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May 27, 2026

Via Electronic Mail

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. Conneaut Lake Park Water Corporation, Inc.
Docket Nos. P-2024-3051855, I-2024-3051857


Dear Secretary Homsher:

Enclosed please find Aqua Pennsylvania, Inc.'s ("Aqua") Main Brief in the above-captioned proceeding.

Copies are being served on the Presiding Officer and all parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

BUCHANAN INGERSOLL & ROONEY PC

By: 

John F. Povilaitis, Esquire

JFP/psm
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	P-2024-3051855
Bureau of Investigation and Enforcement	:	I-2024-3051857
	:	
v.	:	
	:	
Conneaut Lake Park Water Corporation, Inc.	:	

MAIN BRIEF OF AQUA PENNSYLVANIA, INC.

BUCHANAN INGERSOLL & ROONEY PC

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I. INTRODUCTION

This proceeding centers around attempts to divest an existing and certificated Pennsylvania water public utility from its ability to continue to serve the public and require another public utility to provide such service. The legal requirements to force such a sale and acquisition are substantial and cannot be supported in this case.

A. THE PARTIES

Conneaut Lake Park Water Corporation, Inc. (“CLPWC” or the “Company”) is a Pennsylvania Public Utility Commission (“PaPUC” or the “Commission”)-regulated rural public water utility serving approximately 165 unmetered full-time, seasonal, and commercial customers in parts of Sadsbury and Summit Townships in Crawford County, Pennsylvania. It holds a valid certificate of public convenience (“CPC”)¹ from the Commission authorizing it to provide public utility water service in portions of the Commonwealth. CLPWC’s system includes a water treatment station utilizing greensand filtration to address naturally occurring contaminants like iron, manganese, and arsenic, with a maximum permitted production rate of 180 gallons per minute (“gpm”). It features two shallow groundwater sources with a combined safe yield of about 300 gpm, a 75,000-gallon elevated storage tank, roughly 2.5 miles of distribution mains made of various materials, control valves, and fire hydrants, serving a small, community-focused service area.²

Aqua Pennsylvania, Inc. (“Aqua”) is the second largest investor-owned regulated water/wastewater utility operating in the Commonwealth of Pennsylvania. Aqua provides water

¹ Under Code Chapter 11, a CPC must be obtained from the Commission before an entity can commence the provision of public utility service in the Commonwealth: “Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth.” 66 Pa.C.S. § 1101.

² Aqua St. No. 2, p. 3.

and wastewater utility service to approximately 530,000 customers – 463,000 water and 68,000 wastewater. Aqua employs approximately 600 highly trained professionals to achieve its mission to provide safe, adequate, reliable utility service at reasonable rates. In addition, Aqua is one of eight regulated water and wastewater subsidiaries of Essential Utilities, Inc. (“Essential”), which brings to bear its own financial, technical, and managerial resources to assist in Aqua’s mission.³

The Commission’s Bureau of Investigation and Enforcement (“I&E”) is the entity established to prosecute actions involving certificated public utilities pursuant to 66 Pa.C.S. §§ 308.2(a)(11)-(12); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutorial in nature to I&E).⁴

The Office of Consumer Advocate (“OCA”) is the entity authorized under Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, to represent the interests of consumers before the Commission.⁵

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.

B. PROCEDURAL HISTORY

On October 28, 2024, I&E filed with the PaPUC a *Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Conneaut Lake Park Water Corporation*,

³ Aqua St. No. 1, pp. 4-5.

⁴ I&E *Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Conneaut Lake Park Water Corporation, Inc.*, Docket No. P-2024-3051855, October 28, 2024, ¶2.

⁵ The OCA and I&E are collectively referred to herein as the “Public Advocates.”

Inc. (“Petition”).⁶ The Petition requested the Commission to open an investigation under Section 529 of the Public Utility Code (“Code”), 66 Pa.C.S. § 529, to determine whether the Commission should order a “Capable Public Utility”, as defined in Section 529(m) of the Code⁷ to acquire CLPWC. According to the Petition, CLPWC is a certificated Pennsylvania small water public utility that is allegedly in violation of various provisions of the Code and the Commission’s regulations and therefore needs to be investigated under the requirements of Code Section 529. Aqua was identified in the Petition as being a potentially capable proximate water service provider to CLPWC.

On November 5, 2024, Aqua filed a Petition to Intervene in this proceeding.

On November 12, 2024, the OCA filed a Notice of Intervention and Public Statement, and an Answer in Support of I&E’s Petition. That same day, the OSBA filed a Petition to Intervene and Public Statement, and CLPWC filed an Answer to I&E’s Petition.

A telephonic Prehearing Conference was held on November 13, 2024, before Administrative Law Judges (“ALJs”) Eranda Vero and Arlene Ashton⁸ during which the parties agreed to engage in discovery and settlement discussions and to provide a monthly status report to the ALJs. Additionally, the OCA repeated its request from its Prehearing Memorandum that a separate settlement judge be assigned to this proceeding, to which the other parties either agreed with or did not object to.

⁶ In 2023, CLPWC filed a rate case with the PaPUC, which was ultimately resolved via a Joint Petition For Approval of Settlement of Rate Proceedings. (*See Pa. Pub. Util. Comm’n et al. v. Conneaut Lake Park Water Corporation, Inc.*, Docket No. R-2023-3041575 *et al.*, Recommended Decision at 8 (Jul. 1, 2024); Recommended Decision adopted by Commission Order August 1, 2024). The Commission-approved settlement contained a provision directing I&E to initiate a Code Section 529 proceeding. I&E then filed a Petition on October 28, 2024 requesting the Commission open an investigation into whether the Commission should order a capable public utility to acquire CLPWC pursuant to 66 Pa.C.S. § 529.

⁷ 66 Pa.C.S. § 529(m).

⁸ On March 28, 2025, a notice was provided that ALJ Vero would be the presiding judge in this proceeding.

On November 15, 2024, CLPWC mailed a Notice of Acquisition Instigation to all its customers via U.S. First Class Mail, pursuant to 66 Pa. C.S. § 529(h). Proof of Notice was filed with the Commission on November 18, 2024.

On November 25, 2024, an Order was entered granting the OCA's request and assigning Administrative Law Judge Gail Chiodo to serve as the settlement judge in this proceeding.⁹

Since December 13, 2024, the parties have submitted multiple Joint Status Reports to the ALJs. As noted in the various Status Reports, the parties have engaged in settlement negotiations, met privately to address possible settlement and participated in an informal settlement conference with ALJ Chiodo on January 16, 2025. Further, on January 21, 2025, CLPWC and Aqua met at CLPWC's water treatment plant for a site inspection and created a capital plan that reflects Aqua's evaluation of the water system.

On March 28, 2025, the Commission issued a Notice indicating that ALJ Vero would be the sole presiding ALJ for the proceeding.

Following several months of discovery and settlement negotiations, the parties filed their Tenth Joint Status Report on September 19, 2025, informing the ALJs that settlement efforts were at an impasse and requesting that a prehearing conference be scheduled.

In an order dated September 24, 2025, the Settlement Judge, ALJ Chiodo, issued an order terminating settlement negotiations among the parties and directing that the proceeding be referred to ALJ Vero for adjudication.

On October 7, 2025, ALJ Vero issued Prehearing Conference Order #2 establishing a further prehearing conference for October 17, 2025.

⁹ That same day, a Corrected Order was issued correcting the Order's service date.

The second prehearing conference was held as scheduled on October 17, 2025. Among other things, the parties discussed the litigation schedule, public input hearings, discovery modifications and the status of Aqua in this proceeding. The ALJ issued Prehearing Order #3 on November 5, 2025 memorializing procedural matters addressed at the October 17, 2025 prehearing conference including, among other things, the establishment of the litigation schedule and the discovery rules applicable to the proceeding.

The Commission issued a Notice of Public Input Hearings (In-Person and Telephonic) on December 3, 2025 for public input hearings to be held on January 21, 2026 in Conneaut Lake, Pennsylvania where witnesses testified.

The evidentiary hearings were scheduled for April 20, 2026 to April 23, 2026 in Harrisburg, Pennsylvania. However, on February 6, 2026, CLPWC filed a Joint Motion to Amend the Litigation Schedule (“Joint Motion”) that was supported by OCA, OSBA, I&E and Aqua.

In Prehearing Order #5 issued February 12, 2026, ALJ Vero granted the Joint Motion and established an amended litigation schedule.

In Prehearing Order #6 issued April 27, 2026, the ALJ amended the litigation schedule to allow certain witnesses to testify via telephone at the evidentiary hearings in lieu of appearing in person.

On April 28, 2026, CLPWC filed a Motion to Strike portions of the OCA’s previously submitted written testimony, to which the OCA filed its Answer on May 1, 2026.

A single evidentiary hearing was held telephonically on May 4, 2026 at which time most of the parties’ testimony and exhibits were moved into the evidentiary record. Certain rejoinder testimony was later accepted into the record subsequent to the May 4, 2026 evidentiary hearing.

In an order issued May 15, 2026, ALJ Vero denied the Motion to Strike and admitted into the evidentiary record the OCA's direct and surrebuttal testimony and exhibits.

This Main Brief is being submitted to accordance with Prehearing Order No. 6, which required, among things, that the parties submit any Main Briefs by May 27, 2026, and any Reply Briefs by June 10, 2026.

II. BURDEN OF PROOF

Code Section 529 is one of the few Code provisions expressly containing its own specific requirements for burden of proof in proceedings initiated under that statutory section:

(i) Burden of proof.--The Bureau of Investigation and Enforcement shall have the burden of establishing a *prima facie* case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section. Once the commission determines that a *prima facie* case has been established:

(1) the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates; and

(2) a proximate public utility providing the same type of service as the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility.¹⁰

I&E has the initial burden of establishing a *prima facie* case under Code Section 529. In the context of this proceeding, I&E must establish that the acquisition of CLPWC by a "Capable public utility"¹¹ like Aqua would be in the public interest and in compliance with the provisions of Code Section 529.

¹⁰ Code Section 529(i), 66 Pa.C.S. § 529(i).

¹¹ Under Code Section 529(m), a "Capable public utility" is "[a] public utility which regularly provides the same type of service as the small water utility or the small sewer utility to 4,000 or more customer connections, which is not an affiliated interest of the small water utility or the small sewer utility and which provides adequate, efficient, safe and reasonable service. A public utility which would otherwise be a capable public utility except for the fact that it has fewer than 4,000 customer connections may elect to be a capable public utility for the purposes of this section regardless of the number of its customer connections and regardless of whether or not it is proximate to the small

Once the Commission determines that I&E has established a *prima facie* case, the burden shifts to two parties – the public utility and potential proximate public utilities. 66 Pa.C.S. § 529(i). CLPWC has the burden of proving its ability to render adequate, efficient, safe, and reasonably service at just and reasonable rates. 66 Pa.C.S. § 529(i)(1). Code Section 529 further allows for a proximate public utility providing the same type of service as the small utility to demonstrate its financial, managerial or technical inability to acquire and operate the small utility. 66 Pa.C.S. § 529(i)(2).

Although I&E bears a statutory burden of proof in a Code Section 529 proceeding pursuant to Code Section 529(i), the Commission has held that this burden is not exclusive to I&E. Rather, any party may present or rebut a *prima facie* case in support of its position in a Code Section 529 proceeding.¹² Here, that is what the OCA did.

“‘Burden of proof’ in Commission proceedings means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party.”¹³ If a *prima facie* case is established, the burden shifts to the utility.¹⁴ However, if the utility cannot rebut the evidence, then the complainant prevails.¹⁵ If the utility can rebut the evidence, the burden then shifts back to the complainant who must rebut

sewer utility or small water utility to be acquired.” Aqua has not contested its status as a “Capable public utility” in this proceeding. Aqua Statement No. 1, p. 7.

¹² *Pa. P.U.C. v. Delaware Sewer Company*, Docket No. P-2014-2404341, 2016 WL 406563 at 27-28 (Pa. P.U.C. Jan. 28, 2016); *Petition of Twin Lakes Util., Inc. for A Comm'n Ord. Authorizing the Acquisition of Twin Lakes Util., Inc. by A Capable Pub. Util. Pursuant to 66 Pa. C.S. § 529 Application of Twin Lakes Util., Inc. for A Comm'n Ord. Nunc Pro Tunc of Serv. Agreement Between Middlesex Water Co. & Twin Lakes Util., Inc., & Five Amends. to Serv. Agreement Between Middlesex Water Co. & Twin Lakes Util., Inc.* Docket No. G-2020-3020941 at 18-19.

¹³ *Petition of Twin Lakes Util., Inc. for A Comm'n Ord. Authorizing the Acquisition of Twin Lakes Util., Inc. by A Capable Pub. Util. Pursuant to 66 Pa. C.S. § 529 Application of Twin Lakes Util., Inc. for A Comm'n Ord. Nunc Pro Tunc of Serv. Agreement Between Middlesex Water Co. & Twin Lakes Util., Inc., & Five Amends. to Serv. Agreement Between Middlesex Water Co. & Twin Lakes Util., Inc.* Docket No. G-2020-3020941, 2021 WL 5448015, at *1 n. 5 (order Entered. Nov. 18, 2021) (citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950)).

¹⁴ *Id.*

¹⁵ *Id.*

the utility's evidence by a preponderance of the evidence.¹⁶ Thus, "[t]he burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant."¹⁷

Any adjudication by the Commission must be supported by substantial evidence in the record.¹⁸ "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion."¹⁹ A mere trace of evidence or a suspicion of a fact are not sufficient to meet the substantial evidence requirement.²⁰

III. SUMMARY OF ARGUMENT

Code Section 529 imposes a heavy burden on those seeking to dispossess an existing certificated public utility authorized by the Commission from continuing to serve the public in accordance with its existing CPC. While Code Section 529 aims to protect public health and ensure reliable service in cases where small utilities are unable to meet statutory and regulatory standards, the Commission must make several key findings *before* it can direct a capable public utility to take over the service obligations of an existing certificated small public utility.

In order for the public utility to take over, the Commission must determine that *all* of the following apply:

- (1) the small utility violates relevant laws or regulations affecting service quality;

¹⁶ *Id.*

¹⁷ *Id.* (citing *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Burleson v. Pa. P.U.C.*, 443 A.2d 1373 (Pa. Cmwlth. 1982))).

¹⁸ *Application of James Black Water Serv. Co. for Approval to Provide Water Serv. to the Pub. in Jefferson Twp., Lackawanna Cnty., Pa.*, Docket No. A-2013-2395443, 2018 WL 1745324, at *5 (Order Entered Apr. 5, 2018) (citing 2 Pa. C.S. § 704).

¹⁹ *Id.* (citing *Consol. Edison Co. of N.Y. v. Nat'l Labor Relations Bd.*, 305 U.S. 197, 229 (1938)).

²⁰ *Id.* (citing *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dep't. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984)).

(2) the small utility has not complied with Department or Commission orders addressing safety, adequacy, or service standards;

(3) the small utility cannot reasonably be expected to provide adequate and safe service in the future;

(4) alternatives to acquisition are impractical or uneconomical;

(5) the prospective acquiring utility is financially, managerially, and technically capable of operating the small utility in compliance with applicable standards; and

(6) the rates charged post-acquisition will not increase unreasonably for customers.

The Public Advocates have failed to demonstrate that CLPWC cannot reasonably be expected to provide adequate and safe service in the future. In addition, the Commission has not properly determined if alternatives to acquisition were impractical or uneconomical prior to considering if a forced acquisition should be ordered. Therefore, the provisions of Code Sections 529(a)(3) and (4) have not been met, and a forced acquisition of CLPWC cannot be ordered by the Commission.

Regardless of whether Aqua is technically, financially, or managerially capable of acquiring and operating CLPWC or whether Aqua is a “capable public utility” at all, CLPWC is fully capable of meeting its service obligations as a public utility in compliance with the Code. The issues CLPWC currently faces do not warrant the extraordinary remedy of being divested of its CPC.

CLPWC is capable of providing adequate, safe, and reliable service and therefore can reasonably be expected to provide adequate and safe service in the future.²¹ Although CLPWC faces operational and infrastructure challenges, it has made progress in addressing past issues, has

²¹ Code Section 529(a)(3), 66 Pa.C.S. § 529(a)(3).

a committed owner, and a clear plan for future improvements that can and should be funded through rate adjustments and loans.

The conditions under Code Section 529 for forced acquisition have not been satisfied because the CLPWC is not in distress, does not have material unresolved compliance issues, and has the ability to serve the public effectively. Consequently, a forced sale or transfer of ownership of CLPWC's assets to Aqua under Code Section 529 is unnecessary. On the contrary, continued operation by CLPWC with appropriate rate relief, selective borrowing and vigilant regulatory oversight is the best course and in the public interest.

IV. DISCUSSION

A. SECTION 529 CRITERIA

The Commission has the power and authority to direct the acquisition of a small water or sewer public utility by another more capable public utility. But the General Assembly has not allowed the Commission to exercise this power – thereby depriving a public utility of the right to serve the public under its existing CPC – without making several specific determinations outlined in Code Section 529:

§ 529. Power of commission to order acquisition of small water and sewer utilities.

(a) General rule.--The commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines:

(1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the

safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

Code Section 529(a), 66 Pa.C.S. § 529(a).²²

Under Code Section 529(a), in order for a public utility to be directed to acquire a small public utility, the Commission must determine that *all* of the following apply:

(1) the small utility violates relevant laws or regulations affecting service quality – Code Section 529(a)(1);

(2) the small utility has not complied with Department or Commission orders addressing safety, adequacy, or service standards – Code Section 529(a)(2);

(3) the small utility cannot reasonably be expected to provide adequate and safe service in the future – Code Section 529(a)(3);

(4) alternatives to acquisition are impractical or uneconomical – Code Section 529(a)(4);

²² Under the plain language of Code Section 529, the Commission has the authority to order a capable public utility to acquire a small water utility “if all six of the requirements in Code Section 529(a)(1)-(6) are met.” *Petition of Twin Lakes Utilities, Inc.*, Docket No. P-2020-3020914 (Order Entered September 17, 2020) (“*Twin Lakes*”). The Commission noted in *Twin Lakes* that because the language of Code Section 529 is plain that all six requirements must be met, there is no need to inquire into the legislative intent of this provision of the Code. See Footnote 4.

(5) the prospective acquiring utility is financially, managerially, and technically capable of operating the small utility in compliance with applicable standards – Code Section 529(a)(5); and

(6) the rates charged post-acquisition will not increase unreasonably for customers – Code Section 529(a)(6).

If any of the six specific findings cannot be made, the Commission cannot direct a capable public utility to acquire a small water or sewer public utility.

At the heart of this proceeding is whether CLPWC’s existing CPC should be terminated, which would be the natural consequence of a Commission determination under Code Section 529 directing Aqua to acquire CLPWC.

Code Sections 1101 and 1102 provide the PaPUC with the authority to grant CPCs relating to the establishment and abandonment of service.²³ And, the authority to address disputes relating to CPCs is vested in the PaPUC.²⁴ Importantly, a CPC issued by the PaPUC is a privilege, not a property right and confers no vested rights upon its holder.²⁵ With that said, the holder of a CPC issued under Code Chapter 11 has a reasonable expectation of the ability to continue to operate as a public utility so long it remains fit to do so.²⁶ These basic and long-standing principles supporting the issuance and revocation of CPCs are clearly embedded in Code Section 529, particularly because of the six required findings the Commission must make before it can compel the acquisition of a certificated small public utility by another certificated utility.

²³ 66 Pa.C.S. §§ 1101-1102.

²⁴ *Borough of Lansdale v. Philadelphia Electric Company*, 403 Pa. 647, 170 A.2d 565 (1961) (stating that PaPUC has initial jurisdiction in matters concerning relationships between public utilities and the public); *Borough of Grove City v. Pennsylvania Public Utility Commission*, 95 Pa.Cmwlth. 188, 505 A.2d 346 (1986) (holding that only PaPUC may alter the extent of a utility’s certificated territory).

²⁵ *Slater v. PA. PUC*, 173 Pa. Super. 404 (1953) (“*Slater*”); *Day v. Public Service Commission*, 312 Pa. 381, 167 A. 565 (Pa. 1933).

²⁶ *Slater*.

i. 66 Pa. C.S. Section 529(a)(1)

Aqua is not addressing this standard.

ii. 66 Pa. C.S. Section 529(a)(2)

Aqua is not addressing this standard.

iii. 66 Pa. C.S. Section 529(a)(3)

As described below, CLPWC's owner and management have demonstrated a commitment to operating and improving the system. The utility has a capital plan, access to funding, and adherence to regulatory standards. These factors affirm that CLPWC is managed and financially capable of ongoing operation.

CLPWC has addressed past operational issues, plans for infrastructure improvements are in place, and no current or foreseeable service inadequacies threaten its ability to provide safe, adequate, and reliable service. Its ongoing efforts and regulatory compliance support continued service viability.

iv. 66 Pa. C.S. Section 529(a)(4)

Aqua did not address this standard in its testimony but presents legal argument that this standard has not been met.

v. 66 Pa. C.S. Section 529(a)(5)

Aqua is not contesting its technical, financial or managerial capability to acquire and operate CLPWC, but does not believe that all six required findings in Code Section 529(a) have been satisfied in this case.

vi. 66 Pa. C.S. Section 529(a)(6)

The current rates for CLPWC are relatively low compared to other public utilities under the PaPUC's jurisdiction. Specifically, CLPWC's:

- Residential customers pay a flat rate of \$38.71 per month;

- Commercial customers pay a flat rate of \$240.00 per month;
- Metered commercial customers are charged \$38.71 per customer charge, plus \$12.90 per 1,000 gallons consumed each month.

In contrast, the comparable rates paid by water customers of other major water public utilities are higher:

- Aqua average Rate Zone 1 monthly residential bill at 4,000 gallons with a 5/8-inch meter of \$93.36 (Original Page 12.1 and 12.2 of Tariff Water-PA P.U.C. No. 4);
- Pennsylvania American Water Company average Rate Zone 1 monthly residential bill at 4,000 gallons with a 5/8-inch meter of \$93.89 (Fifth Revised Page 16 of Supplement No. 50 to Tariff Water-PA P.U.C. No. 5); and
- The York Water Company Schedule A Metered Rates average monthly residential bill at 4,000 gallons with a 5/8-inch meter of \$50.99 (Twenty-seventh Revised Page No. 42 of Supplement No. 169 to Water-Pa. P.U.C. No. 14).

CLPWC's rates are on the lower end relative to similar utilities, which can impact its ability to generate sufficient revenue for infrastructure investments and operations. This assessment suggests that increasing CLPWC's rates to better align with its costs is necessary to support ongoing improvements and long-term service reliability. Such adjustments would help ensure that CLPWC can meet regulatory standards and adequately serve its customers, in addition to bringing its rates closer to regional comparables.

B. WHETHER BASED ON THE ABOVE ANOTHER CAPABLE UTILITY SHOULD BE REQUIRED TO ACQUIRE CLPWC

CLPWC can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future; therefore, a legal prerequisite for Aqua being ordered to acquire the CLPWC water system has not been met.

Aqua's position in this proceeding was concisely articulated by Witness Packer who stated in his Direct Testimony:²⁷

AP [Aqua] is not contesting in this proceeding that it is a "capable public utility" as defined in Section 529(m) or that under Section 529(a)(5) it is not financially, managerially and technically capable of acquiring and operating Conneaut Lake [CLPWC] in compliance with applicable statutory and regulatory standards. Rather, our position is that Conneaut Lake [CLPWC] is fully capable of meeting its service obligations as a public utility in Pennsylvania in compliance with the Public Utility Code and that the issues and challenges it faces are manageable and not so extreme as to warrant AP [Aqua] being directed to take over that utility.²⁸

A Code Section 529 government-directed sale of a privately-owned water utility is an extraordinary governmental action and remedy that should be reserved for situations where service conditions are dire, and customers are threatened with a lack of potable water and/or an insufficient supply of water. As noted above, *all* of the Code Section 529(a) standards must be met before the Commission may order a capable public utility to acquire a small water or sewer utility.

That the legal context of Code Section 529 is the demonstrable presence of a threat to the utility's customers, such as lack of potable water and/or an insufficient supply of water, is clear from the first two of the six standards required to be found by the Commission under Code Section 529(a) *before* it can order an acquisition of a small public utility.²⁹ Code Section 529(a)(1), requires proof that violations of The Clean Streams Law, the Pennsylvania Sewage Facilities Act, or the Pennsylvania Safe Drinking Water Act, have occurred. Similarly, Code Section 529(a)(2) references demonstrating a failure to comply with orders of the Department of Environmental Resources (now Department of Environmental Protection ("PaDEP")) or Orders of the

²⁷ Mr. Packer has extensive experience with the utility ratemaking process, having supported that process for over 20 years with numerous operating subsidiaries of both the American Water Works Company and Essential.

²⁸ Aqua St. No. 1, pp. 7-8.

²⁹ If the small water or sewer utility and the capable utility cannot mutually agree on a purchase price, the Commission "shall" order the capable utility to acquire the company by eminent domain. 66 Pa. C. S. § 529(e).

Commission “concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, *the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure.*”³⁰ (Emphasis added).

Aqua does not dispute that in the past CLPWC has had operational issues and faces challenges in the future. However, finding that CLPWC should be subject to the extraordinary remedy of a forced acquisition, potentially through the exercise of eminent domain, effectively changes and unlawfully expands the statutory standards for the Commission using this remedy and opens the door to large numbers of small water and sewer companies becoming candidates for forced acquisitions. As witness Packer stated:

While we acknowledge that Conneaut Lake [CLPWC] has had some operational issues in the past and will continue to have some challenges prospectively, *Conneaut Lake’s [CLPWC] issues and challenges are not fundamentally different than those confronting regulated water companies in Pennsylvania regardless of their size or the nature of their service territory.* Accordingly, we recommend that the Commission find and conclude that Conneaut Lake [CLPWC] is not a suitable candidate for acquisition under Section 529, that Conneaut Lake [CLPWC] is capable of continuing to provide safe, adequate and reasonable service at reasonable rates, consistent with Pennsylvania law, and that [Aqua] is not obligated to acquire Conneaut Lake [CLPWC] under Section 529.³¹ Emphasis added.

The specific Code Section 529(a) standard that has not been met in this proceeding is subsection (3):

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;³²

³⁰ 66 Pa.C.S. §§ 529(a)(1) and (2).

³¹ Aqua St. No. 1, p. 3.

³² 66 Pa.C.S. § 529(a)(3).

In evaluating the six required Code Section 529 standards, there are also specific “factors” the ALJ and Commission must consider. The factor relevant to Aqua’s argument is, “(1) [t]he financial, managerial and technical ability of the small water or sewer utility.”

Aqua witness Packer addressed CLPWC’s financial capability in detail. First, he observed that CLPWC admitted in discovery specific facts relating to its financial capability:

1. It has or has access to the financial resources, under current Pennsylvania Public Utility Commission standards to presently and, in the future, provide safe, adequate and reasonable utility service at just and reasonable rates to its present and future customers within its existing Pennsylvania Public Utility Commission-authorized service territory.
2. Subject to funding from PennVest and appropriate ratemaking, it has the present and future capability to make the expenditures that may be necessary to maintain and improve its utility system and assets in order to continue to provide water service consistent with the service standards of the Pennsylvania Public Utility Commission to its present and future customers within its existing Pennsylvania Public Utility Commission-authorized service territory.³³

In Mr. Packer’s view, these Admissions highlight a fundamental reality of both large and small water and sewer utilities. Their continued ability to meet their legal service obligations is primarily predicated on adequate funding, typically through sufficient and appropriate rate increases and selective borrowing.³⁴

CLPWC’s Admissions regarding its financial capabilities are far from the only evidence supporting Aqua’s the position that these capabilities are sufficient for the CLPWC to be able to meet its public utility service obligations. For example:

- All of CLPWC’s vendors were paid up to date as of June 30, 2024. (see Aqua Exhibit WCP-3, OCA-II-2).

³³ Aqua Exhibit WCP-2, Aqua Requests For Admission Set 1.

³⁴ Aqua St. No. 1, p. 10.

- CLPWC is in full compliance with all terms and conditions of the Joint Petition for Settlement filed with the Commission at Docket Nos. R-2023-3041575 and P-2023-3042648 relating to system improvements, customer service, funding, customer complaints, regulatory compliance, lead contamination, residential customer metering, etc. (see Aqua Exhibit WCP-4, Aqua-I-1).
- CLPWC has no lead service lines (see Aqua Exhibit WCP-6, Aqua-I-17).
- CLPWC is not aware of any Maximum Containment Level (MCL) exceedances of any contaminants during its ownership of its water system (see Aqua Exhibit WCP-7, OCA-XX-12).
- The net revenue losses for CLPWC of \$109,891 in 2023 and \$76,000 in 2024 (see Aqua Exhibit WCP-8, OCA-III-8) are relatively minimal and can likely be addressed by a combination of further rate increases and low-cost borrowing from sources like PennVest.

CLPWC's last base rate increase, authorized in May of 2024 via a settlement approved by the Commission, was only a \$75,000 increase that produced total revenues of \$102,757. There is no stay out provision in the settlement, so CLPWC is free to file another base rate proceeding when appropriate.³⁵ In Mr. Packer's opinion further rate relief should be able to resolve any doubt that CLPWC is financially able to own and operate its water system for the following reasons: (i) CLPWC needs another base rate increase that adequately meets its annual operating costs, since current rates are deficient or provide negative operating cash flow;³⁶ (ii) CLPWC has advised in discovery that once this current Code Section 529 proceeding is resolved, it expects CLPWC's

³⁵ Aqua St. No. 1, p. 12.

³⁶ Aqua Exhibit WCP-9, OCA-XIX-19.

cash position to stabilize, which would allow it to evaluate another rate increase filing to cover the current negative operating cash position.³⁷

As explained by Mr. Packer's Rebuttal Testimony, Aqua does not claim that CLPWC's system and its current service are fully comparable to Aqua. Contrary to the Public Advocates' assertions, Aqua has not disregarded differences in quality of service between Aqua and CLPWC.

In his surrebuttal testimony, Mr. Packer testified specifically to this unfounded assertion:

Having testified to the benefits of receiving service from Aqua in many PaPUC cases involving water systems acquisitions, I am quite familiar with those benefits and have contrasted them with service from many other water systems in the Commonwealth. *The reasonable service standard for Section 529 purposes is not whether service from Aqua would be better than service from CLPWC. Rather, the relevant inquiry is whether CLPWC cannot be reasonably expected to furnish adequate, safe and reasonable service in the future. This steep obligation has not been met in this case because: (1) CLPWC has an owner that is interested in taking the steps needed to improve the quality of facilities and service, (2) CLPWC has commissioned and received a study to support the improvement of facilities, (3) CLPWC has a plan for obtaining the capital to support infrastructure improvements, and (4) there are no outstanding orders from the Pennsylvania Department of Environmental Protection ("PaDEP") or the Commission finding that CLPWC has disregarded any of their directives materially impacting the provision of adequate and reasonable service. In short, given the Company's plans and intentions, there is no basis for claiming that CLPWC's present or anticipated future service is inadequate, let alone that CLPWC should lose its certificate of public convenience and be forced to sell the Company to another owner.*³⁸ (Emphasis added).

Aqua's testimony makes it clear that: (i) CLPWC is in need of another base rate increase that fully covers the utility's cost of service that is based on a fully projected future test year; (ii) the CLPWC system clearly has some operational issues and needs some investment to repair and replace portions of its current infrastructure; and (iii) the CLPWC system is not currently operated

³⁷ Aqua Exhibit WCP-10, OCA-XV-22.

³⁸ Aqua St. No. 1-SR, pp. 2-3.

up to Aqua's standards. CLPWC is continuing to address issues and is preparing to complete needed improvements.

It is critical for CLPWC's rehabilitation that the Commission timely grant future rate relief to CLPWC. Such rate relief is credible, plausible and necessary given CLPWC's current tangible plans for future investment. As Mr. Packer testified in rebuttal, "[w]hen considering further increases in CLPWC's base rates, it is important to keep in mind the company's starting point for rates. CLPWC's current rates are \$38.71 per month flat rate for residential customers, \$240.00 per month flat rate for commercial customers, and \$38.71 customer charge and \$12.90 per 1,000 gallons per month for metered commercial customers. These rates are low compared to other public utilities under the PaPUC's jurisdiction."³⁹

Aqua does not dispute that its acquisition of CLPWC would not significantly impact the rates of Aqua's current customers. However, that is only one consideration in this proceeding and, unless the PaPUC is able to find that *all* the Code Section 529(a) mandatory requirements have been met, it cannot force a sale of CLPWC to Aqua. CLPWC's current situation does not resemble other situations where this drastic remedy has been deployed by the Commission.

As Mr. Packer stated in response to the I&E and OCA recommendations for a Commission-forced acquisition:

...while the CLPWC system does have some issues, and is not now operating consistent with Aqua's standards, a forced sale of the CLPWC system to Aqua through Section 529 is not the answer in Aqua's opinion. The CLPWC system does not lack an operator and there is no significant contamination event in the system like there was in Emlenton, Venango, or Sun Valley. Moreover, as noted

³⁹ See e.g., Aqua average Rate Zone 1 monthly residential bill at 4,000 gallons with a 5/8-inch meter of \$93.36 (Original Page 12.1 and 12.2 of Tariff Water-PA P.U.C. No. 4); Pennsylvania American Water Company average Rate Zone 1 monthly residential bill at 4,000 gallons with a 5/8-inch meter of \$93.89 (Fifth Revised Page 16 of Supplement No. 50 to Tariff Water-PA P.U.C. No. 5); and The York Water Company Schedule A Metered Rates average monthly residential bill at 4,000 gallons with a 5/8-inch meter of \$50.99 (Twenty-seventh Revised Page No. 42 of Supplement No. 169 to Water-Pa. P.U.C. No. 14). Aqua St. No. 1-R p. 23.

in OCA's Direct Testimony, the only recent exception to CLPWC not meeting federal and state water quality standards was addressed by CLPWC through an adjustment to its treatment processes. As a result, samples are now at or below the Maximum Containment Level ("MCL").⁴⁰ Otherwise, the CLPWC system has been meeting federal and state water quality standards. Finally, *unlike other systems that have been in a Section 529 proceeding where I participated, CLPWC has an owner who appears determined to both operate and make the necessary improvements to provide reliable utility service. As noted above, what CLPWC needs from the PaPUC is some certainty through adequate rate relief.*⁴¹ (Emphasis added).

CLPWC's admitted desire and commitment to continue to operate the Company and make necessary improvements to provide reliable service in the future has importance legal significance. The Commission has held that before it may order an acquisition under Code Section 529(a) it must meet important duties under Section 529(b):

Subsection 529(b) imposes on the Commission two duties which must be discharged before the Commission may conduct a forced acquisition hearing. First, the Commission must dialogue with the small water utility about alternatives to the utility's forced acquisition. Second, the Commission must afford the small water utility a reasonable opportunity for pursuing alternatives to its forced acquisition.

Correlatively, subsection 529(a) empowers the Commission to hold a forced acquisition hearing and to order a capable public utility's acquisition of a small water utility only if 'alternatives to acquisition have been considered in accordance with subsection [529](b) and have been determined by the Commission to be impractical or not economically feasible.'⁴² *The language of subsections 529(a) and 529(b) reveal a legislative determination that it is in the public interest to encourage a small water utility to avail itself of an alternative to a forced acquisition in order to avoid the taking of private property, the costs and the resource commitments engendered by a forced acquisition hearing.*⁴³ (Emphasis added).

⁴⁰ OCA St. No. 1, p. 32.

⁴¹ Aqua St. No. 1-R, pp. 4-5.

⁴² Code Section 529(a)(4), 66 Pa.C.S. § 529(a)(4).

⁴³ *Public Service Water Co. v. Fairview Water Co.*, Docket No. C-00924451 at 5 (Order Entered December 3, 1992), 1992 WL 684910 (1992).

I&E's initiation of a single proceeding to obtain determinations that: (i) there are no alternatives to a forced acquisition, (ii) CLPWC should be acquired by a capable public utility, and (iii) Aqua should be ordered to acquire the Company, completely contradict what the Commission has stated is the legislative intent of Code Section 529. I&E's process used in this proceeding has precluded the Commission from properly exercising its duty under the Code to first consider and determine if there are any alternatives to a forced acquisition.⁴⁴ CLPWC has been required to incur costs to defend itself against a forced acquisition, using resources that are better devoted to improving customer service, before the Commission has properly considered whether there are any alternatives to ordering a forced acquisition by a capable public utility. The alternatives to acquisition listed in Code Section 529(b) do not specifically list the alternative of the small utility improving the reliability of its service, but the statute is clear that the five alternatives to forced acquisition listed are not the *only* alternatives to an acquisition that may be considered.⁴⁵ There is clearly another alternative that CLPWC is already pursuing - obtaining more capital for the system and developing an improvement plan. As a legal matter, the Commission cannot find in this proceeding that the Code Section 529(a)(4) requirement has been met.

While I&E and the OCA may be skeptical of CLPWC actually moving forward with an improvement plan, CLPWC has adequately addressed those concerns. Mr. Packer noted that CLPWC obtained an engineering report on the system that details the needed infrastructure upgrades.⁴⁶ CLPWC now has a capital plan that provides a road map of improvements needed to

⁴⁴ CLPWC's prior rate case, in which Aqua was not a party, cannot serve as a proceeding in which the Commission determined there were no alternatives to a forced acquisition.

⁴⁵ Code Section 529(b) states "the commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but not limited to: [(1)-(5)]" 66 Pa.C.S. §§ 529(b)(1)-(5).

⁴⁶ Aqua St. No. 1-R, p.6; CLPWC St. No. 1, Exhibit D.

apply for Pennvest funding in the future to address system deficiencies. Regarding the engineering report, CLPWC is confident that it could complete the work recommended.⁴⁷

Aqua also addressed the managerial and technical status of the CLPWC system, which is one of the Code Section 529(c)(1) factors to be considered by the PaPUC in making its Code Section 529(a) determination. In addition to Mr. Packer's testimony, Aqua witness Stephen Clark, Aqua's Director of Operations, addressed the Code Section 529(c)(1) managerial and technical factors to consider when a forced acquisition was under review by the Commission. Mr. Clark has testified in multiple Code Section 529 proceedings as well as a Code Section 1329 proceeding before the Commission.⁴⁸

Mr. Clark generally described the CLPWC water system facilities as "typical" of a small rural public water system serving 165 unmetered full-time, seasonal, and commercial customers. The system includes a water treatment station; two relatively shallow groundwater sources (wells) with a combined safe yield of approximately 300 gpm; filtration vessels with a maximum flow capacity of 200 gpm; approximately 2.5 miles of distribution mains; distribution system control valves; fire hydrants; and a 75,000-gallon elevated water storage tank. System production is permitted at an instantaneous maximum rate of 180 gpm due to chlorine contact time limitations.⁴⁹

The CLPWC treatment process utilizes greensand filtration to address naturally occurring concentrations of iron, manganese, and arsenic in the raw water, which exceed applicable primary or secondary maximum contaminant levels. The distribution system consists of pipe constructed of cast iron, steel, plastic, and asbestos cement in varying diameters.⁵⁰

⁴⁷ CLPWC St. No. 2, p. 6.

⁴⁸ Aqua St. No. 2, pp. 2-3.

⁴⁹ Aqua St. No. 2, p. 3.

⁵⁰ *Id.*

Aqua inspected the CLPWC system on January 21, 2025. From that inspection, Aqua developed a capital plan. Aqua evaluated the system through the lens of how Aqua would operate and maintain it if Aqua were the owner. The inspection identified areas where improvements are advisable, and Aqua developed a ten-year capital expenditure plan addressing conditions at the well station, distribution mains, and the system's water storage tank. The plan contemplates approximately \$4.175 million in capital expenditure over a ten-year period,⁵¹ consistent with Aqua's operational and asset management practices.⁵²

Mr. Clark was unaware of any violations by CLPWC of the requirements of the Clean Streams Law, the Pennsylvania Sewage Facilities Act, the Pennsylvania Safe Drinking Water Act and any regulations adopted under those laws that affect the safety adequacy, efficiency or reasonableness of CLPWC's water service. While he was aware that CLPWC has received at least one Notice of Violation ("NOV") from the DEP on January 4, 2024,⁵³ the Company has been working with the DEP to address the issue in the NOV.⁵⁴ Witness Clark further noted that the DEP does not consider its NOVs to be an "order", so it does not appear that CLPWC is in violation of the requirement contained in Code Section 529(a)(2). Moreover, it is his understanding that the PaDEP has not issued any fines or penalties to CLPWC.⁵⁵ The majority of the violations⁵⁶ appear to be related to certain samples that were taken on January 19, 2022, January 26, 2022, January 19, 2023, and a notice requirement from February 21, 2023. It is not uncommon for water systems to occasionally have issues like these, which are often resolved in the ordinary course of business.⁵⁷

⁵¹ Aqua Exhibit SC-1.

⁵² Aqua St. No. 2, p.4.

⁵³ Aqua Exhibit SC-2, OCA-XX-1.

⁵⁴ Aqua Exhibit SC-3, OCA-XX-15.

⁵⁵ Aqua Exhibit SC-4, OCA-XX-16; Aqua Exhibit SC-5, which is list of CLPWC's violations taken from the DEP's website.

⁵⁶ Aqua Exhibit SC-5.

⁵⁷ Aqua St. No. 2, pp. 5-6.

In Mr. Clark's view, based on Aqua's inspection and evaluation of the CLPWC system, there is no reason to believe CLPWC should not be reasonably expected to provide adequate, efficient, safe and reasonable facilities in the future. Although there is an identified long-term need for capital investment to address certain repairs and equipment replacements over an approximate ten-year period, Aqua observed no evidence indicating that CLPWC will be unable to furnish and maintain adequate, efficient, safe, and reasonable service in the future. Rather, with continued rate relief and prudent, selective borrowing, CLPWC can reasonably be expected to continue providing safe, adequate, and reasonable service in fulfillment of its obligations as a public utility.⁵⁸ Further, the OCA recognizes that CLPWC may be meeting operational and regulatory benchmarks.⁵⁹

Regarding CLPWC's managerial ability, Mr. Packer disagrees with I&E witness Walker that the late filing of required Commission reports is sufficient to support a finding that CLPWC lacks managerial ability. Mr. Packer observed that "I firmly believe that all Commission filing requirements should be met timely and information provided to the PaPUC should be accurate and complete." However, regulatory compliance is not an easy task and the current rates of CLPWC do not allow for a robust regulatory compliance staff to make sure no errors occur. Most importantly, when the absence of PaPUC-filed financial reports was brought to the Company's attention, compliance was achieved.⁶⁰

While Aqua could expand its territory to incorporate the CLPWC system, consistent with Mr. Packer's testimony, the best course of action for CLPWC is to continue the current ownership

⁵⁸ Aqua St. No. 2, p. 6.

⁵⁹ OCA St. 1-R, p. 16.

⁶⁰ Aqua St. No. 1-SR, p. 3.

and operation of the system. Any other action would be inconsistent with the legal requirement that the Commission find that *all* six requirements of Code Section 529(a) (1)-(6) have been met.

Finally, the Commission ordering a forced acquisition of CLPWC could result in improvements to customers' services being delayed, which is contrary to the public interest. At this time there is no determination that CLPWC should be acquired by a specific capable public utility, Aqua. Even if that determination is ultimately made by the Commission, in the event Aqua and CLPWC do not reach mutual agreement on an acquisition price, the Commission must under Code Section 529(e) make a further determination directing Aqua to acquire CLPWC under eminent domain.⁶¹

Witness Packer anticipated this issue and highlighted the adverse consequences to customers of the Commission granting the relief sought in the Petition. Mr. Packer noted that "CLPWC is already actively taking steps to improve service to customers and planning for new investment in its system. Those improvements under CLPWC ownership could start to materialize in 2026. However, if this proceeding is fully litigated and concludes with a directive from the PaPUC for Aqua to acquire ownership of CLPWC, under a negotiated price or eminent domain, those improvements could be delayed until 2027 or later."⁶²

Because *all* of the required Code Section 529(a) requirements have not been met, Aqua should not and cannot be directed or required to acquire CLPWC.

C. IF ANOTHER CAPABLE PUBLIC UTILITY SHOULD BE REQUIRED TO ACQUIRE CLPWC, WHICH CAPABLE UTILITY SHOULD BE REQUIRED TO ACQUIRE THE SYSTEM

Since all six of the required Commission findings under Code Section 529(a) cannot be established, no capable public utility should be authorized or directed to acquire CLPWC. As

⁶¹ 66 Pa.C.S. § 529(e).

⁶² Aqua St. No. 1-R, p. 6.

noted above, the current owner's interest and CLPWC's ability – via more realistic rate treatment and selective borrowing – to improve services support continued independent operation of the Company.

D. OTHER FACTORS FOR CONSIDERATION

i. Section 529(e) – Acquisition Price

Aqua and CLPWC have not agreed to an acquisition of CLPWC and, as discussed herein, no such forced acquisition of CLPWC under Code Section 529 should be directed by the PaPUC in this proceeding. Accordingly, no acquisition price for CLPWC should be set in this proceeding.

V. CONCLUSION

For the reasons specified above, Aqua Pennsylvania, Inc. requests that the Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Conneaut Lake Park Water Corporation, Inc. be dismissed and the Commission authorize and direct Conneaut Lake Park Water Corporation, Inc. to continue to provide public utility water service in accordance with its existing Certificate of Public Convenience.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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PROPOSED FINDINGS OF FACT

1. CLPWC is a Commission-regulated rural public water utility serving approximately 165 unmetered full-time, seasonal, and commercial customers in parts of Sadsbury and Summit Townships in Crawford County, Pennsylvania. The system includes a water treatment station utilizing greensand filtration to address naturally occurring contaminants like iron, manganese, and arsenic, with a maximum permitted production rate of 180 gpm. It features two shallow groundwater sources with a combined safe yield of about 300 gpm, a 75,000-gallon elevated storage tank, roughly 2.5 miles of distribution mains made of various materials, control valves, and fire hydrants, serving a small, community-focused service area. Aqua St. No. 2, p. 3.

2. Aqua is the second largest investor-owned regulated water/wastewater utility operating in the Commonwealth of Pennsylvania. Aqua provides water and wastewater utility service to approximately 530,000 customers – 463,000 water and 68,000 wastewater. Aqua employs approximately 600 highly trained professionals to achieve its mission to provide safe, adequate, reliable utility service at reasonable rates. In addition, Aqua is one of eight regulated water and wastewater subsidiaries of Essential Utilities, Inc., which brings to bear its own financial, technical, and managerial resources to assist in Aqua’s mission. Aqua St.. No. 1, pp. 4-5.

3. On October 28, 2024, I&E filed with the PaPUC a *Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Conneaut Lake Park Water Corporation, Inc.* (“Petition”). The Petition requested the Commission to open an investigation under Section 529 of the Public Utility Code (“Code”), 66 Pa. C.S. § 529, to determine whether the Commission should order a “Capable Public Utility”, as defined in Section 529(m) of the Code to acquire CLPWC. According to the Petition, CLPWC is a certificated Pennsylvania small water public utility that is allegedly in violation of various provisions of the Code and the Commission’s

regulations and therefore needs to be investigated under the requirements of Code Section 529. Aqua was identified in the Petition as being a potentially capable proximate water service provider to CLPWC.

4. Subject to funding from PennVest and appropriate ratemaking, CLPWC has the present and future capability to make the expenditures that may be necessary to maintain and improve its utility system and assets in order to continue to provide water service consistent with the service standards of the Pennsylvania Public Utility Commission to its present and future customers within its existing Pennsylvania Public Utility Commission-authorized service territory. Aqua Exhibit WCP-2, Aqua Requests For Admission Set 1.

5. The net revenue losses for CLPWC of \$109,891 in 2023 and \$76,000 in 2024 (see Aqua Exhibit WCP-8, OCA-III-8) are relatively minimal and can likely be addressed by a combination of further rate increases and low-cost borrowing from sources like PennVest. Aqua Exhibit WCP-8, OCA-III-8.

6. CLPWC's vendors were paid up to date as of June 30, 2024. Aqua Exhibit WCP-3, OCA-II-2.

7. CLPWC is free to file another base rate proceeding when appropriate. There is no stay out provision in CLPWC's last rate case settlement. Aqua St. No. 1, p. 12.

8. CLPWC requires another base rate increase that adequately meets its annual operating costs, because current rates are deficient or provide negative operating cash flow. Aqua Exhibit WCP-9, OCA-XIX-19.

9. Once the current Code Section 529 proceeding is resolved, the Company's cash position will stabilize, allowing CLPWC to evaluate another rate increase filing to cover the current negative operating cash position. Aqua Exhibit WCP-10, OCA-XV-22.

10. CLPWC has commissioned and received a study to support the improvement of facilities, the Company has a plan for obtaining the capital to support infrastructure improvements, and there are no outstanding orders from the Pennsylvania Department of Environmental Protection (“PaDEP”) or the Commission finding that CLPWC has disregarded any of their directives materially impacting the provision of adequate and reasonable service. Aqua St. No. 1-SR, pp. 2-3.

11. CLPWC is in need of another base rate increase that fully covers the utility cost of service that is based on a fully projected future test year. Aqua St. No. 1-R, p. 2.

12. CLPWC’s current rates are \$38.71 per month flat rate for residential customers, \$240.00 per month flat rate for commercial customers, and \$38.71 customer charge and \$12.90 per 1,000 gallons per month for metered commercial customers. These rates are comparatively low to other public utilities under the PaPUC’s jurisdiction. Aqua St. No. 1-R, p. 23.

13. The only recent exception to CLPWC not meeting federal and state water quality standards was addressed by CLPWC through an adjustment to its treatment processes. Otherwise, the CLPWC system has been meeting federal and state water quality standards. OCA St. No. 1, 32.

14. CLPWC has an owner who appears determined to both operate and make the necessary improvements to provide reliable utility service. Aqua St. No. 1-R, pp. 4-5.

15. CLPWC has a capital plan that provides a road map of improvements needed to apply for PennVest funding in the future to address system deficiencies. CLPWC is confident that it could complete the work recommended in its engineering report. CLPWC St. No. 2, p. 6.

16. The CLPWC water system facilities are “typical” of a small rural public water system serving 165 unmetered full-time, seasonal, and commercial customers. Aqua St. No. 2, p. 3.

17. There are no violations by CLPWC of the requirements of the Clean Streams Law, the Pennsylvania Sewage Facilities Act, the Pennsylvania Safe Drinking Water Act and any regulations adopted under those laws that affect the safety adequacy, efficiency or reasonableness of CLPWC’s water service. Aqua Exhibit SC-2, OCA-XX-1.

18. Based on Aqua’s inspection and evaluation of the CLPWC system, there is no reason to believe CLPWC should not be reasonably expected to provide adequate, efficient, safe and reasonable facilities in the future. There is an identified long-term need for capital investment to address certain repairs and equipment replacements over an approximate ten-year period, However, there is no evidence indicating that CLPWC will be unable to furnish and maintain adequate, efficient, safe, and reasonable service in the future. With continued rate relief and prudent, selective borrowing, CLPWC can reasonably be expected to continue providing safe, adequate, and reasonable service in fulfillment of its obligations as a public utility. Aqua St. No. 2, p. 6.

19. A forced acquisition of CLPWC that requires a further proceeding to determine the use of eminent domain could result in improvements to customers’ services being delayed.

PROPOSED CONCLUSIONS OF LAW

Aqua Pennsylvania, Inc. (“Aqua”) proposes the following conclusions of law:

1. Under Section 529(a) of the Public Utility Code, “[t]he commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines” that six criteria have been demonstrated. 66 Pa.C.S. § 529(a).

2. The six criteria that must be demonstrated are: (1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility; (2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure; (3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future; (4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible; (5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and (6) that the rates charged by

the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition. 66 Pa.C.S. § 529(a)(1)-(6).

3. The determinations of Code Section 529(a) appear in the conjunctive and, therefore, the Commission must determine that each of the six standards is met before ordering a capable public utility to acquire a small water utility.

4. Under the plain language of Code Section 529, the Commission has the authority to, after notice and an opportunity to be heard, to order a capable public utility to acquire a small water or sewer utility if all six of the requirements in Section 529(a)(1)-(6) are met.

5. Only after making the determinations set forth in Section 529(a) is the Commission authorized to “issue an order for the acquisition of the small water or sewer utility by a capable public utility,” which “shall provide for the extension of the service area of the acquiring capable public utility.” 66 Pa.C.S. § 529(d).

6. In making a determination under Section 529(a), the Commission shall consider the following factors, pursuant to Section 529(c): (1) the financial, managerial and technical ability of the small water or sewer utility; (2) the financial, managerial and technical ability of all proximate public utilities providing the same type of service; (3) the expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service; (4) the expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired; (5) the opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards

concerning the adequacy, efficiency, safety or reasonableness of utility service; and (6) any other matters which may be relevant. 66 Pa.C.S § 529(c).

7. The Commission must discuss with the small water or sewer utility and provide it a reasonable opportunity to investigate several alternatives to acquisition. See 66 Pa.C.S. § 529(b)(1)-(5). These alternatives include, but are not limited to: (1) the reorganization of the small water or sewer utility under new management; (2) the entering of a contract with another public utility or a management or service company to operate the small water or sewer utility; (3) the appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public; (4) the merger of the small water or sewer utility with one or more other public utilities; and (5) the acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

8. In making these determinations under Section 529(b), the Commission is authorized to hold a forced acquisition hearing and to order a capable public utility's acquisition of a small water utility only if the "alternatives to acquisition have been considered in accordance with subsection [529](b) and have been determined by the commission to be impractical or not economically feasible." 66 Pa.C.S. § 529(a)(4).

9. Code Sections 529(a)(4) and 529(b) reveal a legislative determination that it is in the public interest to encourage a small water utility to avail itself of an alternative to forced acquisition in order to avoid the taking of private property, the costs and the resource commitments engendered by a forced acquisition hearing. *Public Service Water Company v. Fairview Water Company*, Docket No. C-00924451, 1992 Pa. PUC LEXIS 75 at *12-13.

10. Where the Commission orders the acquisition of a small water utility by a capable public utility, "[t]he price for the acquisition of the small water or sewer utility shall be determined

by agreement between the small water or sewer utility and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable.” 66 Pa.C.S. § 529(e).

11. Code Section 529(e) provides: “If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent domain pursuant to the act of June 22, 1964 (Sp. Sess., P.L.84, No.6), known as the Eminent Domain Code.”

12. A proceeding instituted under Code Section 529 places the statutory burden of proof upon I&E. 66 Pa.C.S. § 529(i) (“The Bureau of Investigation and Enforcement shall have the burden of establishing a prima facie case...”). However, “the burden is not exclusive to I&E. Rather, any party may present or rebut a prima facie case in support of its position in the proceeding.” Interlocutory Review Order at *26 (citing Investigation Instituted per Section 529 into *Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 (Order entered Jan. 28, 2016)).

13. Code Section 332(a), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

14. A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

15. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999).

16. Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v. Commonwealth*, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util. Comm'n*, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

17. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

18. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007)(citation omitted).

19. The Public Advocates have failed to carry their burden of proof and demonstrate that all six of the requirements set forth in Code Section 529(a), 66 Pa.C.S. § 529(a), have been satisfied in order to show they are entitled to obtain an order from the Commission authorizing the acquisition of CLPWC by a capable public utility.

PROPOSED ORDERING PARAGRAPHS

Aqua Pennsylvania, Inc. proposes the following ordering paragraphs:

1. That the Petition of the Bureau of Investigation and Enforcement for a Commission order, pursuant to 66 Pa. C.S. § 529, authorizing the acquisition of Conneaut Lake Part Water Corporation, Inc. by Aqua Pennsylvania, Inc. is hereby denied.

2. That the above-captioned docket is marked closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	P-2024-3051855
Bureau of Investigation and Enforcement	:	I-2024-3051857
	:	
v.	:	
	:	
Conneaut Lake Park Water Corporation, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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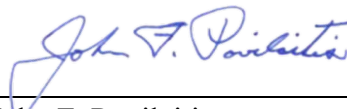
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John F. Povilaitis