA submitted that this commitment, as set forth in Paragraph 53 of the Settlement, will enable the Settlement Parties to use the cost-of-service data to set rates for those customers that differ, as appropriate, from the rates established for other water or wastewater customers. The OCA continued that this will help to mitigate the potential level of subsidy by Aqua's other customers and will apply the ratemaking principle of gradualism to the rates set for customers in the Beaver Falls service area for existing Aqua customers, and the acquired Beaver Falls customers, by reducing overall costs. OCA Statement in Support at 8-9, 12.

Next, the OCA touted the provision in Paragraph 54 of the Settlement, which imposes deadlines on when Aqua will file the LTIP amendment and when Aqua will file to apply the DSIC to customers of the acquired system. The OCA opined that 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, as this will spread the costs recovered through the DSIC over a larger customer base. The OCA submitted that this provision adopts the OCA's recommendations advanced by the OCA in its litigation position and is in the public interest. OCA Statement in Support at 13.

Additionally, the OCA explained that Section 1329 of the Code, 66 Pa.C.S. § 1329(d)(1)(iv), permits only the transaction and closing costs incurred by the acquiring public utility to be included in the established ratemaking rate base. OCA Statement in Support at 14. The OCA continued that under its litigation position, it recommended that Aqua 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. The OCA also noted its recommendation that Aqua should be barred from claiming any transaction and closing costs incurred by the seller. *Id.* (citing OCA St. 1 at 33-34). The OCA opined that its 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 that Aqua's Application should be approved. Therefore, the OCA supported Paragraph Nos. 55 to 57 of the Settlement, which incorporated these recommendations of the OCA. Finally, the OCA stated its support for Paragraph 58 of the Settlement. The OCA highlighted that under this provision of the Settlement, Aqua will not be permitted to include easement land rights in its rate base until it acquires the easements. According to the OCA, this Settlement provision ensures that ratepayers will be protected from paying for missing easements in rates and represents a reasonable approach towards any potentially missing easements in this proceeding, and is in the public interest. Accordingly, the OCA argued that these provisions of the Settlement should be approved. OCA Statement in Support at 14-15.

### 3. OSBA Brief in Opposition

In opposition to the Settlement, the OSBA argued that: (1) the rate increase of approximately 120% for small business wastewater customers is unjust and unreasonable; (2) the Settlement does not include all of the additional increases for small business customers; (3) there is no record evidence demonstrating that the wastewater system of Beaver Falls is troubled; and (4) based on the latest Commission Reasonableness Review Ratio (RRR) calculation, which would act as a cap on the purchase price that would be added to the rate base of the acquiring utility, only \$8,454,113 should be included in the ratemaking rate base.<sup>27</sup> OSBA Brief at 4.

The OSBA contended that the average bill increase of up to 120% does not include: (1) additional rate increases that will result from the *Aqua 2024 Base Rate Case*; and (2) the \$10.2 million that Aqua plans to spend over ten years to improve the wastewater system of Beaver Falls. OSBA Brief at 5 (citing OCA St. 1-SR at 4; *Aqua 2024 Base Rate Case*). Further, the OSBA referred to Paragraph No. 43 of the Settlement to question whether Aqua's rate gradualism plan for the Beaver Falls customers will include the City's small business customers. OSBA Brief at 5 (citing Settlement at ¶ 45).

The OSBA also averred that the record evidence demonstrates that the Beaver Falls wastewater system is in satisfactory condition. Specifically, the OSBA noted that the City's wastewater system: (1) complies with all Pennsylvania Department of Environmental Protection (DEP) requirements; and (2) is currently under a Corrective

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<sup>27</sup> According to the OSBA, the ratemaking rate base of \$8,454,113 is based on applying the RRR to the purchase price of \$41.25 million. See OSBA Brief at 4. As noted, *supra*, the APA was amended to indicate an agreed-upon purchase price of \$37,750,000. See Settlement at Appendix A.

Action Plan with the DEP, but the plan does not require any physical upgrades. Further, the OSBA noted that the Beaver Falls System has no issues of non-compliance with the United States (U.S.) Environmental Protection Agency. Moreover, the OSBA argued that any necessary upgrades for the wastewater system are in the normal course of its operation and do not constitute a troubled system. The OSBA added that Beaver Falls appears to be providing safe, adequate, efficient, and reasonable service to its customers. OSBA Brief at 6 (citing OCA St. 1 at 5, 10-11).

The OSBA also noted that although the Commission has stated that the establishment of the RRR is not retroactive, the Commission also stated that it will consider the facts and circumstances of each acquisition and the dates that the APAs were executed and applications were filed. OSBA Brief at 7 (citing *Valuation of Acquired Municipal Water and Wastewater Systems – Act 12 of 2016 Implementation*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered July 2, 2024) (*2024 FSIO*)). Further, the OSBA posited that the Commission may be convinced that retroactive application of the RRR to the Amended Application is appropriate, given the delay between Aqua’s filing of its original Application and its Amended Application, the Commission’s formal acceptance of the Amended Application (*i.e.*, the December 2024 Secretarial Letter), and Aqua’s multiple requests for delays. Moreover, the OSBA averred that the RRR illustrates that the Joint Petitioners’ proposal to allow Aqua to include \$29,900,000 in ratemaking rate base “is far from the RRR target of \$8,454,113.” OSBA Brief at 7.

Finally, the OSBA noted that the Commission’s approval of a Section 1329 acquisition is not mandatory. Accordingly, the OSBA submitted that the proposed Section 1329 acquisition is not in the public interest. OSBA Brief at 8 (citing *City of York*).

## **D. Recommended Decision**

In the Recommended Decision issued on April 10, 2025, the ALJ recommended denying the Joint Petition, based upon his finding that an essential term violated the Code and was unenforceable. As a consequence of this finding, the ALJ recommended denying the entire Application of Aqua to acquire the Beaver Falls System. R.D. at 10-12.

In support, the ALJ cited the following paragraphs 39 through 42 of the Settlement, *supra*. For ease of reference, we reprint these paragraphs below. These paragraphs provided, as follows:

### **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.

R.D. at 7-8 (citing Joint Petition at 7, ¶¶ 39-42).

The ALJ reasoned that in a Section 1329 proceeding, the establishment of the ratemaking rate base is essential to the acquisition of a wastewater utility. Citing to Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2), the ALJ emphasized that in a proposed acquisition such as this one, the ratemaking rate base shall be either the lesser of the purchase price or the fair market value of Beaver Fall's wastewater system. The ALJ determined that this requirement is not negotiable. R.D. at 9.

Here, the ALJ explained that the Settlement Parties agreed to a rate base of \$29,900,000, while also agreeing to a purchase price of \$37,750,000. However, the ALJ found that the Joint Petition was silent regarding the FMV of the Beaver Falls System. According to the ALJ, the Statements in Support of Beaver Falls, I&E and the OCA do not discuss FMV, and that Aqua, in its Statement in Support, states the FMV of the system is \$42,245,674. R.D. at 9 (citing Aqua Statement in Support at 14-15). Thus, the ALJ concluded that Paragraph 39 of the Joint Petition is in violation of Section 1329(c)(2) of the Code because the agreed upon rate base of \$29,900,000 is neither the purchase price nor the FMV of the wastewater system. R.D. at 9.

In his analysis, the ALJ stated the following:

“The enforceability of a settlement agreement is determined according to principles of contract law.” *Baribault v. Zoning Hearing Bd. of Haverford Twp.*, 236 A.3d 112, 118 (Pa. Cmwlth. 2020) (citing *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999)). “It is well-settled law that a contract with an illegal term is void and unenforceable.” *Commonwealth v. Tanner*, 205 A.3d 388, 399 (Pa. Super. 2019) (citing *Fowler v. Scully*, 72 Pa. 456, 467 (1872)). Moreover, “an agreement that cannot be performed without violating a statute is illegal and will not be enforced.” *Rittenhouse v. Barclay White Inc.*,

625 A.2d 1208, 1211 (Pa. Super. 1993) (citing *Dippel v. Brunozzi*, 74 A.2d 112 (Pa. 1950) (holding “an agreement which violates a provision of a statute, or which cannot be performed without violation of such a provision, is illegal and void.”)).

R.D. at 9-10.

Based on this analysis, the ALJ recommended denial of the Joint Petition because the ALJ concluded that an essential term of the Joint Petition – Paragraph 39 – violated the Code and was unenforceable. According to the ALJ, since this essential term is illegal, the Settlement as a whole was void and unenforceable.

Additionally, the ALJ found the remainder of the Joint Petition and its terms to be rendered moot and did not address them. R.D. at 10.<sup>28</sup>

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<sup>28</sup> The Commission has previously requested that in Section 1329 proceedings, the Office of Administrative Law Judge (OALJ) issue Recommended Decisions on all pending issues, as contemplated by our Regulations and Section 334(a) of the Code, 66 Pa.C.S. § 334(a), even if the presiding officer recommends denial of a Section 1329 application. *See Application of Aqua Pennsylvania Wastewater, Inc., Pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Whiteland Township*, Docket No. A-2021-3026132 (Opinion and Order entered July 29, 2022) (*East Whiteland*) at 46. We explained that in order for the Commission to prepare a comprehensive disposition, it would be beneficial for the presiding officer, who is present for the reception of evidence, to prepare a full recommendation on all pending issues, including the appropriate FMV of the wastewater system being acquired. *Id.*

In the instant Opinion and Order, we find it worthwhile to again emphasize that in cases where a presiding officer is rendering a Recommended Decision (rather than an Initial Decision), particularly in Section 1329 proceedings, the presiding officer should provide the Commission with a fully developed record, with complete findings of fact, dispositions and conclusions of law, upon which to base a final decision, particularly in the event that the Commission does not adopt the recommended disposition. A fully developed record is imperative due to the compressed statutory deadline for the issuance of a final order in such matters. Although the Commission is the ultimate fact finder in proceedings under the Code, 66 Pa.C.S. § 335(a); *see also Milkie v. Pa. PUC*, 768 A.2d 1217, 1220, n.7 (Pa. Cmwlth. 2001), the presiding officer is expected to assist the Commission in developing a complete record with dispositions, particularly when the issuance of a final order might be constrained by the operation of a statutory deadline such as in Section 1329 proceedings. *See* 66 Pa.C.S. § 1329(d)(2). In this proceeding, the record evidence is sufficient for disposition; thus, in the remaining sections of this Opinion and Order, below, we will address the outstanding issues relevant to that disposition.

## **E. Exceptions, Replies and Disposition**

### **1. *Sua Sponte* Argument**

#### **a. Aqua Exception No. 1**

In its Exception No. 1, Aqua argues that the ALJ erred by, *sua sponte*, disposing of an issue not raised by any party to this proceeding. Regarding the ALJ's conclusion that Paragraph 39 of the Settlement is a violation of the Code and unenforceable, the Company submits that no one – including the OSBA which was the only party that opposed the Settlement – raised this argument and that the ALJ is prevented from doing so in a Recommended Decision. Aqua Exc. at 4.

In support of its argument, Aqua contends that Pennsylvania appellate courts have confirmed that trial court judges are not authorized to raise non-jurisdictional arguments, issues or theories, *sua sponte*. Aqua asserts that the Pennsylvania Supreme Court explained that while “[t]he trial judge is charged with the responsibility of defining all *pertinent* questions of law and clarifying the issues to be resolved...[t]his responsibility however does not cast him in the role of an advocate.” Aqua Exc. at 5 (citing *Hrivnak v. Perrone*, 372 A.2d 730, 732 (Pa. 1977) (*Hrivnak*) (emphasis in original) (citations omitted)). Additionally, the Company cites the Pennsylvania Supreme Court's statement that although trial judges may “crystallize the issues raised by the litigants and explain the relevant principles of law, he may not assume the advocate's function of inducing theories not raised by the parties.” Aqua Exc. at 5 (citing *Hrivnak*, 372 A.2d at 733). According to Aqua, it is for this reason that the Commonwealth Court has held that a trial court errs by raising non-jurisdictional issues, *sua sponte*, and that by doing so after the record is closed and without notice to the parties constitutes a due process violation. Aqua Exc. at 5 (citing *Society Created to Reduce Urban Blight v.*

*Zoning Bd. of Adjustment*, 682 A.2d 1, 3 (Pa. Cmwlth. 2006) (*Society*); and *Dep't of Transp. v. Malone*, 520 A.2d 120, 122 (Pa. Cmwlth. 1987) (*Malone*) (citation omitted)).

Aqua contends that Section 1329(c)(2) does not involve a jurisdictional matter regarding the authority of the Commission to hear and dispose of this case. Instead, the Company submits that it involves a non-jurisdictional determination that is made as a part of a utility's proposal to avail itself of Section 1329 when it acquires a water or wastewater system. Aqua argues that the ALJ impermissibly adopted the function and role of an advocate and introduced a legal theory that was not raised by any of the parties. Aqua Exc. at 5-6 (citing *Hrivnak*, 372 A.2d at 733).

For this threshold reason alone, Aqua requests that the Commission decline to adopt the Recommended Decision. Aqua also seeks the issuance of an order approving the Settlement, without modification, and approving the Application, as amended, subject to the terms and conditions of the Settlement. Aqua Exc. at 6.

**b. OSBA Reply Exception**

In its Reply to Aqua Exception No. 1, the OSBA submits that Aqua's legal arguments are that: (1) Section 1329(c)(2) is a non-jurisdictional matter that the Commission has no authority over; and (2) Section 1329(c) is not a pertinent question of law that the ALJ should be addressing. The OSBA posits that these arguments are unusual because they essentially claim that an ALJ of the Commission should not apply the Code when deciding this case. R. Exc. at 12-13.

In further response, the OSBA highlights that the title of Aqua's originally filed Application was "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." R. Exc. at 13

(emphasis in original). Additionally, the OSBA asserts that in the Joint Petition, the signatories, including Aqua, requested approval of the Settlement under Section 1329(c)(2), as follows:

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).

R. Exc. at 13 (citing Joint Petition at 15).

In conclusion, the OSBA argues that the legal requirements of Section 1329 apply to this case and that Aqua Exception No. 1 should be denied. R. Exc. at 13.

## **2. Compliance with Section 1329 of the Code**

### **a. Aqua Exception No. 2**

In its Exception No. 2, Aqua argues that the ALJ erred by concluding that Paragraph 39 of the Settlement does not comply with Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2). Aqua asserts that the ALJ's reasoning constitutes a fundamental misapplication of the Code because it ignores the precedent of this Commission, the facts of record, the language of the Settlement, and the Settlement Parties' submissions in support of the Settlement. According to the Company, nothing in Section 1329(c) abrogates or repeals the Commission's authority to analyze the value of the assets at issue in a Section 1329 proceeding or to adopt modifications to the FMV appraisals based upon the record evidence before it. Aqua Exc. at 6-7.

Specifically, the Company argues that in the Recommended Decision, the ALJ ignored record evidence presented regarding FMV in this proceeding, as well as the Settlement Parties' intent and support for Paragraph 39 of the Settlement. Aqua submits that consistent with applicable Commission precedent, the Commission has the authority to adjust the FMV recommendations of UVEs in Section 1329 proceedings, and the Settlement Parties agreed to a ratemaking rate base that is within the range of the competing litigation positions regarding FMV presented in this case. Aqua Exc. at 6-16.

Aqua proffers that the Recommended Decision stands in isolation from the Commission's prior review and analysis of settlements in other Section 1329 acquisition proceedings. In support, Aqua cites to the Commission's seminal ruling, which held that the Commission retains the authority to review, analyze and adjust the FMV of a system to be acquired under Section 1329. Aqua Exc. at 7-8 (citing *Application of Aqua Pennsylvania Wastewater, Inc. under Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority*, Docket No. A-2016-2580061 (Opinion and Order entered June 29, 2017) (*New Garden*)). The Company asserts that consistent with *New Garden*, the Commission has repeatedly approved settlements in Section 1329 proceedings authorizing settlement language that established a specific, non-purchase price value, within the range of the parties' litigation positions on FMV, as the ratemaking rate base of the subject systems. As examples, Aqua cites to the following Commission decisions as clear precedent on this issue:

- *Application of Pennsylvania-American Water Company under Sections 1102, 1329, and 507 of the Public Utility Code for Approval of the Acquisition of Wastewater Collection and Treatment System Owned by the York City Sewer Authority and Operated by the City of York*, Docket No. A-2021-3024681 (Recommended Decision issued February 28, 2022), *adopted without modification* (Final Order entered April 14, 2022) (*PAWC-York*).
  - Commission approved a negotiated rate base value of \$231,500,000.
  - The negotiated rate base fell between the original positions of the parties and within the likely outcome of a fully litigated case and was

approximately \$23.5 million less than the average of the two appraisals (\$255 million) submitted.

Aqua Exc. at 10 (citing *PAWC-York R.D.* at 32).

- *Application of Aqua Pennsylvania Wastewater, Inc. under Sections 1102, 1329, and 507 of the Public Utility Code for Approval of the Acquisition of the Wastewater System Assets of East Norriton Township*, Docket No. A-2019-3009052 (Opinion and Order entered May 21, 2020) (*East Norriton*).
  - Commission approved a negotiated rate base value of \$20,750,000.
  - The negotiated rate base fell below the purchase price of \$21 million and the average FMV of \$24,674,297.

Aqua Exc. at 10 (citing *East Norriton* at 27).

- *Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for Approval of the Acquisition of the Wastewater System Assets of Exeter Township*, Docket No. A-2018-3004933 (Opinion and Order entered October 3, 2019) (*Exeter*).
  - Commission approved a negotiated rate base value of \$92 million.
  - The negotiated rate base fell below the modified purchase price of \$93.5 million and within the range of likely outcomes if the case were fully litigated.

Aqua Exc. at 11 (citing *Exeter* (R.D. issued August 5, 2019) at 51)).

- *Application of Pennsylvania-American Water Company under Sections 1102 and 1329 of the Public Utility Code for Approval of the Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) (*Steelton*).
  - Commission approved a negotiated rate base value of \$20.5 million.
  - The negotiated rate base fell below the modified purchase price of \$21,750,000 and within the range of likely outcomes if the case were fully litigated.

Aqua Exc. at 11-12 (citing *Steelton* at 15-16, 23).

- *Application of Pennsylvania-American Water Company under Sections 507, 1102(a), and 1329 of the Public Utility Code for Approval of the Acquisition of the Wastewater System Assets of Sadsbury Township*, Docket No. A-2018-3002437 (Recommended Decision issued October 11, 2018), *adopted without modification* (Final Order entered October 25, 2018) (*Sadsbury*).
  - Commission approved a negotiated rate base value of \$8.3 million which was within the range of likely outcomes if the case were fully litigated.

Aqua Exc. at 12 (citing *Sadsbury* R.D. at 16, 31).

- *Application of Pennsylvania-American Water Company-Wastewater under Section 1329 of the Public Utility Code for approval of the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of The Municipal Authority of the City of McKeesport's assets related to its wastewater collection and treatment system and other related transactions*, Docket No. A-2017-2606103 (Recommended Decision issued October 11, 2017), *adopted without modification* (Order entered October 26, 2017) (*McKeesport*).
  - Commission approved a negotiated rate base value of \$158 million which was within the range of likely outcomes if the case were fully litigated.

Aqua Exc. at 13 (citing *McKeesport* R.D. at 20, 45).

Aqua argues that the ALJ failed to take any of these Commission decisions into account and did not conduct a reasoned review of record evidence regarding the FMV of the system. The Company submits that Aqua, the City, the OCA, and the OSBA all presented evidence regarding the FMV of the system, as follows:

- Aqua's UVE presented testimony that established the FMV at \$40,119,348. Aqua M.B. at 33 (citing Aqua St. 5 at 13).<sup>29</sup>

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<sup>29</sup> In both its Main Brief and in Aqua Statement No. 5, Aqua cites the amount of \$40,199,347 for the Company's UVE; thus, Aqua's statement in its Exceptions that the Company's UVE was \$40,119,348 is an apparent minor error. See Aqua M.B. at 33 and Aqua St. 5 at 13. Accordingly, we will cite to the amount of \$40,199,347 when referring to the Company's UVE.

- The City’s UVE presented testimony that established the FMV at \$44,292,000. Aqua M.B. at 33 (citing Aqua St. 6 at 13).
- Thus, the average of the two FMV appraisals was \$42,245,674. Amended Application at ¶ 56.
- I&E did not oppose Aqua’s proposed ratemaking rate base of \$41,250,000. Aqua M.B. at 39 (citing I&E St. 2 at 5).
- The OCA’s witness testified that the FMV should be adjusted to \$19,628,354. Aqua M.B. at 39 (citing OCA St. 2 at 5).
- The OSBA’s witness testified that the ratemaking rate base should not exceed \$8,454,113. Aqua M.B. at 39-40 (citing OSBA St. 1 at 9).

Aqua Exc. at 13-14. According to the Company, this record evidence clearly includes a range of possible litigation outcomes regarding the FMV of the system, which have been advocated by each of the Parties. *Id.* at 14.

Aqua asserts that it was clear error for the ALJ to conclude – without reference to applicable precedent or evidence in the record – that Paragraph 39 of the Settlement violates Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2). The Company concludes that if the Recommended Decision is upheld, the Commission would effectively abdicate its authority to review and modify FMV proposals under Section 1329, in violation of the authority set forth in *New Garden*. Aqua Exc. at 16.

**b. City Exception No. 1**

In its Exception No. 1, the City argues that the interpretation of Section 1329 of the Code, 66 Pa.C.S. § 1329(c)(2), in the Recommended Decision is inconsistent with the Commission’s practice of approving similar settlement petitions in accordance with the public interest and the goals of the statute. City Exc. at 5-10.

The City asserts, in part, that the Commission has never interpreted Section 1329 to mean that the parties cannot come to an agreement for the proper value of the ratemaking rate base. Similar to the above arguments in Aqua Exception No. 2, the City contends that since Section 1329 was enacted, the Commission has routinely approved settlement petitions in which the parties consented to an agreed upon ratemaking rate base, even though the approved rate base was not equal to either the purchase price or the average of the UVE appraisals. City Exc. at 6-7 (citing *PAWC-York, Exeter, Steelton, and McKeesport*).

The City contends that the ratemaking rate base proposed in the Joint Petition reflected the Settlement Parties' assessment regarding the fair market value of the acquired assets, because it was arrived at through prolonged settlement discussions between sophisticated parties involving counsel well versed in Section 1329 proceedings, appraisers approved by the Commission, and a robust factual record. The City further opines that the ALJ failed to consider I&E's explicit statement that it was "able to determine that this proposed value ... comported with the valuation standards and requirements of Section 1329." City Exc. at 8 (citing I&E Statement in Support at 6).

The City notes that the agreed-upon rate base proposed in the Joint Petition is lower than both the amended purchase price of \$37,750,000 and the average UVE of \$42,245,674. Acknowledging the OCA's testimony that the FMV of the system should be adjusted to \$19,628,354 and the OSBA's argument that only \$8,454,113 of the transaction price should be included in the rate base pursuant to the RRR,<sup>30</sup> the City submits that there can be no doubt that the rate base agreed upon in the Settlement "falls

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<sup>30</sup> The City argues that both Aqua and Beaver Falls strongly contested the OSBA's attempt to employ a rigid rate base cap using the RRR because the RRR was only first included in the Commission's *2024 FSIO* on July 2, 2024. The City contends that the APA governing this transaction was entered into in 2021, roughly three years before the *2024 FSIO* was issued. City Exc. at 8-9 (citing Aqua M.B. at 39-40 (citing OSBA St. 1 at 9)).

between the original positions of the parties... [and] falls within the range of likely outcomes in the event of full litigation of the case.” City Exc. at 8-9 (citing *PAWC-York R.D.* at 32).

**c. I&E Letter in Lieu of Exceptions**

In its Exceptions Letter, I&E submits that the ALJ’s concern about the rate base agreed to in the Settlement is misplaced. I&E argues that it benefits the customers to allow the Parties to agree to a rate base that is less than either the purchase price or the FMV because those same parties are expected to pay a return on that rate base. I&E asserts that the Commission approved the same scenario in the acquisition of the Butler Area Sewer Authority by the Pennsylvania-American Water Company. I&E Letter at 2 (citing *Application of Pennsylvania-American Water Company-Wastewater under Sections 1102 and 1329 of the Public Utility Code for Approval of the Acquisition of the Assets of the Butler Area Sewer Authority*, Docket No. A-2022-3037047 (Opinion and Order entered November 16, 2023) (*BASA*)). In *BASA*, I&E explains that parties to the settlement agreed to a rate base of \$228 million, which was lower than the amended purchase price of \$230 million. I&E Letter at 2.

I&E asserts that it supports the Settlement in this proceeding because it is in the public interest. In support of this conclusion, I&E contends that it was able to determine that the proposed ratemaking rate base value of \$29,900,000 comported with the valuation standards and requirements of Section 1329. I&E restates that the proposed ratemaking rate base is \$11.35 million less than what was requested in the Application and is within the range of possible outcomes if this case were to be litigated to its full conclusion. According to I&E, the lesser rate base value benefits customers, as they will be paying a rate of return on a lower amount. I&E Letter at 2.

I&E adds that for the reasons expressed in its Statement in Support, the Settlement meets all the standards necessary for the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code, 66 Pa.C.S. §§ 507, 1102, 1103, and 1329. Moreover, I&E argues that the Settlement Parties actively participated in settlement discussions, and therein, vigorously asserted their respective positions and that the interests of the various stakeholders have been represented and considered. Thus, I&E maintains its position that the Settlement is consistent with the Commission's policy of encouraging settlements and is in the public interest. I&E Letter at 2-3.

**d. OCA Exception No. 1**

In its Exception No. 1, the OCA argues that the Joint Petition is in accordance with the Code and prior Commission Orders. Within this Exception, the OCA makes two arguments. First, the OCA contends that the legal conclusions in the Recommended Decision run contrary to Section 1329 and prior Commission Orders that correctly and properly interpreted Section 1329. Second, the OCA submits that the Recommended Decision is inconsistent with the 2024 *FSIO*, in which the Commission intended for a RRR to be considered in Section 1329 acquisitions regarding ratemaking rate base. OCA Exc. at 5-9.

As to its first argument, the OCA asserts that the question of whether parties can challenge UVE appraisals is a settled one, and the Commission has decided, in sum: (1) that it can be done; and (2) that the Commission can adopt fully substantiated, reasonable adjustments to the UVE appraisals. OCA Exc. at 5 (citing OCA M.B. at 32-33). The OCA submits that the Commission, beginning with its decision in *New Garden*, and in subsequent decisions, determined that Section 1329 contains no prohibitions on the ability of the parties or the Commission to review the

UVE appraisals as to their reasonableness and to make or adopt adjustments. OCA Exc. at 5-7.<sup>31</sup>

The OCA argues that Section 1329 does not eliminate the Commission's authority and discretion to determine the appropriate rate base value for ratemaking purposes. Rather, the OCA submits that Section 1329 prescribes the method by which that valuation is permitted where certain circumstances are present. According to the OCA, Section 1329 also does not prohibit the Commission's authority and discretion to consider substantial evidence presented by statutory advocates regarding adjustments to UVE appraisals. The OCA contends that to decide otherwise, as the ALJ has done here, is tantamount to a blanket prohibition on the Commission from exercising its expert ratemaking discretion to adopt adjustments to the UVE appraisals that the Commission finds reasonable. OCA Exc. at 7.

Regarding its second argument, that the Recommended Decision is inconsistent with the *2024 FSIO*, the OCA asserts that the Commission intends for a RRR to be considered in Section 1329 acquisitions with respect to the ratemaking rate base. The OCA contends that from the vantage point of an approximation of a ratio of a proxy

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<sup>31</sup> In support, the OCA cites to the following Commission order: *Application of Aqua Pennsylvania Wastewater, Inc., under Sections 1102 and 1329 of the Public Utility Code for Approval of the Acquisition of the Wastewater System of Limerick Township*, Docket No. A-2017-2605434 (Opinion and Order entered November 29, 2017) (*Limerick*) at 36; *Application of Aqua Pennsylvania Wastewater, Inc., under Sections 1102, 1329 and 507 of the Public Utility Code for Approval of the Acquisition of the Wastewater System of Cheltenham Township*, Docket No. A-2019-3008491 (Opinion and Order entered November 5, 2019) (*Cheltenham*) at 36-40; *Application of Aqua Pennsylvania, Inc., under Sections 1102 and 1329 of the Public Utility Code for Approval of the Acquisition of the Wastewater System of Lower Makefield Township*, Docket No. A-2021-3024267 (Opinion and Order entered January 13, 2022) (*Lower Makefield*); and *Application of Aqua Pennsylvania Wastewater, Inc., under Sections 1102 and 1329 of the Public Utility Code for Approval of the Acquisition of the Wastewater System of the Township of Willistown*, Docket No. A-2021-3027268 (Opinion and Order entered July 8, 2022) (*Willistown*) at 73. OCA Exc. at 5-7.

fair market value to the depreciated original cost of similarly-situated investor owned water utilities, the Commission calculated a RRR with a 1.68 market value ratio. OCA Exc. at 8 (citing OCA M.B. at 25). According to the OCA, however, if the ALJ's interpretation of Section 1329 is adopted, the RRR would seemingly contradict Section 1329 because no other ratemaking rate base could be applied to acquired systems beyond the lesser of the average of the unadjusted UVE appraisals or the purchase price. OCA Exc. at 8.

Additionally, the OCA argues that, if the ALJ's interpretation of Section 1329 is adopted, it would contradict the Commission's discussion in the *2024 FSIO* regarding equal UVE approach weightings. The OCA submits that this adjustment illustrates in a practical manner how judgment plays a role in the UVEs' determinations about the FMV of the City's assets. OCA M.B. at 31. In contrast, the OCA argues, the ALJ ignored the reasonable adjustments incorporated into the Settlement and simply stated that the FMV submitted is not negotiable. The OCA requests that the Commission carefully consider the assumptions informing each UVE's appraisal results, the flaws in those assumptions that are identified in the OCA's testimony, and consider that the adjustments proposed by the OCA properly reflect financial and ratemaking principles. OCA Exc. at 8-9 (citing OCA M.B. at 31).

**e. OCA Exception No. 3**

In its Exception No. 3, the OCA further argues that litigation should not be the only means by which the OCA's reasonable adjustments to the UVE appraisals can be considered or adopted. The OCA asserts that the ALJ improperly determined the Parties cannot deviate from the UVE appraisals on any basis for purposes of the Settlement. According to the OCA, this would require the OCA to litigate every Section 1329 proceeding in order to have the Commission adopt the OCA's proposed adjustments, and

would conflict with the Commission's policy encouraging settlements. OCA Exc. at 11-12.

The OCA notes that sixteen Section 1329 proceedings before the Commission have settled, with six of those settlements resulting in a difference between the initially proposed FMV and the Commission-approved ratemaking rate base. OCA Exc. at 12 (citing *McKeesport, Sadsbury, Exeter, Steelton, East Norriton, and BASA*). Additionally, the OCA notes, three Section 1329 proceedings were litigated and resulted in a variance between the initially proposed FMV and the approved ratemaking rate base. OCA Exc. at 12 (citing *Limerick, Cheltenham, and East Whiteland*). Therefore, the OCA submits that the ALJ incorrectly implied that these litigated and settled cases are contrary to the law. OCA Exc. at 12.

According to the OCA, if the Commission adopts the ALJ's Recommended Decision, this will limit settlement negotiations going forward unless one party entirely concedes to the applicant's presented unadjusted appraisals. According to the OCA, its reasonable adjustments to the UVE appraisals should not be required to result in litigation if a settlement can be achieved by the parties. Thus, the OCA requests that the Recommended Decision be rejected and the Settlement be approved by the Commission, without modification. OCA Exc. at 13.

**f. OSBA Reply Exception**

In its Reply to Aqua Exception No. 2, City Exception No. 1, the I&E Letter, and OCA Exception No. 3, the OSBA argues that the ALJ correctly concluded that the Joint Petition violated the explicit requirements of Section 1329 of the Code. R. Exc. at 6.

The OSBA contends that in each of the cases cited by the OCA, I&E, the City, and Aqua, the FMV of the selling utility was ultimately equal to the ratemaking rate base dollar amount, regardless of whether the case was settled or litigated. As a result, the OSBA states, each of the cited Commission Orders complied with the requirements of Section 1329(c)(2) of the Code. The OSBA asserts that the Recommended Decision did nothing to change that result. R. Exc. at 11.

The OSBA argues that, instead, the ALJ observed a fundamental error in the Joint Petition. In support, the OSBA submits that although the Joint Petition set the selling price at \$37,750,000 and the ratemaking rate base at \$29,900,000, the only FMV amounts in the record evidence for the City's wastewater facilities are \$42,245,674 by Aqua, \$37,890,758.50 or \$19,628,354 by the OCA, or \$8,454,113 by the OSBA. According to the OSBA, it is obvious that none of the FMV record evidence amounts are equal to the settled ratemaking rate base value of \$29.9 million. The OSBA contends that the ALJ correctly ruled that the Joint Petition was unlawful on its face, violated Section 1329(c)(2) of the Code, and properly recommended the rejection of the Settlement. R. Exc. at 11-12.

Thus, the OSBA concludes that the ALJ committed no error of law and followed Commission precedent, and requests that Aqua Exception No. 2, City Exception No. 1, the I&E Letter, and OCA Exception No. 3 be denied. R. Exc. at 12.

In Reply to OCA Exception No. 1, the OSBA objects to the OCA's assertion that the ALJ enacted a "blanket prohibition" on the calculation of the FMV of a selling utility. R. Exc. at 3.

The OSBA admits that the Commission has authority and discretion to consider substantial evidence presented by statutory advocates regarding adjustments to UVE appraisals. Additionally, the OSBA submits that the Commission has concluded

that the UVE appraisals, conducted during a Section 1329 proceeding, are the starting point for the consideration of the ultimate FMV of the selling utility, while the ultimate FMV approved by the Commission can change due to testimony, litigation, and settlement. The OSBA argues, however, that the OCA takes its analysis of Commission decisions and wrongly concludes that the ALJ created a “blanket prohibition on the Commission from exercising its expert ratemaking discretion to adopt adjustments to the UVE appraisals.” R. Exc. at 4 (citing OCA Exc. at 7).

According to the OSBA, the ALJ placed no blanket prohibition on the determination of the FMV of a selling utility. The OSBA asserts that instead, the ALJ simply pointed out the error made by the signatories, as follows: “In addition, the Joint Petition is silent regarding the FMV of the Beaver Falls wastewater system. Likewise, the Statements in Support of Beaver Falls, [the] OCA, and I&E do not discuss FMV. Aqua’s Statement in Support states the FMV of the system is \$42,245,674.” R. Exc. at 5-6 (citing R.D. at 9).

The OSBA concludes that there is no passage in the Recommended Decision that places any prohibition on the ability of any party to argue the correct FMV of a selling utility. Rather, the OSBA contends, the ALJ simply observed the legal error in the Joint Petition. R. Exc. at 6.

### **3. Substantial Record Evidence**

#### **a. Aqua Exception No. 3**

In its Exception No. 3, Aqua contends that the Recommended Decision is incomplete because the ALJ presented no findings of fact and engaged in no analysis of the record evidence in this proceeding. The Company argues that by recommending that the Commission deny the Settlement, the ALJ was then required by law and under the

terms of the Settlement to render a decision on the merits of Aqua's Application based upon the litigation positions of the Settlement Parties. Aqua Exc. at 17-18 (citing Pa.C.S. §§ 331 and 335; and Settlement at ¶ 64).<sup>32</sup>

Aqua argues that it was not sufficient to simply recommend that the Commission deny the Settlement and, based upon this recommended denial and without any analysis of any of the facts on any other material issue applicable to the Application, deny Aqua's Application, as amended. The Company submits that these significant flaws render the Recommended Decision fundamentally incomplete and, effectively, not a decision that can be adopted in whole or in part by the Commission. Aqua Exc. at 18-19.

In summary, Aqua argues that the Commission should grant its Exceptions and decline to adopt the Recommended Decision. Instead, the Company submits that the Commission should: (1) approve the Settlement, without modification; and (2) approve the Application, as amended, subject to the terms and conditions of the Settlement. Alternatively, Aqua requests that the Settlement Parties be provided the opportunity to submit Reply Briefs on the merits of Aqua's Application, which can be considered if the ALJ's recommended denial of the Settlement were to be upheld by the Commission. Aqua Exc. at 19.

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<sup>32</sup> 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.

Settlement at ¶ 64. According to Aqua, this provision makes clear that upon the ALJ's recommended denial of the Settlement, the Settlement Parties will default to their litigation positions and the Parties will retain their procedural rights to seek to obtain their respective litigation positions. Aqua Exc. at 18.

**b. City Exception No. 3**

In its Exception No. 3, the City argues that the ALJ erred by ignoring the abundant record evidence demonstrating affirmative public benefits derived from the approval of the transaction. According to Beaver Falls, the proposed transaction will affirmatively benefit the public because the City is ill-equipped to operate and maintain the system going forward and needs the revenue from the sale to operate other essential government functions. City Exc. at 12.

Citing the arguments from its Main Brief, the City asserts the following evidence: (1) the City is on the verge of being named a “distressed community” by the DCED or Act 47 status; (2) the City has struggled to operate the system and is, due to financial and operational constraints, unable to proactively address anticipated future problems with the system; (3) there is a recent history of environmental and safety concerns with the system; (4) the City needs the revenue from the sale to focus on other fundamental government functions such as safety, jobs, healthcare, and balancing the budget; (5) the City received a \$2,000,000 deposit from Aqua pursuant to the APA, and has already spent the proceeds to address the shortfalls in its budget. On the other hand, the City restates that Aqua is well positioned to operate a safe and effective system and has the resources necessary to maintain and improve it. City Exc. at 13-14.

Beaver Falls requests that if the Settlement is not approved, the Commission should nonetheless approve the transaction because the City plainly established affirmative public benefits under the prevailing legal standards. City Exc. at 14.

**c. OSBA Reply Exceptions**

In Reply to Aqua Exception No. 3, the I&E Letter, and Beaver Falls Exception No. 3, the OSBA argues that the merits of the Settlement do not overcome its violation of Section 1329(c)(2) of the Code. R. Exc. at 15.

The OSBA submits that the ALJ fully complied with the requirements of Section 335(c) of the Code.<sup>33</sup> Citing the Recommended Decision, the OSBA asserts that the Pennsylvania Superior Court has ruled that “an agreement that cannot be performed without violating a statute is illegal and will not be enforced.” R. Exc. at 15 (citing R.D. at 11). According to the OSBA, the Joint Petition violated the requirements of Section 1329(c)(2) of the Code and was illegal on its face. As such, the OSBA contends that judicial economy and Section 335(c), require nothing more from the ALJ than to recommend denial of the Joint Petition, with reasons. R. Exc. at 15.

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<sup>33</sup> Section 335(c) of the Code provides:

**(c) Record.**--The record shall show the ruling on each finding, conclusion or exception presented. All decisions, including initial, recommended and tentative decisions, are a part of the record and shall include a statement of:

- (1) findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record; and
- (2) the appropriate rule, order, sanction, relief or denial thereof.

66 Pa.C.S. § 335(c).

#### **4. Settlement and Public Interest Analysis**

##### **a. City Exception No. 2**

In its Exception No. 2, the City argues that the ALJ erred in departing from the Commission's policy of encouraging settlements and in finding that the Joint Petition was not in the public interest. City Exc. at 10 (citing 52 Pa. Code § 5.231). According to the City, the ALJ gave no consideration to any of the numerous benefits to the public interest and instead predicated the entire Recommended Decision on the assertion that the Settlement was not in the public interest because it was "illegal." City Exc. at 10.

In support of the purported public benefits, the City asserts that Beaver Falls and its citizens would benefit greatly from a final and immediate resolution of this proceeding, especially because of the vast resources and time expended by the City in arriving at the Joint Petition. The City argues, in part, that the transaction began approximately five years ago, when Beaver Falls commenced a thorough evaluation of the possibility of selling the system, including the involvement of local officials, citizens, and outside experts. Since then, the City contends it worked extensively with Aqua on the Application and negotiating with neighboring municipalities that send wastewater to the City's sewage treatment plant. City Exc. at 10-11.

Furthermore, the City submits that the public interest is well served by approval of the Joint Petition because it results in a reduced rate increase, as compared to the potential increase if, after litigation, the Commission ultimately adopted the rate base sought in the Application. According to the City, Paragraph 39 of the Settlement provides an agreed-upon ratemaking rate base of \$29,900,000, which is far less than the originally filed ratemaking rate base of \$41,250,000, which was the lesser of the negotiated purchase price and average of the UVE appraisals. The City contends that rate impact is routinely considered by the Commission in analyzing the affirmative public

benefit test under Sections 1102 and 1103 of the Code, 66 Pa.C.S. §§ 1102 and 1103. Thus, the City proffers that it is in the public interest to approve the Settlement, which arrives at a compromise position with a reduced rate impact that both the OCA and I&E have determined, through their support of the Settlement, to be reasonable. City Exc. at 11.

Moreover, the City argues that the public interest is served by the approval of the Settlement because it furthers the Commission’s policy of “consolidation and regionalization of its wastewater assets that allows for the increased maintenance, upgrade and expansion of public sewer and water facilities.” City Exc. at 11 (citing *McCloskey*, 195 A.3d at 1065). The City stresses that Aqua operates dozens of wastewater treatment plants in the Commonwealth and provides service to tens of thousands of customers through hundreds of employees including professionals performing management, compliance, engineering, and many other functions. The City adds that approval of the Settlement allows for increased maintenance, upgrade, and expansion of the acquired system. Further, the City notes that Aqua and its parent company have abundant access to financing and equity capital which can be used to fund improvements to the System. City Exc. at 11-12 (citing Aqua M.B. at 13-14).

For these reasons, the City asserts that the Commission should approve the Settlement, in accordance with the policy of encouraging settlements that are in the public interest. City Exc. at 12.

**b. OCA Exception No. 2**

In its Exception No. 2, the OCA reinforces its position that the Joint Petition represents a compromise of the Parties’ litigation positions as to the UVE appraisals and is permissible under the Code and Commission Orders and policy. OCA Exc. at 9-11.

The OCA contends that achieving a settlement that reflects a compromise of the Parties' litigation positions on the UVE appraisals is not in conflict with Section 1329. However, the OCA states, the ALJ's recommendation posits that the Settlement is illegal because the Settlement Parties agreed to a ratemaking rate base that was not equivalent to Aqua's proposed ratemaking rate base. OCA Exc. at 9 (citing R.D. at 10-11). According to the OCA, the ALJ misread the Joint Petition as a mere arbitrary agreement to a \$29,900,000 ratemaking rate base for the to-be-acquired system assets. In contrast, the OCA submits, this agreed-upon ratemaking rate base reflects a reasonable compromise between the litigants' on-the-record positions as to the adjustments to the UVE appraisals, which was the result of extensive, good faith settlement negotiations. The OCA proffers that, although the OCA addressed its recommended adjustments based on substantial evidence at length in its Main Brief, the ratemaking rate base value agreed to by the Settlement Parties is the result of compromise as to the adjustments of the UVE appraisals. OCA Exc. at 9 (citing OCA M.B. at 29-47).

The OCA insists that 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. Additionally, the OCA reinforces its position that 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, while simultaneously establishing a rate gradualism outcome that is overall consistent with the OCA's litigation position in this matter. The OCA restates that its expert witness, Mr. Garrett, recommended adjustments to the FMV appraisals, which resulted in a \$19,628,354 valuation. The OCA further restates that the proposed ratemaking rate base under the Settlement is \$11.35 million less than requested by the Company and approximately \$10.3 million more than the OCA's litigation position. OCA Exc. at 11 (citing Settlement at ¶¶ 39-42).

The OCA argues that the ALJ erred in recommending the rejection of the Settlement, with no discussion of the Parties' compromise as to the agreed upon ratemaking rate base value or the other important issues addressed in the litigation. OCA Exc. at 10.

**c. OSBA Reply Exceptions**

In Reply to City Exception No. 2, the I&E Letter, and OCA Exception No. 2, the OSBA argues that the Commission's policy encouraging settlements does not overcome the Joint Petition's violation of Section 1329 of the Code. The OSBA states that Section 1329(c)(2) of the Code, 66 Pa.C.S. 1329(c)(2), requires the Joint Petition to have a ratemaking rate base that is the lesser of the FMV or the purchase price of the City's wastewater system. According to the OSBA, no Commission policy can override the failure of the signatories to follow the requirements of Section 1329(c)(2). R. Exc. at 13-14.

**5. Disposition**

As an initial matter, we find that the ALJ erred by introducing a theory not raised by any of the Parties, and recommending the disposition of a non-jurisdictional issue in the Recommended Decision without the opportunity for the Parties to brief or argue this issue. Accordingly, we shall grant Aqua Exception No. 1, in part, to the extent that the Company requests that we decline to adopt the Recommended Decision.

The Commonwealth Court's decision in *Malone, supra*, is instructive on this matter:

Our state supreme court has explained in [*Hrivnak*] that, while it is among the functions of the trial court to clarify the issues, that function does not cast it in the role of advocate.

Accordingly, the *Hrivnak* Court held that it was error for a trial judge to introduce theories not raised by the parties. The dictates of *Hrivnak* are equally applicable here. Indeed, the issue was not only raised *sua sponte*, but was raised after the record was closed and without notice to the Department.... We have previously held that raising issues *sua sponte* after the record is closed and without notice to the parties constitutes a due process violation. *See Somerset Mental Retardation Unit v. Sanders* [483 A.2d 1018 (Pa. Cmwlth. 1984)].

*Malone*, 520 A.2d at 122. *See also Omatick v. Cecil Twp. Zoning Hearing Bd.*, 286 A.3d 413 (Pa. Cmwlth. 2022) (*Omatick*); and *Society*, *supra*.

In *Omatick*, the Commonwealth Court more recently explained that it has long been held that a court may not raise an issue, *sua sponte*, that does not involve the court's subject matter jurisdiction. *Omatick*, 286 A.3d at 431. *Sua sponte* consideration of an issue deprives counsel of the opportunity to brief and argue the issue, and of the presiding body's benefit of counsel's advocacy. *Id.* Moreover, the *Omatick* court reiterated that raising issues, *sua sponte*, after closing of the record and without notice to the parties constitutes a due process violation. *Id.*

Although the relevant appellate caselaw pertaining to the raising of *sua sponte* issues resulted from trial court proceedings, we believe the same principle is applicable to the Commission's administrative litigation procedure before a presiding officer because it implicates procedural due process concerns. Here, no Parties raised the argument that Paragraph 39 of the Settlement is a violation of the Code and unenforceable. Indeed, the OSBA, the only Party that opposed the Settlement, did not raise this issue in its Main Brief or in its Brief in Opposition to the Settlement. Rather, the ALJ applied this ruling without any apparent notice to the Parties in the Recommended Decision, after the close of the record.

Moreover, the legal principle set forth in the Recommended Decision did not implicate the Commission's subject matter jurisdiction. That is, the application of Section 1329(c) did not involve a question of whether the Commission had the authority to hear the type of case presented. There is no question the Commission has the authority and responsibility to hear and resolve proceedings under the Code, including Section 1329 proceedings. Thus, the question of whether the Commission has the authority to proceed in addressing the Application was not in question. Instead, the ALJ interpreted the Settlement as being violative of a specific provision of the Code, without any prior notice to the Parties. Concerns of fundamental fairness and due process require us to address this defect.

Accordingly, we shall vacate the Recommended Decision. In some situations, the raising of an issue, *sua sponte*, might necessitate a remand to address the merits of the argument. *See Malone*, 520 A.2d at 122. As previously noted, we stress that the presiding officers in a Commission proceeding should endeavor to fully develop the record on any pertinent issues. In this case, the failure to have the Parties address this relevant issue may have put the Commission under a time constraint, in light of Section 1329(d)(2) of the Code, 66 Pa.C.S. § 1329(d)(2), pertaining to the six-month deadline for issuing a final order on the Application. However, we do not find a remand to be necessary under the circumstances of this case. Thus, we shall address this argument in the disposition below.

Upon review of this issue, we find that the Recommended Decision conflicts with the weight of significant Commission precedent and that the Settlement does not violate Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2). As summarized in Aqua Exception No. 2, City Exception No. 1, I&E's Exception Letter, and OCA Exception Nos. 1 and 3, *supra*, numerous Commission decisions have approved settlements in Section 1329 applications where the settling parties proposed a ratemaking rate base that was within the range of litigation outcomes developed on the record

regarding the FMV of the subject system. *See PAWC-York, East Norriton, Exeter, Steelton, Sadsbury, McKeesport, and BASA.* Additional Commission decisions have determined that Section 1329 contains no prohibitions on the ability of the parties or the Commission to review UVE appraisals as to their reasonableness and to make or adopt adjustments to the approved rate bases. *See New Garden, Limerick, Cheltenham, Lower Makefield, and Willistown.* In the Recommended Decision, the ALJ did not address any of these decisions.

The OSBA attempts to distinguish these cases by arguing that in each case, the FMV of the selling utility was ultimately equal to the ratemaking rate base dollar amount. The OSBA appears to assert, however, that in this matter, none of the record evidence as to the amount of the FMV was equal to the settled ratemaking rate base value of \$29.9 million. Thus, the OSBA submits that the ALJ correctly ruled that the Joint Petition was unlawful on its face, violated Section 1329(c)(2) of the Code, and properly recommended that the Settlement be rejected. R. Exc. at 11-12.

We disagree with the OSBA that the cases cited by the Settlement Parties are distinguishable. Rather, in each of the settled cases, the approved rate base value resulted from an evaluation of the litigated positions of the parties and a Commission determination that the negotiated rate base value fell within the range of likely outcomes if the cases were fully litigated.

Here, Aqua, the City, the OCA, and the OSBA all presented evidence regarding the FMV of the system, beginning with the UVE testimony of the Company's witness in the amount of \$40,199,347, and of the City in the amount of \$44,292,000. The average of the two FMV appraisals was \$42,245,674. Additionally, I&E did not oppose Aqua's proposed ratemaking rate base of \$41,250,000, which Aqua and the City negotiated as the purchase price. The OCA's witness testified that the FMV should be adjusted to \$19,628,354, and the OSBA submitted that the ratemaking rate base should

not exceed \$8,454,113. Aqua M.B. at 33, 39-40; Aqua St. 5 at 13; Aqua St. 6 at 13; I&E St. 2 at 5; OCA St. 2 at 5; and OSBA St. 1 at 9. Thus, there is clear evidence of a range of litigation outcomes developed on the record regarding the FMV of the subject system.

Despite this evidentiary range of litigation positions, the OSBA apparently argues that the Settlement still violates Section 1329(c)(2) because there is no record evidence referencing the actual final negotiated ratemaking rate base amount of \$29.9 million. The Commission has never applied Section 1329(c)(2) in such a constricted manner so as to prohibit a compromise by the parties of their litigated positions.

Moreover, the record evidence contains discussions of the negotiated rate base amount. In its Statement in Support, the Company averred that: “[t]he 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 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.” Aqua Statement in Support at 15-16. Additionally, Aqua responded to the OSBA’s opposition to the Settlement by stating: “[u]nder 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.” Aqua R.B. at 2.

Both I&E and the OCA also referenced the agreed-upon ratemaking rate base in their respective Statements in Support. For example, I&E explained, as follows:

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,[sic] 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 [\*\*\*] for the ratemaking rate base is both warranted and in the public interest. Further, this \$29,900,000 [\*\*\*] 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.*

I&E Statement in Support at 6 (emphasis added).

The OCA, in its Statement in Support, further asserted that:

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.

OCA Statement in Support at 5.

In summary, we disagree with the ALJ's conclusion in the Recommended Decision that the Settlement "is silent regarding the FMV of the Beaver Falls wastewater system." R.D. at 9. Rather, it appears evident that the ratemaking rate base contained in the Settlement was a carefully considered compromise between the litigants' positions as to the adjustments to the UVE appraisals. Consistent with the long-established precedent involving Section 1329 proceedings and with the Commission's authority to make and

approve adjustments to the appraisal results of the UVEs in order to establish fair market value, we find that the Settlement does not violate Section 1329(c)(2) of the Code.<sup>34</sup>

Specifically, as discussed further below, we find that the negotiated FMV of the System, of \$29.9 million, is in the public interest. In other words, the approved FMV for purposes of Section 1329(c)(2) is \$29.9 million. This amount represents the ratemaking rate base because it is the lesser of the negotiated purchase price or the FMV, as adjusted by the Settlement Parties and adopted by the Commission.

Accordingly, we shall grant Aqua Exception No. 2, City Exception No. 1, and OCA Exception No. 3.<sup>35</sup>

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<sup>34</sup> See *e.g.*, *New Garden* at 35 (“[W]e find that Section 1329 permits the Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the UVEs.”); and *Cheltenham* at 39 (“Section 1329 contains no prohibitions on the ability of parties or the Commission, to review UVE appraisals as to their reasonableness and, accordingly, propose, or adopt adjustments to the UVE appraisals.”).

<sup>35</sup> We shall also grant OCA Exception No. 1, in part, regarding the argument that the legal conclusions set forth in the Recommended Decision run contrary to Section 1329 and prior Commission Orders. However, we decline to address the remainder of OCA Exception No. 1, pertaining to the *2024 FSIO*, noting the execution of the original APA in 2021 and that the *2024 FSIO* was not intended to impose retroactive requirements. See *2024 FSIO* at 114. Additionally, the remainder of the issues regarding substantial evidence in the record to support the Settlement and the public interest analysis of the Settlement are addressed below. Accordingly, we shall decline to address the remainder of the Exceptions of the Settlement Parties in Aqua Exception No. 3, City Exception Nos. 2 and 3, and OCA Exception No. 2. In our view, we find that the arguments contained therein are moot because we have vacated the Recommended Decision and are analyzing these issues, in the remaining sections below. As a final matter, we note that I&E’s Exceptions Letter does not contain a request for relief and, although we have addressed the arguments contained in the filing, no formal disposition is deemed necessary.

## **F. Section 1102 and 1103 Approvals**

### **1. Fitness**

Pursuant to Section 1103 of the Code, 66 Pa.C.S. § 1103, Aqua must show that it possesses the technical, legal, and financial capability to own and operate the assets it seeks to purchase from Beaver Falls. *Seaboard Tank Lines*, 502 A.2d 762; *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958). As to legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission Orders and Regulations. As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. As to technical/managerial fitness, Aqua must have sufficient staff, facilities, and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982). As a certificated public utility, Aqua benefits from a rebuttable presumption that it possesses such requisite fitness. *South Hills Movers*, 601 A.2d 1308; 66 Pa.C.S. § 1329.

Upon review of the record, we agree that Aqua has proven that it is technically, legally, and financially fit to acquire Beaver Falls' System. As the Company pointed out, no Party disputed or challenged Aqua's technical, legal, and financial fitness to render wastewater service. In addition, Aqua is a public utility regulated by the Commission, with a good compliance history, and there are no pending legal proceedings that would suggest that the Company is not legally fit to provide service to customers on the City's System. Aqua has also demonstrated on the record that it possesses the requisite financial and technical fitness to provide safe, adequate, and reasonable service to its customers. Regarding financial fitness, Aqua has demonstrated that it will have access to the financial resources of Aqua PA and Essential Utilities. Aqua M.B. at 13-14.

## 2. Affirmative Public Benefits

With respect to evaluating whether the acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition, as set forth in the Commonwealth Court’s decision in *McCloskey*, our obligation in performing “the balancing test under Section 1102 of the Code [is] to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.” *McCloskey*, 195 A.3d at 1066 (applying *City of York*). We are further “charged with deciding whether the impact of rates ... is outweighed by ... other positive factors that ... served [as] a substantial public benefit.” *Id.* at 1067. Moreover, the Pennsylvania Supreme Court has explained that “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Popowsky*, 937 A.2d at 1061, n.21. The Commission has consistently applied this balancing test for evaluating whether to issue Certificates in Section 1329 proceedings. *See e.g., Cheltenham, Application of Pennsylvania-American Water Company – Valley Township*, Docket Nos. A-2020-3019859 and A-2020-3020178 (Opinion and Order entered October 28, 2021), and *Lower Makefield*.

As noted by Aqua in its Statement in Support, in the seminal Section 1329 case in *McCloskey*, the Commonwealth Court considered the Commission’s findings that the applicant in that proceeding, as an owner of numerous water and wastewater systems, had sufficient expertise and ability to raise capital to support system operations. The Court also acknowledged the finding that the Commission has a policy in support of consolidation and regionalization of wastewater system assets that allows for increased maintenance, upgrade, and expansion of public sewer and water facilities. In its rationale, the Court stated that these Commission findings were of the type that the Pennsylvania Supreme Court in *Popowsky* held were sufficient to meet the Section 1103 public benefit standard. “As 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 (emphasis added). *See also* Aqua Statement in Support at 4-5.

As discussed in Section II.B.2, *supra*, recently, the Commonwealth Court in *Cicero* reversed a Commission Order that had approved the acquisition of a municipality’s wastewater assets by a large public utility under 66 Pa.C.S. § 1329 because the benefits did not outweigh the acknowledged harms of the acquisition. The Court in *Cicero* upheld prior precedent that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. The Court further explained that where harms result from the transaction, the acquisition must also provide benefits that differ substantially from those already being provided by the existing system operator, and providing the same services that 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*. Also, the Court stated that public benefits arising from aspirational statements or those benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms. *See Cicero* at 19-21.

Aqua argued that the transaction benefits the public-at-large by promoting the Commission’s policy favoring regionalization and consolidation of water and wastewater systems and the public policy goals in 66 Pa.C.S. § 1329. Aqua M.B. at 14. Indeed, the Commission supports the consolidation and regionalization of water and wastewater system assets. To that end, in the *Final Policy Statement on Acquisitions of*

*Water and Wastewater Systems*, Docket No. M-00051926 (Order entered August 17, 2006) (*2006 Final Policy Statement*), the Commission stated:

[A]cquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development and provide environmental enhancements. We strongly believe that these types of acquisitions generally serve public policy goals....

*2006 Final Policy Statement* at 18.

After enactment of Section 1329, the Commission emphasized similar public policy goals. The Commission explained that Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. *See generally, Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered July 21, 2016) (*TIO*); and *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered September 20, 2018) (*TSIO*). Specifically, the Commission noted that there are a number of water and wastewater systems owned by municipal corporations or authorities throughout the Commonwealth where sale to an investor-owned public utility can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. *TIO* at 2. Additionally, the Commission explained that:

[t]he development of water and wastewater service throughout the Commonwealth over the years has led to the creation of large numbers of geographically dispersed water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to a larger, well-capitalized and well-run regulated public utility or entity

can be prudent because it can facilitate necessary infrastructure improvements and access to capital markets, and, ultimately, it can ensure the long-term provision of safe reliable service to customers at reasonable rates.

*TSIO* at 4.

The acquisition before us in the instant Opinion and Order is no exception to these principles. Furthermore, the analysis set forth in *City of York, McCloskey, Popowsky*, and *Cicero* is equally applicable in this proceeding. Therefore, we shall further evaluate whether Aqua has established that the substantial affirmative benefits of the proposed acquisition outweigh the acknowledged harms resulting from it. Our evaluation will consider whether the Company has satisfied the preponderance of the evidence standard with the understanding that it is not required to secure legally binding commitments, nor quantify benefits if impracticable, burdensome, or impossible. *See Popowsky* at 1057; *Cicero* at 19-21. Additionally, an integral part of our review must include full consideration of the harms of the acquisition on the existing customers of Aqua and Beaver Falls, and the public-at-large.

Pursuant to Sections 1102 and 1103 of the Code, 66 Pa.C.S. §§ 1102 and 1103, we agree with Aqua and the Settlement Parties that, based upon the record evidence in this particular instance, the acquisition has substantial affirmative public benefits that outweigh the potential harms resulting from the acquisition. Therefore, we will grant the Application, as amended by the Settlement.

As Aqua stated, the acquisition of the Beaver Falls System will not only result in regionalization and economies of scale for both Aqua and the City's customers, but will also result in better management practices, protective customer service programs, and technological advancements for Beaver Falls' customers. Additionally, the

transaction will resolve significant safety and operational deficiencies with the Beaver Falls System, including:

- 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;
- 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 Supervisory Control and Data Acquisition (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.

Aqua M.B. at 16-19; Aqua St. 3 Supp. at 12-39.<sup>36, 37</sup>

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<sup>36</sup> Aqua Statement 3 Supp. is the Supplemental Direct Testimony of Mr. Zach Martin; pages 12-39 contain unredacted testimony designated as “Confidential” and “Highly Confidential.” However, the summary discussion of this testimony above in this Opinion and Order has not been designated as either “Confidential” or “Highly Confidential” by the Parties. *See* Aqua Statement in Support at 8-9; and Aqua M.B. at 19.

<sup>37</sup> The safety deficiencies pertaining to the City’s WWTP set forth in the testimony of Aqua’s witness, Mr. Martin, are indeed concerning. Based on his approximately ten visits to the WWTP, Mr. Martin testified that: “I did not feel safe, and we would not allow Aqua employees to work at the WWTP under the current conditions.” Aqua St. 3 Supp. at 11. Additionally, Mr. Martin testified that many of the treatment issues identified at the WWTP present risks to millions of downstream users in the Beaver and Ohio River valleys. Aqua St. 3-R at 12.

In addition to these safety concerns, the transaction also addresses environmental deficiencies with the Beaver Falls System. Aqua identified problems with the treatment process that present a health risk to the downstream public water system and users in the Beaver and Ohio River valleys. The Company stated that the System has experienced more recent violations, such as total suspended solids (TSS) effluent violations in December 2022, and February and March 2023, and a fecal coliform violation in June 2023. Beaver Falls also did not submit discharge monitoring reports (DMR). Also in 2024, the Pennsylvania DEP issued a notice of violation to the City for violations of its National Pollutant Discharge Elimination System permit, including TSS violations in October and November 2023 and April and May 2024, fecal coliform violation in April 2024, and pH violation in January 2024. Aqua M.B. at 20; Aqua St. 2-R at 4-5.

Aqua plans to spend approximately \$10.2 million to make the necessary improvements to the System. Some of the Company's initial work includes upgrades to the WWTP, including improvements to filter tower No. 1 and sludge collectors, along with electrical work associated with the SCADA systems to provide greater assurance of continued process control and compliance. Aqua also plans to complete headworks upgrades and gas to liquid chlorine conversion to improve safety. The Company will rehabilitate or replace the gravity collection system pipe based on an assessment of pipe age and condition. Aqua will work with the City and the DEP to address inflow and infiltration and sanitary sewer overflows within the System. Aqua's Information Technology systems will also provide advanced cybersecurity protection, to protect customer information and defend against cyber intrusions into operating systems. Aqua M.B. at 22; Aqua St. 2 at 8; Aqua St. 3 at 9.

Aqua will provide numerous improvements to the System's service, including: (1) enhanced customer service through call centers; (2) customers with payment issues will have the option to enter into a deferred payment arrangement to help

pay off unpaid balances, and for those that meet eligibility requirements, they may participate in Aqua's low-income programs; and (3) low-income City customers will have access to Aqua's CAP. Aqua M.B. at 23-25; Aqua St. 3 at 5; Aqua St. 3-R at 17-18; Aqua St. 9-R at 3-4.

We recognize that this acquisition will result in rate increases for Beaver Falls' customers, and potentially Aqua's customers as well. However, it is informative to review the City's current rates, which are approximately \$33.38 a month for residential customers, or \$100.13 per quarter. This estimated monthly bill is lower than the tariffed wastewater rates for other major regulated wastewater utilities in the Commonwealth. *See* Aqua St. 1-R at 5; *see also Application of Aqua Pennsylvania Wastewater, Inc. under Sections 1102, 1329, and 507 of the Public Utility Code for Approval of the Acquisition of the Wastewater System Assets of the Greenville Sanitary Authority*, Docket No. A-2023-3041659 (Opinion and Order entered December 20, 2024) (*Greenville*) at 64.<sup>38</sup> We find this low monthly rate to be indicative of a wastewater system which has been neglected. *Greenville* at 64. As the evidence in this proceeding indicates, the System is in need of rehabilitation, whether from the City or Aqua. Moreover, Beaver Falls customers would see rate increases under City ownership. Aqua M.B. at 29. We note the Settlement provides a rate gradualism plan to alleviate rate shock for the Beaver Falls customers. Pursuant to the Settlement, in its first base rate case that includes the

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<sup>38</sup> In *Greenville*, the Commission provided the comparative example of Pennsylvania-American Water Company's Zone 1 Wastewater Rate, which is approximately \$133. *Greenville* at 64, n.17 (citing Pennsylvania-American Water Company Supplement No. 52 to Tariff Wastewater Pa. P.U.C. No. 16, Ninth Revised Page 11.1). For example, the Pennsylvania-American Water Company's Zone 1 Wastewater Rate is \$2.9539 per 100 gallons, with a \$15.00 monthly fixed service charge. Utilizing this rate and the Beaver Falls' average monthly residential usage of 3,161 gallons, the average City customer bill is approximately \$108.37 per month.  $((\$2.9539 \times (3,161/100)) + \$15.00 = \$108.37)$ . *See* Pennsylvania-American Water Company Tariff Wastewater Pa. P.U.C. No. 16, Ninth Revised Page 11.1, effective August 7, 2024.

Acquired Assets, Aqua will propose to limit the average bill increase for a typical residential customer using 3,161 gallons to \$56.00 per month. Settlement at ¶¶ 43-44.

In its objection to the Settlement, the OSBA argues that no substantial affirmative benefits will result from the transaction, contending, in part, that the System is not troubled and that any necessary improvements could be made by the City. Additionally, the OSBA objects to the Settlement due to the alleged significant rate impacts on small business customers. OSBA Brief at 4.

Aqua responded to the OSBA's objections by arguing that the OSBA failed to address the many operational deficits of the System and the potential health and safety risks. Specifically, the Company cited to evidence that the City is unable to resolve the operational deficiencies because it lacks the finances, the experience, and the strategic plan to do so. Aqua M.B. at 23; Aqua St. 4-R at 4; Aqua St. 8-R at 2-4; Aqua St. 3-R at 13-16; Aqua St. 4-R at 3; Aqua St. 4 Supp. at 3; and Aqua St. 3-R at 8.

Regarding the OSBA's rate impact objection, Aqua contends that any rate impacts are outweighed by the benefits of the acquisition. In support, the Company argues that the rate impact percentage highlighted by the OSBA is due, in part, to the low rates the City is currently charging, noting that they are significantly lower than the tariffed rates of major public utilities. Additionally, Aqua contended that rate impacts are but one aspect of the net benefits test, and are not a superseding factor over all other benefits. Aqua R.B. at 10-11.

Upon weighing the OSBA's objections in relation to the record evidence, we find that Aqua has satisfied its burden to demonstrate that there are net affirmative benefits that will result from the transaction. In our view, the instant Application, as amended by the Settlement, represents a prudent option for the System to achieve its much-needed improvements while moving rates toward a more reasonable cost-of-

service. When weighing all these factors, we find that the acquisition has substantial affirmative public benefits which outweigh the rate impact.

## **G. Section 1329 Analysis and Settlement Provisions**

### **1. Purchase Price and Rate Base of Acquired Assets**

The Settlement Parties stipulated that the rate base of the Acquired Assets will be \$29,900,000. Aqua and Beaver Falls agreed to amend the APA, dated October 21, 2021, to reflect a purchase price of \$37,750,000 and to remove the contract termination date. The Settlement stated that Aqua will exclude from its rate base any goodwill resulting from the transaction that is included on its balance sheet. Additionally, the Settlement noted that any debt or equity issued to finance the goodwill shall be excluded from Aqua's ratemaking capital structure for ratemaking purposes. Lastly, the Settlement provided 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 from Beaver Falls' current customers. Settlement at ¶¶ 39-42.

Upon review, and consistent with our disposition pertaining to Aqua Exception No. 2, City Exception No. 1, and OCA Exception Nos. 1 and 3, we find that there is sufficient proof of a public benefit resulting from the proposed acquisition. Accordingly, we shall approve the ratemaking rate base provided in the Settlement.

Aqua contends that consistent with its decision in *New Garden*, the Commission has approved settlements in Section 1329 proceedings where the settlement proposed a ratemaking rate base that differed from the purchase price or FMV of the subject system. As set forth in our discussion in Section II.E.2, above, we agree with Aqua that the Commission has recognized that a settlement term that specified the ratemaking rate base of a system acquired under Section 1329 complies with the statute,

where it falls within the range of litigation positions offered as to the ratemaking rate base.

In this proceeding, Paragraphs 39 and 40 of the Settlement stipulated that the negotiated ratemaking rate base for the Acquired Assets is \$29,900,000, while the negotiated purchase price is \$37,750,000. Accordingly, Aqua requests that the Commission approve the addition of \$29,900,000 to its rate base for the acquisition of the System. We shall approve Aqua's request.

## **2. Rate Gradualism**

According to the Settlement, in Aqua's first base rate case that includes the Acquired Assets, the Company will propose a rate gradualism plan for Beaver Falls' residential customers that limits the rate increase to 68% over existing rates. The Settlement noted the current average bill for the City's residential customers is \$100.13 per quarter or \$33.00 per month at 3,161 gallons. Consistent with Aqua's rate gradualism plan, the Joint Petitioners agreed that in the Company's first base rate case that includes the Acquired Assets, Aqua will propose a rate increase for Beaver Falls' customers not to exceed an average bill of \$168 per quarter, or \$56.00 per month at 3,161 gallons. The Settlement provided that 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 gradualism plan. Further, as set forth in the Settlement, Aqua established that any Section 1311(c) shift of the 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. Finally, the Settlement allowed all Settlement Parties to challenge 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 Beaver Falls. Settlement at ¶¶ 43-47.

We find Aqua’s rate gradualism plan to be in the public interest, as it will move Beaver Falls’ customers toward paying their full cost of service over time. This plan will reduce rate shock for the City’s customers, while mitigating Aqua’s other users from subsidizing customers in Beaver Falls’ service territory.

### **3. Customer Assistance Program**

In the Settlement, the Joint Petitioners agreed that Aqua will contribute \$100,000 to the Company’s Hardship Fund over the next three-year period or prior to the Company’s next base rate case, whichever occurs first.<sup>39</sup> Immediately after closing, the Beaver Falls customers will be eligible for Aqua payment options and customer programs. Within ten days of closing, Aqua will send a welcome letter to the Beaver Falls customers that will include information regarding: (1) payment options; (2) low-income CAP programs; (3) other customer services; and (4) how to locate the rate impact range on Aqua’s website, consistent with the Company’s commitment in the *Aqua 2024 Base Rate Case*. Within fifteen (15) days of a final Commission Order in the instant proceeding, Aqua will provide the OCA with a draft copy of the welcome letter. The OCA, within ten days of receipt of the welcome letter, will provide any suggestions to Aqua, and the Company will consider incorporating those suggestions. Settlement at ¶¶ 48-50.

The Joint Petitioners further agreed that every six months, Aqua will track Beaver Falls customers that are potentially eligible to enroll, or who are enrolled, in the

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<sup>39</sup> This funding commitment is in addition to Aqua’s funding commitment to the Hardship Fund in the Settlement of the *Aqua 2024 Base Rate Case*. Settlement at ¶ 48.

Company's CAP. Aqua will present this information: (1) on a timely basis to regularly held meetings of the Aqua Assistance Collaborative; and (2) in the Company's next base rate case filing, in a format that shows the potential eligibility (based on U.S. Census Data) and enrollment data in six-month increments, beginning from the time of closing through and until the time of filing the rate case. Settlement at ¶ 51.

We find that these Settlement provisions are in the public interest and should be approved. We agree with Aqua's commitment to: (1) contribute an additional \$100,000 to the Hardship Fund; (2) send a welcome letter to Beaver Falls customers with information regarding the low-income programs offered by the Company and how to access and enroll in those programs, if eligible; and (3) track Beaver Falls customers potentially eligible to enroll, or who are enrolled, in the Company's CAP. Indeed, it is clear that Aqua will take the steps necessary to ensure that all Beaver Falls customers are aware of the available low-income programs. Furthermore, Aqua will present a breakdown of CAP enrollment data pertaining to Beaver Falls customers in its next base rate case. Accordingly, we find that these provisions of the Settlement are in the public interest and should be approved.

#### **4. Bulk Services Agreements**

The Settlement provided that the Joint Petitioners agreed to not object to the terms of the bulk wastewater service agreements entered into by Aqua and the Contributing Municipalities, which are included as Exhibits F9 through F15 to the Amended Application. The Joint Petitioners agreed that in future rate cases, the Parties may submit testimony and challenge the agreements and rates for the bulk customers of Beaver Falls. Settlement at ¶ 52.

We find that this Settlement provision is in the public interest and should be approved. We concur with the Joint Petitioners' agreement to not object to the bulk

service agreements. We find that approval of this provision will allow Aqua to offer continuous and seamless bulk service to each of the seven Contributing Municipalities. Additionally, as noted above, this provision reserves the rights of the Joint Petitioners to review and address bulk service rates in future Aqua base rate cases. Accordingly, we find that this Settlement provision is in the public interest and should be approved.

## **5. Other Issues**

### **a. Cost of Service**

The Settlement provided that Aqua, in its first base rate case filed after closing in which it claims the Acquired Assets in rate base, will file a COSS that: (1) removes all costs and revenues associated with the operation of the Beaver Falls system; and (2) includes the Contributing Municipalities as a separate rate class. Settlement at ¶ 53.

We find this Settlement provision is in the public interest and should be approved. We agree with Aqua's commitment, in its first base rate case filed after closing, to file a COSS that does not include operating costs and revenues associated with the Beaver Falls system. By requiring cost of service studies in Aqua's next base rate case, the Commission will be in a better position to evaluate and establish rates for the Company's customer classes (including the separate rate class for the Contributing Municipalities) based on cost causation considerations. This, in turn, will move the rates charged to Beaver Falls customers towards a more accurate and true cost of service, thereby promoting fairness to all of Aqua's customer classes. Accordingly, we find this Settlement provision is in the public interest and should be approved.

**b. Distribution System Improvement Charge**

The Settlement also provided that Aqua will not include System Asset-related investments in the Company's DSIC until a DSIC is collected from Beaver Falls customers. Aqua will be permitted to collect a DSIC from Beaver Falls customers when: (1) the Company files an amended wastewater LTIP that includes the System Assets, which does not re-prioritize other existing commitments in other service areas; (2) the Commission approves the amended LTIP, as may be modified at the Commission's discretion; and (3) the Company files a compliance tariff supplement that incorporates the System Assets and all other systems included in the amended LTIP into the Company's DSIC tariff, including all customer safeguards thereto, no later than the next quarterly DSIC filing after the Commission approves the amended LTIP. Aqua will file the amended LTIP within 180 days of closing. Settlement at ¶ 54.

We agree with Aqua's commitment not to include investments in the System Assets in the Company's DSIC until a DSIC is collected from Beaver Falls customers, upon the Commission's approval of the Company's amended LTIP filing and Aqua's filing of an amended LTIP compliance tariff. This provision will protect existing Aqua customers from the burden of being financially responsible for the System Assets prior to when a DSIC would become applicable to the Beaver Falls customers. Moreover, this provision assures that current DSIC commitments to existing Aqua customers are maintained. We also agree with Aqua's commitment to: (1) in its next base rate case, identify any outside legal fees in the Company's transaction and closing costs under the APA, absent costs incurred by Beaver Falls; and (2) not include easement land rights into its rate base until it acquires easements. Accordingly, we find that this Settlement provision is in the public interest and should be approved.

**c. Transaction and Closing Costs**

The Joint Petitioners also acknowledged that the Application includes a request that Aqua be permitted to claim transaction and closing costs associated with the acquisition of the System Assets. Under this provision, the Joint Petitioners agreed that they will not contest these requests in this proceeding, but they retain their rights to fully litigate their positions in future rate cases when this issue is ripe for review. Aqua will identify the transaction and closing costs associated with this matter when it claims these costs in a future rate case. The Joint Petitioners agreed that this term should not be construed as their preapproval of Aqua's request. Settlement at ¶ 55.

The Settlement also provided that Aqua, in its next base rate case, will separately identify any outside legal fees in the Company's transaction and closing costs under the APA, and any claim by Aqua to recover transaction and closing costs associated with the transaction will not include costs incurred by Beaver Falls. Additionally, the Joint Petitioners agreed that Aqua should not be permitted to include easement land rights into its rate base until it acquires easements. Settlement at ¶¶ 56-58.

We agree with the Joint Petitioners' acknowledgement of the requests made by Aqua in its Application, as permitted under Section 1329.<sup>40</sup> As noted, the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases, and Aqua will identify the transaction and closing costs associated with this matter when those costs are claimed in a future rate case. Accordingly, we find that this Settlement provision is in the public interest and should be approved.

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<sup>40</sup> As noted, *supra*, Section 1329 permits an acquiring utility to include, in its next base rate case, a claim for transaction and closing costs incurred in connection with the acquisition. 66 Pa.C.S. § 1329(d)(1)(iv).

## 6. Disposition

As noted above, it is the policy of the Commission to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Columbia Gas* at 6-7.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *CS Water and Sewer*.

The instant Joint Petition reflects the consensus of the Settlement Parties that the terms and conditions benefit all interested parties, including securing a lower rate increase than might have otherwise resulted from protracted litigation. The Joint Petition resolves the issues necessary for the ultimate resolution of the present proceeding. It also removes several potentially contentious issues that would have prolonged or required further litigation or administrative proceedings. The benefits of approving the Joint Petition are numerous and will result in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Joint Petition provides regulatory certainty with respect to the disposition of issues, which benefits all parties.

We further note that while we do not find it necessary to disfavor or reject a settlement because it is non-unanimous, we also note that there are sound policy reasons to ensure appropriate due process for non-settling parties that do not support the proposed settlement or who wish to continue litigation. The use of a non-unanimous settlement raises the obvious concern that the Commission continue to respect the non-settling parties' right to notice and the opportunity to be heard. Therefore, where a non-unanimous settlement is proposed to resolve litigation, the agency's review of the entire matter should ensure that the evidence and arguments presented by non-settling parties receive full and fair consideration. *See Pa PUC, et al. v. Peoples Natural Gas Company LLC*, Docket No. R-2023-3044549 (Opinion and Order entered September 12, 2024) (*Peoples Natural Gas*); *Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket Nos. P-2024-3049343, *et al.* (Opinion and Order entered February 7, 2025); and *Aqua 2024 Base Rate Case*.

We note that a proceeding's procedural history is significant since it reveals whether and how all the parties, particularly non-settling parties, were afforded due process. Applying this to the instant proceeding, the OSBA, the only party to this proceeding who opposed the Non-Unanimous Settlement, had the opportunity to file opposition to the Settlement and to the Application, as amended by the Settlement. Accordingly, we find that the OSBA has been afforded the appropriate due process through the full and fair notice and opportunity to be heard.

In light of the above, including our analysis of the foregoing Settlement provisions, we find that the Joint Petitioners' proposed Settlement is in the public interest. Therefore, we conclude that the Settlement should be approved by the Commission, without modification. The OSBA submitted that the proposed Section 1329 acquisition is not in the public interest. OSBA Brief at 8. However, we find that the record evidence in this proceeding demonstrates the public benefits of

Aqua's acquisition of the System Assets. Indeed, as noted by Aqua, the Company's acquisition of the System Assets of Beaver Falls, as conditioned by the Settlement, will affirmatively and substantially promote the public interest. Aqua Statement in Support at 4 (citing *City of York, McCloskey, and Cicero*).

## H. Section 507 Approvals

As discussed in Section II.G.3, *supra*, under Paragraph 52 of the Settlement, the Joint Petitioners agreed to not object to the terms of the bulk wastewater service agreements entered into by Aqua and the Contributing Municipalities, which are included as Exhibits F9 through F15 to the Amended Application. The Joint Petitioners also agreed that in future rate cases, the Parties may submit testimony and challenge the agreements and rates for the bulk customers of Beaver Falls. We have approved this provision, finding that it is in the public interest.

Additionally, in the Amended Application, Aqua and the City requested that the Commission approve, if necessary, the Agreement between Aqua and the City (Exhibit B), as well as the New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities (*i.e.*, Exhibits F9-F15), the charitable contribution agreement between Aqua and the City (Exhibit F16), the *pro forma* meter read agreement between Aqua and the Beaver Falls Municipal Authority (Exhibit F17), and the Settlement Agreement entered into by Aqua, the City, and the Municipal Protestants (Exhibit F18).<sup>41</sup> According to the Company, these contracts are necessary for the operation of the system. Aqua further averred that no party opposed the issuance of certificates for these contracts. Aqua M.B. at 57.

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<sup>41</sup> See Aqua St. 1 at 22-24; Aqua St. 1 Supp. at 4; *see also* Aqua Exhibit 2, Amended Application, ¶¶ 5, 25, 69-70.

Therefore, Aqua submitted that these contracts are reasonable, legal, and valid, and that certificates of filing should be issued under 66 Pa.C.S. § 507. Aqua further noted that the Amended Application includes a Capital Lease Agreement, which was disclosed by the City on April 8, 2014 (Exhibit F5). Aqua asserted that the New Wastewater Service Agreements (Exhibits F9-F15) cancel all prior agreements concerning wastewater service between the parties, and, therefore, the Capital Lease Agreement will terminate if it was a valid agreement. Moreover, Aqua stated that by its terms, the Capital Lease Agreement expired December 31, 2024. As such, Aqua submitted that it is not seeking Section 507 approvals with respect to this agreement. Aqua M.B. at 57.

Additionally, Aqua subsequently averred that it is withdrawing its request for the Commission to approve the charitable contribution agreement between the Company and the City (Exhibit F16) under Section 507, and thus, approval of the agreement is no longer sought or required. Aqua Statement in Support of Settlement at 21.

No Parties filed objections to the Section 507 approval requests. Moreover, we note 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. Finding these requests to be reasonable, we approve them without further comment and direct that certificates of filing under Section 507 of the Code shall be issued.

## **I. Other Approvals**

Aqua requested that the Commission acknowledge, in its Opinion and Order, the issuance of all other approvals, certificates, registrations, and relief, if any, under the Code, as may be appropriate. Aqua M.B. at 58.

It is unclear what specific relief the Company is requesting with this general argument. To the extent that Aqua is requesting that we acknowledge our general powers under Section 501 of the Code, 66 Pa.C.S. § 501, we find such an announcement to be unnecessary. Accordingly, we decline to approve the Company's general request.

### **III. Conclusion**

Based on the forgoing discussion, we shall: (1) grant, in part, and render moot, in part, the Exceptions of Aqua, Beaver Falls, and the OCA; (2) vacate the Recommended Decision; (3) adopt the Settlement, without modification; and (4) approve the Application, as amended by the Settlement, all consistent with this Opinion and Order. **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of Aqua Pennsylvania Wastewater, Inc., filed on April 22, 2025, at Docket No. A-2022-3033138, are granted, in part, and rendered moot, in part, consistent with this Opinion and Order.
2. That the Exceptions of City of Beaver Falls, filed on April 22, 2025, at Docket No. A-2022-3033138, are granted, in part, and rendered moot, in part, consistent with this Opinion and Order.
3. That the Exceptions of the Office of Consumer Advocate, filed on April 22, 2025, at Docket No. A-2022-3033138, are granted, in part, and rendered moot, in part, consistent with this Opinion and Order.

4. That the Recommended Decision of Administrative Law Judge F. Joseph Brady, issued on April 10, 2025, at Docket No. A-2022-3033138, is vacated, consistent with this Opinion and Order.

5. That the Joint Petition for Non-Unanimous Settlement of All Issues, filed by Aqua Pennsylvania Wastewater, Inc., the City of Beaver Falls, the Commission's Bureau of Investigation and Enforcement, and the Office of Consumer Advocate, on March 25, 2025, at Docket No. A-2022-3033138, is approved, without modification.

6. That the Application filed by Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 507, 1102, and 1329 of the Pennsylvania Public Utility Code for approval of its acquisition of the wastewater system assets of the City of Beaver Falls on February 17, 2023, and as amended on March 29, 2024, at Docket No. A-2022-3033138, and as modified by the Joint Petition for Non-Unanimous Settlement of All Issues, is approved, consistent with this Opinion and Order.

7. That if Aqua Pennsylvania Wastewater, Inc., and the City of Beaver Falls decide to close on the transaction in accordance with their respective contractual rights and obligations under the Asset Purchase Agreement, as amended, the closing shall not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Amended Application.

8. That pursuant to 66 Pa.C.S. § 1329(c)(2), the ratemaking rate base of the City of Beaver Falls' wastewater System Assets is \$29,900,000.

9. That Aqua Pennsylvania Wastewater, Inc., and the City Beaver Falls agree that the Asset Purchase Agreement dated October 20, 2021, and attached to the Amended Application as Exhibit B, shall be amended to reflect the purchase price of

\$37,750,000, and to remove the contract termination date in the Asset Purchase Agreement.

10. That any goodwill resulting from the transaction described in Ordering Paragraph No. 9 that is included on the balance sheet of Aqua Pennsylvania Wastewater, Inc., 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.

11. That the difference between the purchase price and the allowed rate base, set forth in Ordering Paragraph Nos. 8 and 9, above, shall not be recovered in rate base, nor via amortization, from the existing customers of Aqua Pennsylvania Wastewater, Inc., or from current customers of the City of Beaver Falls.

12. That in the first base rate case that includes the acquired assets of the City of Beaver Falls, Aqua Pennsylvania Wastewater, Inc., shall propose a rate gradualism plan for all of the customers of the City of Beaver Falls to pay their full cost of service over time, and shall propose to limit the base rate increase for the residential customers located within the City's limits of the City of Beaver Falls to an increase of no more than 68% over their existing rates, as reflected in the *pro forma* tariff supplement included in the Joint Petition for Non-Unanimous Settlement of All Issues as Appendix F.

13. That consistent with Ordering Paragraph No. 12, above, the current average bill for the residential customers of the City of Beaver Falls is \$100.13 per quarter, or \$33.00 per month, at 3,161 gallons; and that in the first base rate case to include the Acquired Assets of the City of Beaver Falls, Aqua Pennsylvania Wastewater, Inc., shall propose a rate increase that will increase the average bill for the residential customers of the City of Beaver Falls, not to exceed an average bill of \$168 per quarter, or \$56.00 per month, at 3,161 gallons.

14. That in the first base rate case that includes the Acquired Assets of the City of Beaver Falls, Aqua Pennsylvania Wastewater, Inc., shall propose to limit any shift pursuant to Section 1311(c) of the Public Utility Code, 66 Pa.C.S. § 1311(c), of a revenue requirement deficiency related to the operations of the City of Beaver Falls to no more than is needed to achieve the rate limit stated in Ordering Paragraph Nos. 12 and 13, above.

15. That any proposed shift pursuant to Section 1311(c) of the Public Utility Code, 66 Pa.C.S. § 1311(c), of wastewater revenue requirement to water customers proposed in a base rate case after the first base rate case that includes the Acquired Assets of the City of Beaver Falls shall decline from the Section 1311(c) shift set by the Commission in the first base rate case that includes the Acquired Assets.

16. That the Settlement Parties to the Joint Petition for Non-Unanimous Settlement of All Issues shall have the right to challenge any rates proposed by Aqua Pennsylvania Wastewater, Inc., in any future base rate cases, except that the Office of Consumer Advocate shall not challenge the proposal of Aqua Pennsylvania Wastewater, Inc., to the extent consistent with Ordering Paragraph Nos. 12, 13 and 14, above, in the first base rate case that includes the system of the City of Beaver Falls.

17. That Aqua Pennsylvania Wastewater, Inc., shall 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 the funding commitment of Aqua Pennsylvania Wastewater, Inc., 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 Opinion and Order entered February 7, 2025.

18. That, immediately after the closing of the transaction, the customers of the City of Beaver Falls shall become eligible for all Aqua Pennsylvania Wastewater, Inc., payment options and customer programs.

19. That within ten (10) days following closing of the transaction, Aqua Pennsylvania Wastewater, Inc., shall send a welcome letter to the customers of the City of Beaver Falls 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 Pennsylvania Wastewater, Inc.'s website (including the link) where a customer can find the rate impact range consistent with Aqua Pennsylvania Wastewater, Inc.'s commitment in Paragraph 92 of the Settlement in the proceeding at Docket Nos. R-2024-3047822 and R-2024-3047824, *et al.*, which was approved by the Commission by Opinion and Order entered February 7, 2025. Within fifteen (15) days of the entry of this Opinion and Order, Aqua Pennsylvania Wastewater, Inc. shall provide the Office of Consumer Advocate with a copy of the draft welcome letter; the Office of Consumer Advocate shall provide any suggestions to Aqua Pennsylvania Wastewater, Inc. within ten (10) days of receipt; and Aqua Pennsylvania Wastewater, Inc., in good faith, shall consider incorporation of the suggestions.

20. That every six (6) months following the closing of the transaction, Aqua Pennsylvania Wastewater, Inc., shall track the number of the customers of the City of Beaver Falls who are (1) potentially eligible to enroll in Aqua Pennsylvania Wastewater, Inc.'s customer assistance program (CAP); and (2) who are enrolled in Aqua's CAP. Aqua Pennsylvania Wastewater, Inc. shall provide and present this information on a timely basis to the regularly held meetings of the Aqua Assistance Collaborative. Aqua Pennsylvania Wastewater, Inc. shall 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 shall be based on U.S. Census data.

21. That the Settlement Parties to the Joint Petition for Non-Unanimous Settlement of All Issues waive any objections 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 bulk customers of the City of Beaver Falls in future rate cases.

22. That in the first base rate case filed after the closing of the transaction in which Aqua Pennsylvania Wastewater, Inc., makes a claim for the Acquired Assets in rate base, Aqua Pennsylvania Wastewater, Inc. will file a cost of service study that removes all costs and revenues associated with the operation of the City of Beaver Falls' system. Additionally, in that cost of service study, the Contributing Municipalities of Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough shall be included as a separate rate class.

23. That Aqua Pennsylvania Wastewater, Inc., shall not include system-related investments related to the acquisition in its distribution system improvement charge (DSIC) until Aqua collects a DSIC from the customers of the City of Beaver Falls. Aqua Pennsylvania Wastewater, Inc. shall be permitted to collect a DSIC from customers of the City of Beaver Falls upon: (i) Aqua Pennsylvania Wastewater, Inc.'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 LTIIIP, as may be modified in the discretion of the Commission; and (iii) Aqua Pennsylvania Wastewater, Inc.'s filing of a compliance tariff supplement

which incorporates the system and all other systems included in the amended LTIIP into Aqua Pennsylvania Wastewater, Inc.'s DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIP. The amended LTIIP shall be filed within 180 days of closing of the transaction.

24. That the Settlement Parties to the Joint Petition for Non-Unanimous Settlement of All Issues acknowledge that the Application includes a request that Aqua Pennsylvania Wastewater, Inc., shall be permitted to claim transaction and closing costs associated with the acquisition of the system of the City of Beaver Falls. The Settlement Parties do not contest these requests in this proceeding, but shall retain their rights to litigate their positions fully in future rate cases when this issue is ripe for review. In a future base rate case when these costs are claimed, Aqua Pennsylvania Wastewater, Inc. shall clearly set out and identify all transaction and closing costs associated with this matter. The Settlement Parties' assent to this term shall not be construed to operate as their preapproval of Aqua's request.

25. That the inclusion of outside legal fees, if any, in transaction and closing costs of Aqua Pennsylvania Wastewater, Inc., under the Asset Purchase Agreement shall be separately identified in Aqua Pennsylvania Wastewater, Inc.'s next base rate case, and all parties shall have the right to challenge the reasonableness, prudence, and basis for such fees.

26. That any claim made by Aqua Pennsylvania Wastewater, Inc., to recover transaction and closing costs associated with the transaction shall not include costs incurred by the City of Beaver Falls.

27. That Aqua Pennsylvania Wastewater, Inc., shall not be permitted to include easement land rights into its rate base until it acquires the easements.

28. That the Commission’s Secretary shall issue a Certificate of Public Convenience evidencing the right of Aqua Pennsylvania Wastewater, Inc., under Sections 1102(a)(1), 1102(a)(3), and 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3), and 1329(c)(2), subject to the conditions set forth in this Opinion and Order, to:

- a. acquire, by purchase, the wastewater system assets of the City of Beaver Falls situated within the City of Beaver Falls Eastville Borough, and West Mayfield Borough, Beaver County, Pennsylvania;
- b. begin to offer, render, furnish, or supply wastewater service to the public in the City of Beaver Falls, Beaver County, Pennsylvania; and
- c. allow Aqua Pennsylvania Wastewater, Inc., to incorporate the ratemaking rate base of \$29,900,000 for the City of Beaver Falls wastewater system assets in its next base rate case pursuant to 66 Pa.C.S. § 1329(c)(2).

29. That the Commission’s Secretary shall issue a Certificate of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 507, for each of the following agreements:

- a. Asset Purchase Agreement between City of Beaver Falls, Beaver County, as Seller, and Aqua Pennsylvania Wastewater, Inc., as Buyer, dated October 20, 2021, attached to the Amended Application as Exhibit B, and the following amendments to the Asset Purchase Agreement: (i) the First Amendment to the Asset Purchase Agreement between City of Beaver Falls, Beaver County, as Seller, and Aqua Pennsylvania Wastewater, Inc., as Buyer, dated June 13, 2023; and (ii) the Second Amendment to the

Asset Purchase Agreement between City of Beaver Falls, Beaver County, as Seller, and Aqua Pennsylvania Wastewater, Inc., as Buyer, dated March 24, 2025, both attached to the Joint Petition for Non-Unanimous Settlement of All Issues as Appendix A.

b. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the Borough of Big Beaver, dated December 19, 2023, attached to the Amended Application as Exhibit F9.

c. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the Borough of Eastvale, dated December 4, 2023, attached to the Amended Application as Exhibit F10.

d. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the North Sewickley Township Sewer Authority, dated December 21, 2023, attached to the Amended Application as Exhibit F11.

e. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the Borough of Patterson Heights, dated December 20, 2023, attached to the Amended Application as Exhibit F12.

f. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the Township of White, dated December 6, 2023, attached to the Amended Application as Exhibit F13.

g. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the Township of Patterson, dated December 14, 2023, attached to the Amended Application as Exhibit F14.

h. Wastewater Service Agreement between Aqua Pennsylvania Wastewater, Inc., and the Borough of West Mayfield, dated December 14, 2023, attached to the Amended Application as Exhibit F15.

i. Pro Forma Water Usage Agreement between Aqua Pennsylvania Wastewater, Inc., and the Beaver Falls Municipal Authority, attached to the Amended Application as Exhibit F17.

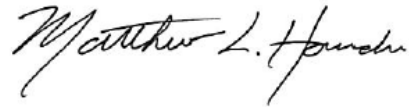
j. Settlement Agreement by and between Aqua Pennsylvania Wastewater, Inc., the City of Beaver Falls, Patterson Township, Patterson Heights Borough, White Township, and West Mayfield Borough, dated December 20, 2023, attached to the Amended Application as Exhibit F18.

30. That, after closing of the acquisition, Aqua Pennsylvania Wastewater, Inc., shall file with the Commission a compliance tariff revision to be effective upon one day's notice, consistent in form and content with the Tariff Supplement attached as Appendix F to the Joint Petition for Non-Unanimous Settlement of All Issues, filed on March 25, 2025, implementing the rates for the City of Beaver Falls customers, post-closing.

31. That Aqua Pennsylvania Wastewater, Inc. shall comply with all directives and conclusions contained in this Opinion and Order that are not the subject of individual ordering paragraphs as if they were the subject of specific ordering paragraphs.

32. That the Commission's Secretary, upon the receipt of written notice from Aqua Pennsylvania Wastewater, Inc., filed with the Secretary's Bureau notifying the Commission of the closing of the acquisition shall mark this docket closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher  
Secretary

(SEAL)

ORDER ADOPTED: June 18, 2025

ORDER ENTERED: June 18, 2025