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September 22, 2026

VIA eFILING

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

Re: Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC, and Alpha Merger Sub, Inc. for a Certificate Of Public Convenience Under Sections 1102(a)(3) and 2210(c) of the Public Utility Code And All Other Necessary Approvals To Effect a Change of Control of Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., And Peoples Natural Gas Company LLC Docket Nos. A-2025-3058927, A-2025-3058928 and A-2025-3058929

Dear Secretary Homsher,

Enclosed for filing in the above-captioned proceeding is the Settlement Protest of Chester Water Authority. As indicated on the Certificate of Service, copies have been served upon Administrative Law Judge Emily DeVoe, Administrative Law Judge Ann Quimby and all parties of record.

If you have any questions, please contact us directly at 215.640.8500. Thank you.

Best,

/s/ Joseph Jesiolowski
Joseph Jesiolowski

Enclosures

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC and Alpha Merger Sub, Inc. for a Certificate of Public Convenience under Sections 1102(a)(3) and 2210(c) of the Public Utility Code and All Other Necessary Approvals to Effect a Change of Control of Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company LLC

**Docket Nos. A-2025-3058927
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A-2025-3058929**

CERTIFICATE OF SERVICE

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

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Dated: September 22, 2026

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC and Alpha Merger Sub, Inc. for a Certificate of Public Convenience under Sections 1102(a)(3) and 2210(c) of the Public Utility Code and All Other Necessary Approvals to Effect a Change of Control of Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company LLC

**Docket Nos. A-2025-3058927
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SETTLEMENT PROTEST OF CHESTER WATER AUTHORITY

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SETTLEMENT PROTEST OF CHESTER WATER AUTHORITY

**TO THE HONORABLE EMILY I. DEVOE AND ANN QUIMBY,
ADMINISTRATIVE LAW JUDGES:**

Chester Water Authority (“CWA”), by their respective counsel, submit this brief protesting the Joint Petition for Non-Unanimous Settlement submitted by American Water Works Company, Inc. (“American Water”), Essential Utilities, Inc. f/k/a Aqua America, Inc. (“Essential”), Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater, Inc. (“Aqua PA WW”), Peoples Natural Gas Company LLC (“Peoples”), and Alpha Merger Sub, Inc. (“Merger Sub”) (collectively, the “Joint Applicants”), the Pennsylvania Public Utility Commission (“Commission”) Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) (collectively, the “Joint Petitioners”). In support of its position against the Proposed Settlement, CWA states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

a. Introduction

Pennsylvania is on the verge of handing enormous control over its water and wastewater systems to a single corporate family. PAWC is one of the Commonwealth's largest investor-owned water and wastewater utilities, serving about 2.4 million people across 37 counties. Aqua and Aqua WW, part of Essential, serve about 1.59 million people across 34 counties. These are already massive, established companies with the financial and operational ability to stand on their own. Neither is failing, and neither needs the other to continue providing service. Yet the proposed Merger would bring them under a single corporate parent anyway, eliminating the competition that currently exists between them and creating a company with an even more dominant reach across Pennsylvania's water and wastewater market. It would also give that combined company greater power to acquire healthy municipal systems across the Commonwealth. Such acquisitions would burden current municipal authority ratepayers with rates that will be significantly higher and escalate faster as seen by most, if not all such acquisitions. Ratepayers of municipal authorities do not want this to happen and have been vociferous about their rejection of such actions across the Commonwealth.

Before this Merger can be approved, the Joint Applicants must show the Commission that the transaction will affirmatively benefit the public in a substantial way. In other words, the Commission is not supposed to ask whether the Merger sounds promising in theory. It must ask what concrete benefit Pennsylvania customers will actually receive in return for allowing this consolidation.

So far, the Joint Applicants have leaned heavily on a “bigger is better” theory, arguing that a larger system will have greater resources, greater financial strength, and more opportunities to improve service. From there, they evade the concrete issues with empty and undefined terms like “synergies,” “best practices,” “infrastructure investment,” and unexplained claims of future customer savings. But they never truly answer the central question required by the public interest test: what substantial, measurable benefit does this Merger actually guarantee to the public, and is that benefit enough to justify the long-term harms and risks that come with combining these two companies?

The Joint Petitioners themselves, namely— OCA, I&E, and OSBA, presented testimony warning the Commission about the higher future rates, unknown integrations costs, monopolistic risks and serious affordability concerns the Merger raises for the public. Those same witnesses repeatedly criticized the Joint Applicants for failing to identify concrete, measurable public benefits.

Pennsylvania has already seen the consequences of utility expansion led by the Joint Applicants. In May 2024, Aqua Pennsylvania sought another substantial rate increase, proposing to increase the average monthly residential water bill by 19.9% and the average residential wastewater bill by 18.4%.¹ This request followed Aqua's 2022 rate case, in which water rates increased by approximately 10% and wastewater rates by approximately

¹ *PUC to Host Two Telephonic Hearings on Proposed AQUA Rate Increases*, LOWER MAKEFIELD TWP. (July 18, 2024), <https://www.lmt.org/resources/news/article/?id=8002>.

50%.² Two years before that, Aqua increased its water rates by 10% and wastewater by nearly 35%.³ Likewise, in 2024, the Commission approved PAWC rate hikes of 10.7% for water customers and 6.4% for wastewater customers.⁴ Just this year, PAWC increased its water rates by 4.75% and a 14.17% increase on its wastewater rates.⁵ The acquisitions that these Joint Applicants have facilitated over the past ten years have increased rates for Pennsylvania customers by at least \$100 million per year.⁶ Against that history, giving an even larger combined company more power to acquire municipal systems should concern anyone who pays a water or wastewater bill.

This imbalance leaves customers helpless. If one grocery store raises its price, customers can shop somewhere else. If a water company raises its rates, customers cannot

² *Aqua Pennsylvania's Rate Hike: The Price Per Flush Will Go Up 50% As Early As Thursday*, PHILA. INQUIRER (May 17, 2022), <https://www.inquirer.com/business/aqua-pennsylvania-water-wastewater-rate-increase-puc-20220517.html>

³ *Comitta Reminds Residents of Opportunities to Oppose Aqua Rate Increase*, PA. SENATE DEMOCRATS (July 30, 2024) <https://pasenate.com/comitta-reminds-residents-of-opportunities-to-oppose-aqua-rate-increase/>.

⁴ *PUC Approves PAWC Water Sewer Rate Increases*, City of Scranton (July 11, 2024) (reporting that the PUC approved PAWC rate increases of 10.7% for water customers and 6.4% for wastewater customers, after PAWC initially sought increases of 24.2% and 2.5%, respectively)

⁵ *PUC Approves Smaller Than Requested Rate Changes for Pennsylvania American Water*, Pa. Pub. Util. Comm'n (July 16, 2026) <https://www.puc.pa.gov/press-release/2026/puc-approves-smaller-than-requested-rate-changes-for-pennsylvania-american-water-7-16-26> .

⁶ Direct Testimony of Patrick Cicero, CAUSE-PA St. 1 at 27:12-18.

pick up their pipes and select a new utility company. They stay where they are, and they pay.

Yet when it came time for the Joint Petitioners to practice what they preached, they settled. In exchange for supporting the Merger, the Joint Petitioners accepted, among a series of broader, vague terms, a one-time \$40 bill credit and two “rate-case stay-outs.” The bill credit allows each customer to receive a mere \$40 reduction on a single utility bill. A rate-case stay-out is an agreement by the utility not to file a new base-rate case, the formal process through which it asks the Commission for permission to raise its base rates, before a certain date. Under this Proposed Settlement, PAWC would only agree not to file to raise its base rates before April 1, 2028, just over a year from now, while Aqua would wait only until June 1, 2027, merely eight months from now.

These protections are pathetic. They will prove to be largely inconsequential compared with the size and permanence of the transaction they are supposed to justify and the massive and irreversible rate hikes that ratepayers will be burdened with in the coming years that extend in perpetuity. The \$40 credit appears once on a ratepayer’s bill and then disappears, with no guarantees the Joint Applicants will not make up for the deduction in future bills.

The rate-case stay-outs sound like they will protect consumers from raised rates for a substantial amount of time. But the Proposed Settlement does not promise customers a set number of months or years without a new base-rate case after the Merger closes. Instead, it picks fixed dates on the calendar: April 1, 2028 for PAWC and June 1, 2027 for Aqua. That means the clock is already running while the Merger is still being reviewed. If the

Commission approves the Merger months from now, and the companies then need additional time to close the transaction and combine their operations, part of the stay-out period will already be gone before customers ever begin living under the merged company. A customer may hear “no new rate case until 2028” and reasonably think that means years of protection after the Merger. Not necessarily so. Depending on when the transaction closes, the actual period of post-Merger protection could be much shorter. The stay-outs also do not cap the size of the next requested increase. They delay when PAWC and Aqua may file a new base-rate case, but they do not prevent those utilities from returning to the Commission once the stay-out expires and seeking higher rates at that point.

So the protection is temporary: large portions of the stay-out period will disappear before any Merger (if approved) is even complete, and once the fixed date arrives, the utilities are free to seek another rate increase through the normal rate-case process. The Merger, however, is permanent.

If the Commission ignores the public affirmative benefit test and refuses to deny the Merger, approval should come with protections strong enough to address the severe risks of the Merger on the public. The combined company should be barred for fifteen years from buying healthy, functioning municipal systems. Voters should have a say before their local water or wastewater system is sold. The merged entity should not be allowed to use Section 1329 fair-value pricing for those acquisitions during that period, and customers should have local advisory and oversight boards that can monitor rates, service, acquisitions, and whether the promised Merger benefits ever appear.

CWA asks the Commission to reject the Proposed Settlement and deny the Merger. After a lengthy record and months of litigation, the Joint Applicants still have not shown anything that comes close to the affirmative public benefit the law requires. The Commission now has a choice that reaches beyond this Merger. It can apply the public-benefit standard as a real condition of approval and deny a transaction that has not satisfied it. Or it can approve the Merger anyway and effectively reduce that standard to words on a page, stripping the test of all legal power. CWA asks the Commission to hold the Joint Applicants to the standard the law requires and deny the Proposed Settlement and Merger. It asks the Commission to choose the public's interest.

b. Procedural History

On November 26, 2025, the Joint Applicants filed the above-captioned Joint Application seeking approval of the proposed Merger/change in control transaction involving Essential, Aqua Pa, Aqua Pa WW, and Peoples.⁷ A telephonic prehearing conference was held before ALJ Mary D. Long on January 22, 2026.⁸ In connection with that conference, multiple parties submitted prehearing memoranda including the Joint Applicants, DelCo, CAUSE-PA, OCA, CWA, and other municipal participants.⁹

⁷ See *Application of American Water Works Co., Inc. and Essential Utilities, Inc. for Approval of Merger*, Pa. P.U.C. Docket No. A-2025-3058927 (filed Nov. 26, 2025).

⁸ See *Telephonic Prehearing Conference Notice*, Pa. P.U.C. Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Jan. 13, 2026).

⁹ See *Prehearing Memorandum of the Office of Consumer Advocate* (filed Jan. 22, 2026); *Prehearing Conference Memorandum of the County of Delaware* (filed Jan. 20, 2026); *Prehearing Conference Memorandum of American Water Works Company, Inc. et al* (filed

Afterward, numerous parties, including the OCA, CAUSE-PA, I&E, CWA, DelCo and other municipalities all filed petitions to intervene, answers to intervention petitions, motions to compel, and interim orders resolving discovery and procedural disputes during February and March 2026.

Public participation was then taken through a series of public input hearings in April 2026.¹⁰ By May 21, 2026, the Intervenors and Protestants filed direct testimony, including that of D.C. Patel, Ethan H. Cline, Christine Reuther, and other like testimony. The Joint Applicants filed Rejoinder Testimony in late July, while Surrebuttal testimony was also filed including submissions by I&E, OCA, OSBA, CAUSE-PA, and municipal parties.¹¹ An initial in-person evidentiary hearing was held before ALJs Emily DeVoe and Ann Quimby on August 4-6, 2026, which was ultimately cancelled on August 5, 2026.¹²

Most recently, the Joint Petitioners and Joint Applicants have come to a partial non-unanimous settlement agreement (“Proposed Settlement”) on August 21st, which they

Jan. 20, 2026); *Prehearing Conference Memorandum of CAUSE-PA*, (filed Jan. 20, 2026); *Prehearing Conference Memorandum of Chester Water Authority*, (filed Jan. 20, 2026).

¹⁰ See *Proofs of Publication of Notice of Public Input Hearings*, Pa. P.U.C. Docket No. A-2025-3058927, Doc. No. 2901113 (filed Apr. 22, 2026).

¹¹ *Certificate of Service to Rejoinder Testimony*, Statement Nos. 1-RJ through 6-RJ, American Water and Merger Sub, Pa. P.U.C. Docket No. A-2025-3058927 (filed and published July 31, 2026); *Surrebuttal Testimony of Patrick M. Cicero (CAUSE-PA)*, *Celia Hashlamoun (OSBA)*, *Ralph Smith and Barbara Alexander (OCA)*, and *D.C. Patel and Ethan H. Cline (I&E)*, Pa. P.U.C. Docket No. A-2025-3058927 (filed July 23–24, 2026).

¹² See *Transcript of Initial In-Person Evidentiary Hearing Before ALJs Emily DeVoe and Ann Quimby*, Pa. P.U.C. Docket No. A-2025-3058927, at 656–774 (Aug. 4, 2026) (filed Aug. 7, 2026); *Hearing Cancellation Notice*, Pa. P.U.C. Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Aug. 5, 2026).

notified the ALJs of on August 25, 2026. The Joint Petitioners and Joint Applicants filed a Joint Petition for Non-Unanimous Settlement (“Joint Petition”) on September 15, 2026.¹³ In this Joint Petition, the Joint Applicants and Joint Petitioners briefed their support for the Proposed Settlement. CAUSE-PA, Butler, East Norriton Township, Local 542, Local 612, Lower Makefield Township, and Upland Borough did not oppose the Proposed Settlement, while DelCo and the York Area Intervenors had yet to confirm a position.¹⁴ East Whiteland, MontCo, and of course, CWA oppose this Proposed Settlement.¹⁵ CWA opposes this Proposed Settlement for the reasons outlined in this brief.

II. NON-UNANIMOUS SETTLEMENT

The Proposed Settlement purports to include several nominal customer “protections” in the very short term, but they are so amorphous as to be effectively unenforceable, limited in scope, or dependent on future regulatory proceedings. Each PAWC, Aqua PA, and Peoples customer would receive a one-time \$40 bill credit, for a total of about \$82 million, funded by American Water and Essential through the utilities’ Rate Stabilization Fund and excluded from future rate recovery.¹⁶ American Water would also contribute an additional \$600,000 per year to Aqua PA’s and Peoples’ hardship funds

¹³ Joint Petition for Non-Unanimous Settlement, *Joint Application of American Water Works Co., Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Co. LLC & Alpha Merger Sub, Inc.*, Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Pa. P.U.C. Sept. 15, 2026).

¹⁴ *Id.* at 2 n. 3.

¹⁵ *Id.* at 2 n. 3.

¹⁶ *Id.* at 6 ¶ 10.

for at least three years, although the Proposed Settlement leaves the allocation of that money for later discussion.¹⁷ PAWC would agree not to file for new base rates before April 1, 2028, while Aqua PA would agree not to file before June 1, 2027.¹⁸ The companies would also absorb transaction costs, merger goodwill, certain transition costs, merger-related executive compensation, and termination costs if the Merger fails.¹⁹ Aqua PA's and Peoples' existing rates and tariffs would remain in place at closing, and the Proposed Settlement includes protections for ADIT treatment, low-income reconnection-fee waivers, collective bargaining agreements, pension obligations, a 12-month limitation on union workforce reductions, continued charitable giving for three years, and certain corporate-separateness and ring-fencing protections.²⁰ While these "protections" were offered, they are not without cost to the ratepayers. The revenue gained from these "protections," as amorphous and unenforceable as they may be, are ultimately paid for by higher and higher rates charged to ratepayers. The merged companies have nothing to lose and everything to gain.

The alleged customer benefits are even less concrete. Many of these "commitments" are benefits the utilities already provide in the ordinary course of service: The utilities promise to maintain at least current service quality, take "prudent" actions to realize Merger

¹⁷ *Id.* at 16 ¶ 51.

¹⁸ *Id.* at 6 ¶ 11-12.

¹⁹ *Id.* at 6-7.

²⁰ *See generally, id.*

benefits, provide safe and affordable service, coordinate universal-service programs, preserve local management, continue customer-service functions, and reflect identifiable and quantifiable Merger savings in their next rate cases.²¹ Those provisions only preserve the status quo rather than identify a new, merger-specific benefit for customers.

The Proposed Settlement also sets no minimum amount of Merger savings, no deadline for producing those savings, and no guaranteed percentage that must flow back to customers. It also does not specify how much future infrastructure investment must exceed existing plans or quantify the value of promised efficiencies. In other words, these provisions are a farce. Other provisions are equally weak even though they require tracking, annual reporting, affiliate-transaction controls, financial metric reporting, a post-closing Report of Action, PFAS and lead-line education, municipal contract protections, and a BASA-related lateral replacement pilot.²² Those provisions are limited to oversight - they do not guarantee measurable savings or lower bills for Pennsylvania customers.

III. LEGAL STANDARDS

a. Burden of Proof

The Supreme Court has found that Section 203 of the Code requires a finding that a proposed Merger will affirmatively benefit the public and “affirmatively promote the ‘service, accommodation, or convenience or safety of the public’ in some substantial

²¹ *See id.* at 10-17.

²² *See generally, id.*

way.”²³ The Joint Application must be examined pursuant to Chapters 11, 21, and 22 of the Code.²⁴

b. Sections 1102 & 1103

Section 1102 of the Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by a public utility or their affiliated interests.²⁵ Section 1103 requires that a certificate shall only be granted upon findings that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”²⁶ Additionally, Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience.²⁷

c. Settlement

Under the Code, a settlement petition must be filed with the Secretary in accordance with the general requirements governing petitions.²⁸ The settlement agreement must

²³ *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1973) (internal citations omitted); *see Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1054 (Pa. 2007).

²⁴ 66 Pa. C.S. §§ 66 Pa. C.S. §§ 1102; 1103; 2102; 2210.

²⁵ 66 Pa. C.S. § 1102(a)(1)-(3).

²⁶ 66 Pa. C.S. § 1103(a).

²⁷ 66 Pa. C.S. § 1103(a) (“The Commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.”)

²⁸ 52 Pa. Code § 5.232(a).

specifically identify which parties support the settlement, oppose it, take no position, or were denied an opportunity to participate in the settlement.²⁹

Each party must be given an opportunity to comment on the proposed settlement unless the presiding officer orders otherwise.³⁰ When no presiding officer has been assigned, the Commission reviews the settlement directly to determine whether the settlement is in the public's interest, and parties that have not joined the settlement may submit objections within twenty days after the petition is filed unless the Commission establishes a different deadline.³¹

IV. SUMMARY OF ARGUMENT

CWA's argument is threefold: First, The Joint Applicants have failed to establish that the Merger provides an affirmative public benefit, even with the provisions of the Proposed Settlement. The Joint Petitioners spent this proceeding building a record that identified substantial and very real problems the Merger would create: higher future rates, speculative and unquantified savings, unresolved transition and integration costs, acquisition-driven growth, greater market concentration, reduced competition, and severe affordability pressures on low-income households. Their own witnesses repeatedly challenged the Joint Applicants' failure to identify concrete, measurable public benefits.

²⁹ 52 Pa. Code § 5.232(b).

³⁰ 52 Pa. Code § 5.232(c).

³¹ 52 Pa. Code § 5.232(d), (g).

The Proposed Settlement itself changes nothing and does not ameliorate these problems. It focuses only on short-term, largely amorphous concessions and does not account for the long-term consequences that will last for generations. The Commission should not treat future rate proceedings as a catch-all remedy for whatever problems emerge later. By the time those proceedings occur, the Merger will have closed, the companies will have combined, the competitive landscape will have changed, and the market structure will already be more concentrated. A later rate case cannot recreate competition that disappeared years earlier nor can it unwind the structural power created by consolidation as though the Merger never happened. These harms ultimately outweigh the benefits of this proposed Merger, and thus, the Commission should reject the Proposed Settlement and Merger.

Second, the Proposed Settlement exposes a serious failure by the very public interest advocates who entered this case claiming to protect consumers. The Joint Petitioners accepted a settlement centered on a one-time \$40 bill credit and temporary rate-case stay-out provisions. In CWA's view, the Joint Petitioners' signatures on the Proposed Settlement do not strengthen the Joint Application. They only reveal just how little protection the consumers they claim to represent ultimately received. The Commission should take these Joint Petitioners' pre-settlement positions and accumulation of testimony into account and disregard their sudden disinclination to continue to defend the public.

Third, the Commission should exercise its own judgment and decide whether this Proposed Settlement actually protects consumers and the public, because to rule against the consumer is to put the procedural system into question. If the Commission approves a

Merger of this magnitude on these terms, the decision will send a powerful message about what Pennsylvania's affirmative public benefit standard has become. A standard that permits approval without concrete, measurable, transaction-specific customer benefits offers very little protection to the public it was designed to serve. It will also send a strong message that the Commonwealth is not serious about stemming the rapid rise of rates charged by utilities. That the rhetoric by elected officials about lowering utility rates charged to the citizens, residents, and businesses in the Commonwealth is just talk without any action to back it up.

If the Commission is nevertheless inclined to approve to the Merger notwithstanding the clear lack of a substantial public benefit, it should impose significant conditions to prevent this Merger from becoming a launching pad for another fifteen years of acquisition-driven consolidation funded by captive ratepayers. At a minimum, the Commission should require all of these:

1. prohibit the Joint Applicants, for fifteen years, from acquiring any healthy, functional, or non-distressed Pennsylvania municipal authority;
2. prohibit the use of Section 1329 fair-value pricing for Pennsylvania municipal-authority acquisitions during that fifteen-year period and require valuation based on depreciated original cost;
3. require majority voter approval before the Joint Applicants may acquire any Pennsylvania municipal authority during that period; and
4. require the Joint Applicants to establish meaningful local ratepayer advisory and oversight boards throughout the combined service territory.

If the Commission approves the Merger, it should impose these safeguards to mitigate the massive risks the record actually reveals. Temporary concessions will expire, but structural conditions can continue protecting customers long after the Merger closes.

For a transaction this large, with multi-generational consequences this lasting, the Commission should demand nothing less.

V. ARGUMENT

a. Overall Position on the Transaction and Settlement

1. *The Joint Applicants Still Have Not Shown That The Merger Produces an Affirmative Public Benefit.*

The Joint Applicants have not carried their burden of demonstrating that this Merger provides a substantial affirmative public benefit. When asked to identify actual performance improvements, the Joint Applicants did not identify specific incremental customer-service or service-quality commitments arising from the Merger.³² For low-income customers, Essential said only that it would “continue to review and make adjustments” where appropriate.³³ CAUSE-PA attacked the Joint Applicants’ reliance on “best practices,” testifying that the claimed benefit was “nothing more than ephemeral corporate-speak that can neither be measured nor substantiated.”³⁴

In fact, studies and arguments show that the result that investor owned utilities yield is a detriment to ratepayers. To start, the Commission should reject any suggestion that the

³² See Direct Testimony of D.C. Patel, I&E St. 1 at 18:6-19:14.

³³ *Id.* at 14:11-19.

³⁴ See Cicero (Direct) at 13:5-19.

combined company's promised capital spending is, in itself, a public benefit. Under rate-of-return regulation, an investor-owned utility earns its profit as a percentage of its rate base: every dollar of infrastructure it places in service is a dollar on which ratepayers must pay shareholders a return forever, plus the income taxes on that return, for the entire life of the asset. This structure rewards spending for its own sake. Economists have recognized the distortion for more than sixty years, since Averch and Johnson demonstrated that a regulated firm permitted to earn a return on capital has a built-in incentive to deploy more capital than efficient service requires.³⁵ For an investor-owned utility, completing a project at the lowest reasonable cost is not a success; it is a forgone earnings opportunity, because the larger the investment, the larger the profit and profit is the goal and not benefit to ratepayers. Pennsylvania law magnifies this incentive. The Distribution System Improvement Charge allows recovery of qualifying investment between rate cases, and Section 1329 fair market value acquisitions allow purchase prices far exceeding depreciated original cost to enter rate base.³⁶ A merged Aqua and American Water, controlling a dominant share of the Commonwealth's investor-owned water service, would operate under these incentives at a scale this Commission has never before permitted.

A municipal authority operates under none of them. It has no shareholders to reward, pays no income taxes, and finances infrastructure with tax-exempt debt at a cost well below an investor-owned utility's weighted cost of capital. Every dollar a municipal authority

³⁵ See Leland L. Johnson, *Behavior of the Firm Under Regulatory Constraint: A Reassessment*, 63 Am. Econ. Rev. 90, 90–97 (1973).

³⁶ See 66 Pa.C.S. §§ 1353, 1357; *see also*, 66 Pa.C.S. § 1329(c)(2), (d)(1).

saves, by doing the job efficiently, remains with the ratepayers who provided it. The same mains can be replaced, the same treatment plants modernized, and the same regulatory standards met at a substantially lower lifetime cost to the public. A pipe in the ground is not a benefit to the public when the public is made to pay a premium for it. It's the same pipe and the same pumps but ratepayers pay more for it when it is put into service by and investor owned utility.

The Proposed Settlement does nothing add any true benefit to the ratepayer. The settling parties have agreed to what amounts to a hyperbolic advertisement, not settlement terms. The public gains little from provisions that do not create measurable obligations or meaningful enforcement standards. In fact, the terms of the Proposed Settlement are so vague that they largely allow the Joint Applicants to define their own compliance.

Take for example, the Customer Assistance provisions in the Proposed Settlement. These provisions are exceedingly vague: The Joint Applicants “will continue to devote the necessary resources;” American Water is “committed to providing clean, safe, reliable and affordable utility services;” American Water will “continue to invest in infrastructure replacement. . . to support the provision of clean, safe, reliable and affordable service.”³⁷ The list continues. These provisions are mere continuations of what already exists in the current pre-Merger atmosphere. They add no affirmative benefit to the public.

Further, the Proposed Settlement leaves the Joint Applicants unfettered discretion to define what resources are “necessary,” what actions are “prudent,” what counts as a

³⁷ *Joint Petition for Non-Unanimous Settlement* at 10 ¶¶ 26-28.

“Merger benefit,” and when future acquisitions are “appropriate.” Although they promise efficiencies, cost savings, infrastructure investment, and lawful business practices, the Proposed Settlement sets no savings target, guarantees no customer benefit, requires no pass-through of realized savings, and identifies no specific infrastructure spending beyond existing obligations. These provisions therefore offer few, if any, measurable benefits to ratepayers and largely restate conduct already expected of regulated utilities.

Measured against the Commission’s public-benefit standard, these provisions offer broad assurances rather than concrete Merger-specific benefits. More concrete provisions such as the “rate case stay-out” provision are tragically wanting in long-term value. The stay-out provision, in particular, says that PAWC will wait until April 1, 2028 to file a new base-rate case and Aqua PA will wait until June 1, 2027.³⁸ That gives customers a temporary pause in one specific type of rate proceeding. On this, the testimonies and pre-settlement arguments of I&E and its witnesses are compelling.³⁹

A filing delay carries far less weight in the public-benefit analysis than a defined period of post-Merger rate stability. It simply moves the filing date. Though not my much. A Merger of this size takes time to investigate, litigate, approve, close, and integrate. By the time the transaction actually closes and customers begin living under the merged company, a significant part of the stay-out may already be gone. The Joint Applicants get to advertise a stay-out lasting until 2027 or 2028. Customers, however, may receive only a

³⁸ *Id.* at 6 ¶¶ 11-12.

³⁹ *See, e.g.,* Patel (Direct) 8:17-9:15.

much shorter period of actual post-closing protection, if it actually can be called “protection,” before the next base-rate filing becomes possible. What looks lengthy on a calendar may amount to only a few months of meaningful breathing room once the Merger is complete. The stay-out should therefore be considered according to the benefit it actually provides after the Merger takes effect and more importantly, real protections like the four conditions mentioned above should be the ones that are put in place.

A genuine post-Merger rate safeguard would start the clock at closing and guarantee customers a defined period of stability after the transaction takes effect and all required conditions are put in place and operational. This Proposed Settlement does something very different. It uses fixed calendar dates that continue running while the case is still pending, while approval is still being decided, and while the companies are working through the steps needed to complete the transaction.

So the clock is already ticking.

That allows the Joint Applicants to present the stay-out as a major concession even though much of the stated period may overlap with time the Merger process would have consumed anyway. Further, the stay-out only (very briefly) delays when the utilities may ask for more money. It places no cap on the size of the next increase and gives customers no assurance that costs accumulating during the stay-out will not show up in the first rate case that follows. The Commission should therefore look past the headline dates and focus on the period that actually matters: how long customers will be protected after the Merger closes. Viewed that way, the stay-out begins to look far more like a temporary scheduling benefit than meaningful protection against Merger-related rate pressure.

Likewise, the rate-credit and hardship-fund provisions give customers some immediate help but do very little to prevent the ultimate hardship this Merger creates in the long-run. For the negligible \$40 bill credit per customer, across the entire customer base, the total amount may sound substantial. For each individual customer, though, it is still forty dollars of a bill—*once*. The credit does not lower base rates, limit future increases, or create lasting affordability protection. It appears on the bill, the customer uses it, and the “benefit” is gone. The credit therefore adds a short-term customer benefit to the Proposed Settlement, but it provides little evidence about the long-term value of the Merger itself.

The hardship-fund commitment provides somewhat more targeted assistance, but it has the same basic limitation. Again, CWA largely defers to CAUSE-PA’s arguments prior to their settlement inclination here.⁴⁰ An additional \$600,000 per year for at least three years may help some vulnerable households, and that assistance has value to these households but it is ultimately still funded by the entire ratepayer base. But the Proposed Settlement does not make the funding permanent, expand eligibility, or establish that the amount will come close to meeting actual customer need. At most, it gives some households temporary support during the years immediately following the Merger.

Taken together, these provisions establish temporary forms of assistance. The Commission must still determine whether the Merger produces a substantial affirmative public benefit extending beyond the transition period.

⁴⁰ See Cicero (Direct) at 32:3-45:4, 67:1-73:16.

2. The Foreseeable Harms of the Merger Undermine Any Finding of Affirmative Public Benefit.

The Commission should view the Proposed Settlement's vague and short term "benefits" in light of the foreseeable harms this Merger will cause in the long run. Among the most obvious harms, the Commission should ask, how will this affect a consumer's rates? The Commission cannot leave that question for future ratemaking proceedings. As part of its present affirmative public benefit analysis under Section 1103, the Commission must consider, at least in general terms, the probable effect of the transaction on customer rates.⁴¹ As such, the Commission "cannot postpone considering the impact on rates until a future rate base case," because rate impacts form part of the affirmative-public-benefit inquiry itself.⁴² Thus, although the Commission need not determine the precise rates customers will pay after the Merger, it must evaluate the transaction's foreseeable effect on rates now.

The Joint Applicants have failed to give any evidence as to the transaction's effect on rates. In fact, the parties all understand the truth; in all likelihood, this transaction will

⁴¹ *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 829 (Pa. 1972) ("We agree with complainants that the Commission should consider, at least in a general fashion, the effect that a proposed Merger is likely to have on future rates to consumers").

⁴² *Lawrence v. Pennsylvania Pub. Util. Comm'n*, 348 A.3d 108, 128 (Pa. 2025).

drastically raise rates in the long term across Pennsylvania.⁴³ I&E's witness, Ethan Cline, provided testimony that identified the rate risk clearly:

[I]f the Merger is approved and both companies are eventually consolidated under a single rate structure, the Aqua PA customers would likely be expected to increase their rates to match those of PAWC in addition to any base rate increases to cover their own cost of service in the intervening year. . . this increase in rates would not be commensurate with a similar increase in quality of service or any other such bene-fit for the customers[.]⁴⁴

There were several reasons the intervenors and protestants identified that this Merger would raise rates:

First, CAUSE-PA's Witness and former Pennsylvania Consumer Advocate, Patrick Cicero, testified that there would be "costs to achieve Merger-related synergies," although the Joint Applicants did not have the concrete costs of the integration of these companies available.⁴⁵ Closing the transaction does not end the Merger-related spending. Combining two large utilities may require technology conversions, accounting changes, personnel restructuring, systems migration, consulting, operational redesign, and management transition. Cicero's testimony explained: "Without an accounting of these costs or when

⁴³ Direct Testimony of D.C. Patel, I&E St. 1 at 8:17-9:15 (Patel explained the Joint Applicants made only a "speculative and unsupported statement" that the Merger would help maintain more affordable bills and that the Joint Applicants "are not committing to or presenting any specific plan for a rate freeze or rate case stay-out by each subsidiary for a definite future period.")

⁴⁴ Direct Testimony of Ethan H. Cline, I&E St. 2 at 7:13-8:7.

⁴⁵ Cicero (Direct) at 26:15-16.

they will occur, I am concerned about how such costs may ultimately be as well as when and how they will be passed through to customers, including through rates.”⁴⁶

Second, the Merger could create long-term rate pressure through acquisition-driven growth. Again, Cicero was “particularly concerned that a newly combined company’s strategic growth strategy will ultimately lead to increases in customers’ rates and monthly bills.”⁴⁷ He noted that the Joint Applicants described acquisitions of water and wastewater systems as a “fundamental aspect of the Company’s growth strategy” and stated that the company “intends to continue to expand its regulated footprint geographically by acquiring water and wastewater systems.”⁴⁸

Testifying for I&E, D.C. Patel also warned about the likelihood of rate increases and identified these companies’ ultimate motivations: increasing profits for shareholders. PAWC, Aqua PA, and Peoples will continue accelerated capital expenditure programs and that those programs “will request a higher return on investment . . . [t]his exercise motivates utilities to seek rate increases more frequently, which has the effect of consistently burdening rate-payers, increasing profits for the utility companies and parent companies, and benefitting investors at the cost of ratepayers.”⁴⁹

⁴⁶ *Id.* at 26:11-20.

⁴⁷ *Id.* at 50:17-20.

⁴⁸ *Id.* at 27:1-28:5.

⁴⁹ Surrebuttal Testimony of D.C. Patel, I&E St. 1 at 8:17-9:15.

Investor-owned utilities are obligated to improve their top and bottom lines to appease and incentivize their shareholders. Top lines are improved via aggressive acquisition of municipal authorities that will drive revenue gains. Earnings are improved by aggressive increasing of rates charged to ratepayers in order to increase profits. These rate risks have particularly serious consequences for low-income customers. CAUSE-PA released extensive testimony by Patrick Cicero showing the impact unaffordable water service has on the low-income communities, and to that testimony CWA largely defers its arguments.⁵⁰ As D.C. Patel stated, water and wastewater customers have no practical ability to switch providers and low-income programs do not solve the problem for struggling customers who do not qualify for them.⁵¹

Most notably of this testimony, water terminations threaten public health and human dignity because they can leave families unable to cook, bathe, clean, or flush toilets; threaten the habitability of the home; jeopardize housing stability; and contribute to homelessness.⁵² Those are the stakes these intervenors and protestants themselves described.

“To be affordable, a household’s total housing costs – including utility costs – should account for no more than 30% of a household’s total income.”⁵³ For the households

⁵⁰ See Cicero (Direct) at 32:3-43:5.

⁵¹ Patel (Direct), I&E St. 1 at 8:17-9:15.

⁵² *Id.* at 41:5-15.

⁵³ Cicero (Direct) at 36:5-7.

CAUSE-PA analyzed, Aqua represented a 5.94% utility burden, Aqua WW represented 6.61%, PAWC water represented 8.59% under current rates and 10.04% under proposed rates, and PAWC wastewater represented 11.54% under current rates and 12.59% under proposed rates.⁵⁴ Cicero concluded that:

low income customers already carry significant burden levels across the Companies. . . [A]t least 25% of the residential customer base of the combined Companies have profound and dire affordability concerns. . . While the immediate impact of the Merger may not worsen these outcomes, I have significant concerns that the Joint Applicants have made no proposals to assist their most economically vulnerable customers.⁵⁵

The Commission should weigh that testimony directly against the Proposed Settlement's claimed benefits, particularly where the customer protections offered are temporary and the affordability pressures described in the record may continue escalating for generations. The Proposed Settlement avoids these concerns. All of this testimony points to one problem: the risks of this Merger are specific and foreseeable, while the claimed benefits are uncertain and unquantified.

CWA, therefore, asks the Commission to credit the testimony of CAUSE-PA's witnesses on the drastic impact this Proposed Settlement has on consumers, and asks it to reject the Proposed Settlement, with the public's interest in mind, for lack of supplying a substantial public benefit.

⁵⁴ *Id.* at 37, Table 5.

⁵⁵ *Id.* at 37:4-10.

3. The Joint Petitioners' Support for the Settlement Does Not Overcome Their Own Record Evidence.

The Joint Petitioners' decision to support the Proposed Settlement does not erase the record they created before the Proposed Settlement. Originally, the Joint Petitioners resisted the fact that the Joint Applicants had not identified measurable public benefits, had not quantified savings, had not shown durable affordability protections, had not resolved integration costs, and had not explained how customers would fare over the long term. But, most of the advocates designed to fight for the public have inexplicably decided to throw in their hats for what essentially amounts to \$40 and a six (6) month rate stay, if that.

If anything, this Proposed Settlement sheds light on the weakness of state government, particularly highlighted by the disconnect between what the Joint Petitioners advocated for in this case and what they ultimately accepted. Their own witnesses identified serious risks to consumers: higher rates, uncertain savings, unresolved integration costs, acquisition-driven growth, greater market concentration, weaker competition, and serious affordability concerns for low-income households.⁵⁶ They repeatedly criticized the Joint Applicants for failing to identify concrete, measurable public benefits.⁵⁷ Their witnesses exposed massive deficiencies in the Merger case and explained the consequences to be inflicted on consumers.

⁵⁶ See, e.g., Direct Testimony of D.C. Patel, I&E St. 1 at 7:14-9:15, 12:16-13:11, 35:4-38:18; Direct Testimony of Ethan H. Cline, I&E St. 2 at 7:1-8:7.

⁵⁷ See, e.g., Direct Testimony of D.C. Patel, I&E St. 1 at 7:18-8:12, 34:4-13; Surrebuttal Testimony of D.C. Patel, I&E St. 1-SR at 6:14-9:20; Direct Testimony of Patrick M. Cicero, CAUSE-PA St. 1 at 11:19-25:12.

But advocacy is ultimately measured by the protection secured for the people represented. When an advocate tells the Commission that Merger savings are speculative, that rate increases are foreseeable, that integration costs remain unknown, that acquisition-driven growth has already imposed enormous costs on ratepayers, and that a substantial portion of the customer base faces “profound and dire affordability concerns,” the public should expect that advocate to demand protections proportionate to those harms. Ordinary customers depend on these entities to press issues they often lack the resources to litigate themselves. Low-income customers rely on advocates who understand that affordability concerns continue every month. Ratepayers rely on I&E and OCA to scrutinize costs that may appear years later in a rate case. The system is designed so the public can rely on advocates for protection because the public cannot all fight for themselves. But the system only works as well as the advocates who defend it. Here, the Joint Petitioners failed as advocates to defend the consumers’ rights to benefit from this Merger.

The Commission should focus on keeping the public’s trust and dependence and therefore give little weight to the fact that the Joint Petitioners now support the Proposed Settlement. Their support does not erase their witnesses’ unimpeachable testimony. Their own evidence shows that the Applicants failed to establish concrete public benefits and identified substantial risks involving rates, affordability, integration costs, acquisition growth, market concentration, and long-term customer harm. The Commission should evaluate the Proposed Settlement against that evidence. This Proposed Settlement fails to provide the protection Pennsylvania consumers were entitled to expect from the very entities that appeared in this case to represent them and should be rejected.

4. The Commission Must Make Its Own Judgment About Whether the Proposed Settlement Protects Consumers and the Public.

The Commission has an independent duty to evaluate the Proposed Settlement.⁵⁸ CWA respectfully asks that the Commission examine the actual amorphous and nominal relief the Proposed Settlement claims to provide and compare it with the risks in the records. Should the Commission see the Proposed Settlement terms as working for the public benefit, it would indicate the following about Pennsylvania's utility governance:

First, the affirmative public benefit test has become too permissive if it permits approval of massive industry consolidation without proving concrete ratepayer benefit. Under Section 1103, the Commission is supposed to approve a certificate only if the transaction is "necessary or proper" for the public.⁵⁹ If this standard can be satisfied without a rigorous showing of specific, measurable, transaction-linked customer benefit, then the statute is no longer a shield for consumers, but a wide and open gateway for utility growth.

Should the proposed Merger pass the affirmative public benefit test, it would also show that the test over-values utility size and capital access and under-values loss of local control and future pricing power. The Joint Applicants have mainly emphasized their scale as a reason the test should tip in their favor, leaning into the "bigger is better" mantra.⁶⁰ But if these factors now dominate the affirmative public benefit analysis even where the

⁵⁸ See 52 Pa. Code § 5.232(d).

⁵⁹ 66 Pa. C.S. § 1103(a).

⁶⁰ See, e.g., Rebuttal Testimony of Cheryl Norton, Joint Applicants St. 1-R at 4:8-20, 6:4-11.

transaction also reduces local accountability and increases concentration, then the emphasis is no longer on consumer protection. Local public systems are accountable to local voters. Investor-owned utilities are accountable primarily through regulatory proceedings and shareholder imperatives. If the law no longer considers the magnitude of the importance of local control in favor of the “bigger is better” mantra, then it now undervalues any true form of consumer protection.

Second, approval would demonstrate a trend for the Commission only looking toward the short-term public benefits which are largely non-existent or vague unprovable assertions instead of considering the track record that proves the long-term harms that will be caused by the requested Merger. The Commission may be looking at this Merger as an isolated event, but in actuality, its harm is cumulative. If approved, the transaction enlarges the same handful of entities, which leads to a concentrated private market.⁶¹ In turn, ratepayer harm in water utility consolidation is cumulative and will continue to escalate.

Third, approval shows that the law is now over relying on the “reasonable rate” protection that arrives too late in the process to make a true difference to consumers. The usual reply from the Applicants was that future rates are still subject to Commission regulation, so customers remain protected. But once consolidation occurs and local alternatives disappear, rate regulation becomes a back-end remedy applied after the market

⁶¹ Surrebuttal Testimony of Christine A. Reuther, Delaware County St. 1-S at 7:11-13 (July 23, 2026) (“If the Merger is approved, the combined business entity would serve virtually every regulated investor-owned water and wastewater customer in Pennsylvania. This would be an unprecedented level of concentration.”)

structure has already shifted.⁶² The consequences are evident in Aqua's prior acquisitions. In 2022, Aqua increased rates by 47% in East Bradford, 69% in Cheltenham, 73% in East Norriton, 90% in New Garden, and 98% in Limerick Township, all newly privatized entities.⁶³ If the regulatory system waits until later rate cases to address the consequences of earlier structural approvals, then it is not truly preventing harm; it is a gatekeeper witnessing the damage of the aftermath.

Fourth, approval of this Merger would reinforce a troubling conclusion: that Pennsylvania's utility oversight is functionally captured, in the sense that it treats the growth strategies of large investor-owned utilities as aligned with the public interest, even where those strategies threaten local accountability and long-term ratepayer protection. If a Merger of this scale, bringing together two already dominant investor-owned water and wastewater platforms, can be approved despite obvious concerns to ratepayers, then the public is entitled to ask what, exactly, Pennsylvania's regulatory safeguards still prevent.⁶⁴

⁶² Rebuttal Testimony of David Bowler, Joint Applicants St. 2-R at 30:1-7 (June 25, 2026); Surrebuttal Testimony of Ethan Cline on behalf of the Bureau of Investigation and Enforcement, I&E St. 2-SR at 4:16-5:2.

⁶³ Andrew Maykuth, *Aqua Pennsylvania Customers Will See Water and Wastewater Rate Increases*, PHILA. INQUIRER (May 25, 2022), <https://www.inquirer.com/business/aqua-pennsylvania-rates-water-wastewater-20220525.html>.

⁶⁴ Marley Parish, *Compromise Elusive on Reforming 2016 Law That Led to Higher Water Bills Across Pa.*, SPOTLIGHT PA (Sept. 5, 2024), https://www.spotlightpa.org/statecollege/2024/09/pennsylvania-legislature-act-12-private-water-companies-utility-bills-harrisburg/?utm_ (describing customer frustration with Act 12 acquisitions and legislative proposals to repeal the law, impose limits on acquisition valuations, and strengthen customer protections); Judith Schwank, *Establishing a Binding Ratepayer Referendum Approval for Municipal Water/Wastewater Sales*, PA. SENATE CO-SPONSORSHIP MEMORANDUM (Mar. 31, 2025), <https://www.palegis.us/senate/co-sponsorship/memo?memoID=46259&utm> (stating that

For those reasons, the Commission should reject the Merger under existing law. Legislative reforms, including referendum rights and distress-based acquisition standards, could provide additional protections against similar transactions in the future. The Commission has a present obligation to apply Section 1103 rigorously to the record to preserve it as a law.

b. Conditions Requested By Parties Opposing the Proposed Settlement

If the Commission nevertheless decides to accept this Proposed Settlement rather than reject it outright, it should impose a series of conditions designed to give equal bargaining power its best chance in Pennsylvania.

The parties have signed on to create a monopoly that will sweep the bargaining power out of the municipalities' hands. This Merger would combine Pennsylvania's two largest investor-owned water utilities, eliminate the competition that currently exists between them, and create a company with even greater financial capacity to wield political influence and to acquire municipal systems throughout the Commonwealth. "PAWC and Aqua PA (including Aqua PA-WW) are the two largest investor-owned (IOU) water utilities in Pennsylvania, and no other investor-owned water utilities in Pennsylvania are comparable or close in size to these two large water utilities by any metric."⁶⁵

PAWC provides water and/or wastewater services to approximately 2.4 million people, approximately 19% of the Commonwealth's population in 418 communities in 37 counties of Pennsylvania and plans to invest approximately \$525 million to \$625 million annually to upgrade its water and

rate increases following Act 12 acquisitions have occurred "across the Commonwealth" and calling for additional protections for consumers, municipalities, and residents).

⁶⁵ Patel (Direct) at 13:17-20.

wastewater systems.¹⁴ Aqua PA provides water and/or wastewater services to approximately 1.59 million people (approximately 13% of the Commonwealth's population) in 34 counties of Pennsylvania.¹⁵ Both these utilities are operationally, technically, and financially competent and sound to independently provide safe and reliable water and wastewater services to their customers in the Commission's franchised territories.⁶⁶

The Merger therefore does not combine two struggling utilities that need each other to provide safe and reliable service. Both companies are already large, financially strong, and capable of operating independently.⁶⁷

Combining those companies would remove a meaningful competitive check from the Pennsylvania water and wastewater market. Today, Aqua and PAWC can compete when a municipality considers selling a water or wastewater system. Competing bidders give municipalities leverage over price, investment commitments, employment protections, operating terms, and other conditions. The Merger would eliminate that leverage. DelCo's witness, Christine Reuther is the vice chair of Delaware County Council. Reuther gave extensive testimony on the dangers of the Joint Applicants creating a monopoly in Pennsylvania, stating:

Historically, municipalities who wished to sell their water or wastewater systems would be able to engage in a competitive bidding process involving Essential and American Water. Going forward, this will no longer be the case. Municipalities in the County will likely only have one option to consider, and there will be no incentive for the Joint Applicants to engage in a manner that results in the best deal possible for a selling municipality. Instead, the new combined entity will be able to dictate sale terms and potentially make lowball bids/offers. In short, there will be no possibility of a competitive bidding process because the Joint Applicants will be

⁶⁶ *Id.* at 13:20-14:9.

⁶⁷ *Id.* at 21:7-10.

eliminating any competition that has existed and presently exists between them.⁶⁸

Again, I&E's Witness, D.C. Patel gave the Commission the same warning from a market-wide perspective. He testified that after the Merger:

[B]y virtue of being the largest and financially strongest IOU, American Water/Essential through PAWC, Aqua PA, and Aqua PA-WW would be in a position to dictate the water and wastewater industry practices given its dominate position in the industry and would become a sole buyer of other investor owned or privately held water and wastewater utilities and municipal owned water and/or wastewater systems (under 66 Pa C.S.A § 1329) in Pennsylvania as there would likely be no viable competitors in a competitive bidding process. This would enable American Water (through its subsidiaries, PAWC, Aqua PA, and Aqua PA-WW) to expand, consolidate, and strengthen its monopoly in service territories, limiting and creating barriers for free market access for other utilities in the Pennsylvania water and wastewater utility market. Thus, this Merger transaction would have the effect of boosting an anti-competitive market environment in the Pennsylvania water and wastewater market that would be detrimental to the public interest as without viable competition to control purchase prices, territory expansion costs could increase, which would be fully funded by customers.⁶⁹

To protect Pennsylvania customers from the risks of the proposed transaction, CWA respectfully asks the Commission to reject the Proposed Settlement. If the Commission nevertheless approves the Proposed Settlement, CWA asks that approval be conditioned on the following protections.

- 1. Condition 1: To mitigate the clearly destructive effects of these monopolies, the Commission should prohibit the Joint Applicants from acquiring healthy, functional, or non-distressed Pennsylvania municipal authorities for fifteen years.***

⁶⁸ Direct Testimony of Christine Reuther, Delco St. at 5:16-6:2.

⁶⁹ Patel (Direct) at 22:1-17.

This restriction directly addresses the risk that the merged company will use its increased size and financial power to acquire public systems that already provide reliable service and have no operational need for private takeover.

The Joint Applicants could still acquire a municipal authority experiencing legitimate and significant operational and fiscal distress. A system facing serious service failures, financial instability, or an inability to maintain safe and reliable operations may require outside assistance. A healthy municipal authority presents a very different case, as allowing the merged company to acquire functioning public systems would give it an easy path to expand the market power that I&E itself warned could become monopolistic.⁷⁰

A fifteen-year restriction would prevent the Merger from immediately becoming a springboard for further consolidation. It would also preserve public authorities as meaningful alternatives to investor-owned service. Authorities like CWA provide another model for essential water service—one based on public ownership and local accountability rather than shareholder returns and acquisition-driven rate-base growth. The condition would therefore protect both competition and customer choice at the institutional level. Healthy public systems could continue serving their communities, and the merged company could still step in where a genuinely distressed system requires outside assistance.

⁷⁰ *Id.* at 22:1-17.

2. Condition 2: The Commission should also require majority approval by voter referendum before the joint applicants may acquire any Pennsylvania municipal authority during the fifteen-year period.

As has been described extensively previously in this brief, the public can no longer rely on the advocates designed to defend them.

The Merger creates a local-control problem as well as a competition problem. Municipal water and wastewater systems are essential public infrastructure. Residents depend on them every day, fund them through their rates, and live with the long-term consequences when public ownership transfers to a private utility. The public should have a voice in what happens with their water. Requiring voter approval would provide a direct check that the public is missing from the imbalance.

The requirement would still permit acquisitions. Communities that believe a sale serves their interests could approve one. Communities that prefer to preserve public ownership could reject one. Requiring majority approval therefore protects local choice while preventing the merged company's market power from becoming the only meaningful force driving the transaction.

Residents should decide whether their public system becomes part of the dominant private water company in Pennsylvania. A referendum gives the people who will pay the bills and live with the service consequences a meaningful voice before local control changes hands.⁷¹

⁷¹ See, e.g., Nisma Gabobe, *Victory! Pittsburgh Residents Protect Public Water from Corporate Control*, CORPORATE ACCOUNTABILITY (Aug. 18, 2025), <https://corporateaccountability.org/blog/victory-pittsburgh-residents-protect-public-water-from-corporate-control/> (reporting that 78% of Pittsburgh voters approved a referendum barring the sale or lease of the city's water and sewer system to private entities, reflecting

3. Condition 3: The Commission should require the Joint Applicants to establish local ratepayer advisory and oversight boards throughout their service territory.

Greater corporate scale creates a real risk that decision-making will move farther away from the communities affected by it. The same Merger that concentrates economic power would also place millions of customers across dozens of counties under a much larger corporate organization. Customers need a formal way to raise local concerns and monitor whether the promised Merger benefits ever materialize.

DelCo Vice Chair Christine Reuther testified that if the Joint Applicants “truly believe benefits will materialize, they should welcome accountability,” and that resistance to reporting “suggests a lack of confidence in their own projections.”⁷²

Local advisory boards would provide that accountability where customers actually experience the consequences of the Merger. They could monitor rates, service quality, customer-service complaints, infrastructure investment, affordability, acquisition activity, and the company’s responsiveness to local communities. They could also provide counties and municipalities with a regular avenue to raise issues before they grow into larger regulatory disputes.

The boards would become particularly important if the merged company continues expanding. Each additional acquisition increases the geographic reach of the company and further centralizes decision-making. Local oversight would help preserve a connection

substantial public support for allowing residents to determine whether local water systems remain publicly controlled)

⁷² Surrebuttal Testimony of Christine A. Reuther, Delco St. at 9:8-10.

between the utility and the communities it serves as the company becomes larger and more powerful.

4. Condition 4: The Commission should prohibit the Joint Applicants, for fifteen years, from using Section 1329 fair-value pricing to acquire Pennsylvania municipal authorities and instead require depreciated original cost value.

CAUSE-PA's Witness Patrick Cicero warned that Section 1329 acquisitions can carry substantial costs. He testified that the companies themselves acknowledged that acquisitions and integrations could "incur significant costs" and could fail to produce the expected synergies or savings.⁷³ His concern was grounded in the history of Section 1329 acquisitions. Those acquisitions "have raised rates for consumers across the Commonwealth by at least \$100 million a year over the past 10 years."⁷⁴

The Commission should also limit the mechanism that allows acquisition-driven growth to become higher customer rates. Section 1329 permits fair-value acquisition pricing that may exceed depreciated original cost. When the Commission allows the higher acquisition value into rate base, customers may ultimately pay rates that support that value and the utility's return on it.

Aqua PA's "water operating revenue and operating income . . . increased by 24.51% and 17.03% respectively from 2020 to 2024" and its "wastewater operating revenue and operating income . . . increased by 135.01% and 379.79% respectively from 2020 to 2024. . .[t]his growth is funded by ratepayers. Notably, the significant growth in wastewater

⁷³ Cicero (Direct) at 27:8-11.

⁷⁴ *Id.* at 27:14-18.

operations revenue and operating income is partly attributable to the acquisition of municipal wastewater facilities at fair market value under 66 Pa. C.S.A. § 1329.”⁷⁵

These utilities have “consistently and successfully completed numerous acquisitions of municipal water and wastewater facilities at fair market value under 66 Pa. C.S.A. § 1329” while expanding their territories and customer bases.⁷⁶ CAUSE-PA likewise testified that it was “all too familiar with the peril of these acquisitions for utility ratepayers” and that Section 1329 acquisitions “have raised rates for consumers across the Commonwealth by at least \$100 million a year over the past 10 years.”⁷⁷ Section 1329 acquisitions have also added approximately \$1 billion to rate base and approximately \$100 million in annual customer charges.⁷⁸

For example, in 2018, Aqua purchased Limerick Township’s wastewater system for \$75.1 million, approximately 63% more than its depreciated book value, and the Commission ultimately approved approximately \$64.4 million as the system’s ratemaking rate base.⁷⁹ By 2022, after the initial rate protections expired, a residential Limerick wastewater customer using 4,000 gallons per month saw their monthly bill increase by

⁷⁵ Patel (Direct) at 15:3-10.

⁷⁶ *Id.* at 21:1-10.

⁷⁷ Cicero (Direct) at 27:12-18.

⁷⁸ *Id.* at 50-51.

⁷⁹ Andrew Maykuth, *A Pa. Law Sets Off a Feeding Frenzy for Public Water Systems. Will Customers Pay the Cost?*, Phila. Inquirer (Sept. 5, 2018), <https://www.inquirer.com/business/pa-law-sets-off-feeding-frenzy-public-water-systems-will-customers-pay-cost-20180905.html>

approximately 98%.⁸⁰ New Garden followed a similar course when it was acquired by Aqua in 2017. Aqua acquired New Garden's wastewater system for \$29.5 million, which became the approved ratemaking rate base for 2,106 customers.⁸¹ Following Aqua's 2022 rate case, a residential New Garden customer using 4,000 gallons per month faced a bill increase of approximately 90%.⁸²

The Merger would place even more acquisition capacity in the hands of the company pursuing those transactions. A fifteen-year requirement to use depreciated original cost would directly address the resulting ratepayer risk. The merged company could still acquire qualifying systems, but it could not use the Merger to accelerate acquisitions at valuations that may increase rate base well beyond depreciated original cost.

The Commission should therefore place a meaningful limit on that dynamic if it approves a transaction that creates the Commonwealth's dominant investor-owned water company.

⁸⁰ Andrew Maykuth, *Aqua Pennsylvania Customers Will See Water and Wastewater Rate Increases*, Phila. Inquirer (May 25, 2022), <https://www.inquirer.com/business/aqua-pennsylvania-rates-water-wastewater-20220525.html> (reporting that, for customers using 4,000 gallons per month, Limerick wastewater bills increased 98% and New Garden wastewater bills increased 90%).

⁸¹ *McCloskey v. Pennsylvania Pub. Util. Comm'n*, 195 A.3d 1055, 1059-60 (Pa. Commw. Ct. 2018).

⁸² Andrew Maykuth, *Aqua Pennsylvania Customers Will See Water and Wastewater Rate Increases*, Phila. Inquirer (May 25, 2022), <https://www.inquirer.com/business/aqua-pennsylvania-rates-water-wastewater-20220525.html> (reporting that, for customers using 4,000 gallons per month, Limerick wastewater bills increased 98% and New Garden wastewater bills increased 90%).

These conditions work together to prevent the Merger from becoming a vehicle for a larger monopoly at ratepayer expense. The Merger would combine the two largest investor-owned water utilities in Pennsylvania. I&E warned that the combined company could become a “sole buyer,” “expand, consolidate, and strengthen its monopoly,” and create an anti-competitive market in which customers ultimately fund higher expansion costs.⁸³ DelCo warned that municipalities would lose the competition between Essential and American Water.⁸⁴ CWA’s recommendations respond directly to those warnings.

Section 1103 gives the Commission the authority to impose conditions upon these parties before those consequences occur. CWA therefore requests the Commission to impose those conditions if it approves the transaction.

VI. CONCLUSION

The Joint Applicants present these Proposed Settlement terms with the confidence of companies that understand exactly how this process works: they offer broad promises and vague commitments that create the appearance of public protection while leaving them enormous room to maneuver. But the Commission’s task is still to determine whether the Joint Applicants have demonstrated a substantial affirmative public benefit.

The only entity walking away with a benefit is the monopoly, not the public.

This Proposed Settlement offers temporary and vague “benefits,” while the record the Joint Petitioners had built identified significant long-term risks. If this Merger is

⁸³ Patel (Direct) at 22:1-17.

⁸⁴ Reuther (Direct) at 5:16-6:2.

allowed, the harms are foreseeable: greater consolidation, greater monopoly power, greater pressure on rates, and greater hardship for the people least able to absorb it. Low-income households will feel those consequences first and most painfully.

CWA urges the Commission to confront those consequences directly, because the now silent protestants and intervenors described them in their own testimony. Higher utility costs force real choices inside real households. Families may cut back on showers, laundry, heating, or hot water. They may reduce grocery spending or postpone other basic necessities just to keep their water connected.

Those are the tradeoffs this case is really about. Because a \$40 credit means little when a family is still choosing months later between groceries and a water bill that keeps rising.

Signature to Follow

Respectfully submitted,

Dated: September 22, 2026

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APPENDIX A: PROPOSED FINDINGS OF FACT

1. American Water is a public utility holding company and is the parent company of PAWC, which provides regulated water and wastewater utility service in Pennsylvania.¹

2. Essential is a public utility holding company that directly or indirectly controls, among other entities, Aqua, Aqua PA WW, and Peoples.²

3. Aqua PA is a Pennsylvania public utility that provides water service within certificated territories in the Commonwealth of Pennsylvania.³

4. Aqua PA WW is a Pennsylvania public utility that provides wastewater service within certificated territories in the Commonwealth of Pennsylvania.⁴

5. Peoples is a natural gas distribution company operating in Pennsylvania.⁵

6. PAWC provides water and/or wastewater services to approximately 2.4 million people, approximately 19% of Pennsylvania's population.

7. PAWC and Aqua PA (including Aqua PA-WW) are the two largest investor-owned water utilities in Pennsylvania.⁶

¹ Joint Applicants' Application at 4, Docket Nos. A-2025-3058927 et al. (Nov. 26, 2025).

² *Id.* at 5-6.

³ *Id.* at 5-6.

⁴ *Id.* at 5-6.

⁵ *Id.* at 6.

⁶ Patel (Direct) at 13:17-20.

8. PAWC serves 418 communities in 37 Pennsylvania counties.⁷
9. Aqua PA provides water and/or wastewater services to approximately 1.59 million people, approximately 13% of Pennsylvania's population.⁸
10. Aqua PA serves customers in 34 counties of Pennsylvania.⁹
11. The Merger would combine Pennsylvania's two largest investor-owned water utilities.
12. On November 26, 2025, the Joint Applicants filed a Joint Application at Docket Nos. A-2025-3058927, A-2025-3058928, and A-2025-3058929.¹⁰
13. In the Joint Application, the Joint Applicants seek a Certificate of Public Convenience under Sections 1102(a)(3) and 2210(c) of the Code, together with all other approvals the Commission deems necessary, to effect a change of control of Aqua PA, Aqua PA Wastewater, and Peoples.¹¹

⁷ *Id.* at 13:20-14:2.

⁸ *Id.* at 14:4-6.

⁹ *Id.* at 14:4-6.

¹⁰ *See* Joint Applicants' Application at 4, Docket Nos. A-2025-3058927 et al. (Nov. 26, 2025).

¹¹ *Id.* at 1-2.

14. The Joint Application states that the proposed transaction would be effected through the Merger of Merger Sub with and into Essential, with Essential surviving the Merger as a wholly owned subsidiary of American Water.¹²

15. The Joint Application further provides that, following consummation of the proposed transaction, Aqua PA and Aqua PA Wastewater would be under common ownership with Pennsylvania American Water Company within the American Water corporate family.¹³

16. The Joint Application requests that the Commission review the proposed transaction on an expedited basis.¹⁴

17. The Joint Application requests that the Commission enter a final order approving the transaction on or before the Commission's December 17, 2026 public meeting.¹⁵

18. The Joint Applicants mainly emphasized their scale as a reason the substantial public-benefits test should tip in their favor, leaning into the "bigger is better" mantra.¹⁶

¹² *Application of American Water Works Company, Inc., Essential Utilities, Inc., et al.*, Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929, at 6 (filed Nov. 26, 2025).

¹³ *Id.* at 7.

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 19.

¹⁶ *See, e.g.*, Rebuttal Testimony of Cheryl Norton, Joint Applicants St. 1-R at 4:8-20, 6:4-11.

19. When asked to identify actual performance improvements, the Joint Applicants did not identify specific incremental customer-service or service-quality commitments arising from the Merger.¹⁷

20. For low-income customers, Essential said only that it would “continue to review and make adjustments” where appropriate.¹⁸

21. On January 22, 2026, ALJ Mary D. Long held a telephonic prehearing conference.¹⁹

22. In connection with the conference, multiple parties, including the OCA, CAUSE-PA, I&E, CWA, DelCo and various other municipalities filed petitions to intervene and protests.²⁰

23. On December 29, 2025, CWA timely filed a Protest to the Joint Application pursuant to the Commission’s Rules of Practice and Procedure and the Code.²¹

¹⁷ See Direct Testimony of D.C. Patel, I&E St. 1 at 18:6-19:14.

¹⁸ *Id.* at 14:11-19.

¹⁹ See *Telephonic Prehearing Conference Notice*, Pa. P.U.C. Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Jan. 13, 2026).

²⁰ See *Prehearing Memorandum of the Office of Consumer Advocate* (filed Jan. 22, 2026); *Prehearing Conference Memorandum of the County of Delaware* (filed Jan. 20, 2026); *Prehearing Conference Memorandum of American Water Works Company, Inc. et al* (filed Jan. 20, 2026); *Prehearing Conference Memorandum of CAUSE-PA*, (filed Jan. 20, 2026); *Prehearing Conference Memorandum of Chester Water Authority*, (filed Jan. 20, 2026).

²¹ See *Protest of Chester Water Authority*, Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929, (filed Dec. 29, 2025)

24. In its Protest, CWA opposed approval of the Joint Application and requested that the Commission deny the requested relief.²²

25. In its Protest, CWA asserted, inter alia, that the proposed transaction should not be approved because, in CWA's view, the Joint Application does not establish that the transaction is in the public interest, does not demonstrate substantial affirmative public benefits, raises competitive concerns, and warrants review under applicable provisions of the Code and Commission precedent.²³

26. In its Protest, CWA opposed expedited disposition of the proceeding and asserted that the size, complexity, and potential customer impacts of the proposed transaction warrant a full evidentiary process.²⁴

27. In its Protest, CWA asserted that the outcome of this proceeding may affect interests of CWA and its ratepayers.²⁵

28. CWA reserved the right to raise additional issues as the proceeding develops and as further information is obtained from the Joint Applicants.²⁶

²² *See id.*

²³ *See id.* at 4-9.

²⁴ *See id.* at 19.

²⁵ *See id.* at 19.

²⁶ *See id.* at 9.

29. In April 2026, public participation was taken through a series of public input meetings.²⁷

30. By May 21, 2026, Intervenor and Protestants had filed direct testimony in the proceeding. The direct testimony filed by Intervenor and Protestants included testimony of D.C. Patel, Ethan H. Cline, Patrick M. Cicero, Christine Reuther, and other witnesses.²⁸

31. The Joint Applicants filed rejoinder testimony in late July 2026.²⁹

32. Surrebuttal testimony was also filed, including submissions by I&E, OCA, the Office of Small Business Advocate (“OSBA”), CAUSE-PA, and municipal parties.³⁰

33. In both the Direct and Surrebuttal testimony, OCA, CAUSE-PA, and I&E’s witnesses identified serious risks to consumers: higher rates, uncertain savings, unresolved

²⁷ See *Proofs of Publication of Notice of Public Input Hearings*, Pa. P.U.C. Docket No. A-2025-3058927, Doc. No. 2901113 (filed Apr. 22, 2026).

²⁸ See *OCA Direct Testimony*, Certificate of Service, Docket No. A-2025-3058927 (May 21, 2026); *CAUSE-PA Direct Testimony*, Certificate of Service, Docket No. A-2025-3058927 (May 21, 2026); *Delaware County, Montgomery County, Butler City, East Whiteland Township & York Area Regional Intervenor Direct Testimony*, Certificate of Service, Docket No. A-2025-3058927 (May 27, 2026).

²⁹ *Certificate of Service to Rejoinder Testimony*, Statement Nos. 1-RJ through 6-RJ, American Water and Merger Sub, Pa. P.U.C. Docket No. A-2025-3058927 (filed and published July 31, 2026).

³⁰ *Surrebuttal Testimony of Patrick M. Cicero (CAUSE-PA), Celia Hashlamoun (OSBA), Ralph Smith and Barbara Alexander (OCA), and D.C. Patel and Ethan H. Cline (I&E)*, Pa. P.U.C. Docket No. A-2025-3058927 (filed July 23–24, 2026).

integration costs, acquisition-driven growth, greater market concentration, weaker competition, and serious affordability concerns for low-income households.³¹

34. In both the Direct and Surrebuttal testimony, OCA, CAUSE-PA, and I&E's witnesses repeatedly criticized the Joint Applicants for failing to identify concrete, measurable public benefits.³²

35. CAUSE-PA attacked the Joint Applicants' reliance on its vague assertion that it would create a larger platform to enhance water and wastewater "best practices," testifying that the claimed benefit was "nothing more than ephemeral corporate-speak that can neither be measured nor substantiated."³³

36. An initial in-person evidentiary hearing was scheduled and convened before ALJs Emily DeVoe and Ann Quimby on August 4 through August 6, 2026.³⁴

37. The evidentiary hearing was ultimately cancelled on August 5, 2026.³⁵

³¹ See, e.g., *Direct Testimony of D.C. Patel*, I&E St. 1 at 7:14-9:15, 12:16-13:11, 35:4-38:18; *Direct Testimony of Ethan H. Cline*, I&E St. 2 at 7:1-8:7.

³² See, e.g., *Direct Testimony of D.C. Patel*, I&E St. 1 at 7:18-8:12, 34:4-13; *Surrebuttal Testimony of D.C. Patel*, I&E St. 1-SR at 6:14-9:20; *Direct Testimony of Patrick M. Cicero*, CAUSE-PA St. 1 at 11:19-25:12.

³³ See Cicero (Direct) at 13:5-19.

³⁴ See *Transcript of Initial In-Person Evidentiary Hearing Before ALJs Emily DeVoe and Ann Quimby*, Pa. P.U.C. Docket No. A-2025-3058927, at 656–774 (Aug. 4, 2026) (filed Aug. 7, 2026).

³⁵ *Hearing Cancellation Notice*, Pa. P.U.C. Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Aug. 5, 2026).

38. On August 21, 2026, certain parties reached a partial settlement agreement (“Proposed Settlement”).

39. The ALJs were notified of the partial settlement agreement on August 25, 2026.³⁶

40. The Joint Petitioners and Joint Applicants filed a Joint Petition for Non-Unanimous Settlement (“Joint Petition”) on September 15, 2026.³⁷

41. In this Joint Petition, the Joint Applicants and Joint Petitioners briefed their support for the Proposed Settlement.

42. CAUSE-PA, Butler, East Norriton Township, Local 542, Local 612, Lower Makefield Township, and Upland Borough did not oppose the Proposed Settlement, while Delco and the New York Area Intervenors had yet to confirm a position.³⁸

43. East Whiteland, MontCo, and CWA oppose this Proposed Settlement.³⁹

44. The Proposed Settlement is non-unanimous.⁴⁰

45. CWA opposes the Proposed Settlement.

³⁶ *Interim Order Setting Updated Requirements for Briefs, Non-Unanimous Settlement, and Statements in Support*, at 2, Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Aug. 28, 2026).

³⁷ Joint Petition for Non-Unanimous Settlement, *Joint Application of American Water Works Co., Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Co. LLC & Alpha Merger Sub, Inc.*, Docket Nos. A-2025-3058927, A-2025-3058928 & A-2025-3058929 (Pa. P.U.C. Sept. 15, 2026).

³⁸ *Id.* at 2 n. 3.

³⁹ *Id.* at 2 n. 3.

⁴⁰ *Id.* at 8 ¶ 24.

46. Under the Proposed Settlement, each PAWC, Aqua PA, and Peoples customer would receive a one-time bill credit of \$40, with a total value at approximately \$82 million.⁴¹

47. The one-time \$40 bill credit provides an immediate but non-recurring benefit to PAWC, Aqua PA, and Peoples customers.

48. The Proposed Settlement also provides that American Water would contribute an additional \$600,000 per year to Aqua PA's and Peoples' hardship funds for at least three years.⁴²

49. The hardship-fund contributions provide additional support for customer assistance programs, but the Proposed Settlement leaves allocation details for later determination.

50. Under the Proposed Settlement, PAWC would agree not to file for new base rates before April 1, 2028.⁴³

51. Under the Proposed Settlement, Aqua PA would agree not to file for new base rates before June 1, 2027.⁴⁴

52. The stay-out gives no assurance that costs accumulating during the stay-out will not appear in the next rate case.

⁴¹ *Id.* at 6 ¶ 10.

⁴² *Id.* at 16 ¶ 51.

⁴³ *Id.* at 6 ¶ 12.

⁴⁴ *Id.* at 6 ¶ 11.

53. A Merger of this size takes time to investigate, litigate, approve, close, and integrate.

54. By the time the transaction closes, a significant part of the stay-out period may already have elapsed.

55. The Proposed Settlement provides that the companies would absorb transaction costs and certain transition costs associated with the Merger.⁴⁵

56. Aqua PA's and Peoples' existing rates and tariffs would remain in place at closing, and the Proposed Settlement includes protections for ADIT treatment, low-income reconnection-fee waivers, collective bargaining agreements, pension obligations, a 12-month limitation on union workforce reductions, continued charitable giving for three years, and certain corporate-separateness and ring-fencing protections.⁴⁶

57. Under the Proposed Settlement, the utilities would commit to maintain at least current service quality, to take "prudent" actions to realize Merger benefits, to provide safe and affordable service, to commit to coordinate universal service programs, to preserve local management, to continue customer-service functions, to reflect identifiable and quantifiable Merger savings in their next rate cases.⁴⁷

58. OCA, CAUSE-PA and I&E's witnesses identified serious risks of the proposed Merger to consumers: higher rates, uncertain savings, unresolved integration

⁴⁵ *Id.* at 6-8.

⁴⁶ *See generally, id.*

⁴⁷ *See generally, id.*

costs, acquisition-driven growth, greater market concentration, weaker competition, and serious affordability concerns for low-income households.⁴⁸

59. OCA, CAUSE-PA and I&E's witnesses repeatedly criticized the Joint Applicants for failing to identify concrete, measurable public benefits in their filings with the Commission.⁴⁹

60. I&E's own testimony identified the rate risk that the Merger will drastically raise rates in the long term across Pennsylvania:

[I]f the Merger is approved and both companies are eventually consolidated under a single rate structure, the Aqua PA customers would likely be expected to increase their rates to match those of PAWC in addition to any base rate increases to cover their own cost of service in the intervening year. . . this increase in rates would not be commensurate with a similar increase in quality of service or any other such bene-fit for the customers[.]⁵⁰

61. I&E testified that, when asked to identify actual performance improvements, the Joint Applicants did not identify specific incremental customer-service or service-quality commitments arising from the Merger.⁵¹

⁴⁸ See, e.g., Direct Testimony of D.C. Patel, I&E St. 1 at 7:14-9:15, 12:16-13:11, 35:4-38:18; Direct Testimony of Ethan H. Cline, I&E St. 2 at 7:1-8:7.

⁴⁹ See, e.g., Direct Testimony of D.C. Patel, I&E St. 1 at 7:18-8:12, 34:4-13; Surrebuttal Testimony of D.C. Patel, I&E St. 1-SR at 6:14-9:20; Direct Testimony of Patrick M. Cicero, CAUSE-PA St. 1 at 11:19-25:12.

⁵⁰ Direct Testimony of Ethan H. Cline, I&E St. 2 at 7:13-8:7.

⁵¹ See Direct Testimony of D.C. Patel, I&E St. 1 at 18:6-19:14.

62. CAUSE-PA testified there would be costs to achieve Merger-related synergies, although the Joint Applicants did not have the concrete costs of the integration of these companies available.⁵²

63. CAUSE-PA expressed concern that the combined company's growth strategy would lead to increased customer rates and monthly bills.⁵³

64. I&E's witness, D.C. Patel warned that PAWC, Aqua PA, and Peoples would continue accelerated capital expenditure programs; that those programs would seek higher returns on investment and motivate more frequent rate increases, and that this effect would burden ratepayers, increase profits for utility and parent companies, and benefit investors at the cost of ratepayers.⁵⁴

65. CAUSE-PA released extensive testimony showing the impacts unaffordable water service as on the low-income communities.⁵⁵

66. CAUSE-PA's witness Patrick Cicero concluded that at least 25% of the residential customer base of the combined companies have profound and dire affordability concerns.⁵⁶

⁵² Direct Testimony of Patrick M. Cicero, CAUSE-PA St. 1 at 26:15-16.

⁵³ *Id.* at 26:11-20.

⁵⁴ Surrebuttal Testimony of D.C. Patel, I&E St. 1 at 8:17-9:15.

⁵⁵ *See* Cicero (Direct) at 32:3-43:5.

⁵⁶ *Id.* at 37:4-10.

67. For low-income customers, Essential said hat it would “continue to review and make adjustments” where appropriate.⁵⁷

68. Water and wastewater customers have no practical ability to switch providers.⁵⁸

69. To be affordable, a household’s total housing costs, including utilities, should account for no more than 30% of household income.⁵⁹

70. Water terminations can leave families unable to cook, bathe, clean, or flush toilets.⁶⁰

71. Water terminations can threaten the habitability of the home, jeopardize housing stability, and contribute to homelessness.⁶¹

72. For the households analyzed by CAUSE-PA, Aqua Water represented a 5.94% utility burden and Aqua WW represented a 6.61% utility burden.⁶²

⁵⁷ *Id.* at 14:11-19.

⁵⁸ Patel (Direct), I&E St. 1 at 8:17-9:15.

⁵⁹ Cicero (Direct) at 36:5-7.

⁶⁰ *Id.* at 37, Table 5.

⁶¹ *Id.* at 37, Table 5.

⁶² *Id.* at 37, Table 5.

73. For households analyzed by CAUSE-PA, PAWC water represented an 8.59% burden under current rates and 10.04% under proposed rates and PAWC wastewater represented an 11.54% burden under current rates and 12.59% under proposed rates.⁶³

74. No other investor-owned water utilities in Pennsylvania are comparable or close in size to PAWC and Aqua PA by any metric.⁶⁴

75. Municipalities currently can obtain competing bids from Essential and American Water when considering sale of systems.

76. Competing bidders give municipalities leverage over price, investment commitments, employment protections, operating terms, and other conditions.

77. CAUSE-PA's Witness Patrick Cicero warned that 1329 acquisitions can carry substantial costs and could fail to produce the expected synergies or savings.⁶⁵

78. CAUSE-PA's Witness Patrick Cicero testified that 1329 acquisitions "have raised rates for consumers across the Commonwealth by at least \$100 million a year over the past 10 years."⁶⁶

79. I&E's Witness testified that the Merger would eliminate competition from a market-wide perspective. He testified that after the Merger:

[B]y virtue of being the largest and financially strongest IOU, American Water/Essential through PAWC, Aqua PA, and Aqua PA-WW would be in a position to dictate the water and wastewater industry practices given its

⁶³ *Id.* at 37, Table 5.

⁶⁴ Patel (Direct) at 13:17-20.

⁶⁵ Cicero (Direct) at 27:8-11.

⁶⁶ *Id.* at 27:14-18.

dominate position in the industry and would become a sole buyer of other investor owned or privately held water and wastewater utilities and municipal owned water and/or wastewater systems (under 66 Pa C.S.A § 1329) in Pennsylvania as there would likely be no viable competitors in a competitive bidding process. This would enable American Water (through its subsidiaries, PAWC, Aqua PA, and Aqua PA-WW) to expand, consolidate, and strengthen its monopoly in service territories, limiting and creating barriers for free market access for other utilities in the Pennsylvania water and wastewater utility market. Thus, this Merger transaction would have the effect of boosting an anti-competitive market environment in the Pennsylvania water and wastewater market that would be detrimental to the public interest as without viable competition to control purchase prices, territory expansion costs could increase, which would be fully funded by customers.⁶⁷

80. The Merger would eliminate competition that currently exists between PAWC and Aqua.⁶⁸

81. Both Aqua PA and PAWC are operationally, technically, and financially competent and sound to provide safe and reliable service independently.

82. Aqua PA's water operating revenue and operating income increased by 24.51% and 17.03%, respectively, from 2020 to 2024.⁶⁹

83. Aqua PA's wastewater operating revenue and operating income increased by 135.01% and 379.79%, respectively, from 2020 to 2024.⁷⁰

⁶⁷ Patel (Direct) at 22:1-17.

⁶⁸ Direct Testimony of Christine Reuther, Delco St. at 5:16-6:2; *see also*, Patel (Direct) at 22:1-17.

⁶⁹ Patel (Direct) at 15:3-10.

⁷⁰ *Id.* at 15:3-10.

84. Section 1329 permits fair-value acquisition pricing that may exceed depreciated original cost.⁷¹

85. The Joint Applicants have “consistently and successfully completed numerous acquisitions of municipal water and wastewater facilities at fair market value under 66 Pa. C.S.A. § 1329” while expanding their territories and customer bases.⁷²

86. CAUSE-PA testified that it was “all too familiar with the peril of these acquisitions for utility ratepayers” and that Section 1329 acquisitions “have raised rates for consumers across the Commonwealth by at least \$100 million a year over the past 10 years.”⁷³

87. Section 1329 acquisitions have added approximately \$1 billion to rate base and approximately \$100 million in annual customer charges.⁷⁴

⁷¹ Cicero (Direct) at 27:12-18.

⁷² *Id.* at 21:1-10.

⁷³ Cicero (Direct) at 27:12-18.

⁷⁴ Cicero (Direct) at 27:8-11, 14-18.

APPENDIX B: CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this proceeding and over the Joint Application pursuant to the Code, including 66 Pa. C.S. §§ 1102, 1103, 2102, and 2210.

2. The Supreme Court has found that this section of the Code requires a finding that a proposed Merger will affirmatively benefit the public and “affirmatively promote the ‘service, accommodation, or convenience or safety of the public’ in some substantial way.”¹

3. Section 1102 of the Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by a public utility or their affiliated interests.²

4. Section 1103 requires that a certificate shall only be granted upon findings that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”³

5. Additionally, Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience.⁴

¹ *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1973) (internal citations omitted); *see Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1054 (Pa. 2007).

² 66 Pa. C.S. § 1102(a)(1)-(3).

³ 66 Pa. C.S. § 1103(a).

⁴ 66 Pa. C.S. § 1103(a) (“The Commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.”)

6. Under the Commission's regulations, a settlement petition must be filed with the Secretary in accordance with the general requirements governing petitions.⁵

7. The settlement agreement must specifically identify which parties support the settlement, oppose it, take no position, or were denied an opportunity to participate in the settlement.⁶

8. Each party must be given an opportunity to comment on the proposed settlement unless the presiding officer orders otherwise.⁷

9. When no presiding officer has been assigned, the Commission reviews the settlement directly to determine whether the settlement is in the public's interest, and parties that have not joined the settlement may submit objections within twenty days after the petition is filed unless the Commission establishes a different deadline.⁸

10. The Commission should consider foreseeable effects on competition, concentration, local control, and acquisition power as part of its affirmative public benefit analysis.

11. The Commission should give little weight to the support of the Joint Petitioners for the settlement where their own prior evidence identified substantial customer risks.

⁵ 52 Pa. Code § 5.232(a).

⁶ 52 Pa. Code § 5.232(b).

⁷ 52 Pa. Code § 5.232(c).

⁸ 52 Pa. Code § 5.232(d), (g).

12. The Commission should evaluate the settlement against the evidentiary record rather than defer to the fact of party agreement.

13. The Joint Applicants have failed to establish concrete public benefits sufficient to meet their burden of proof.

14. The Proposed Settlement does not satisfy the affirmative public benefit standard because it does not provide concrete, measurable, transaction-specific customer benefits.

15. Future ratemaking proceedings do not excuse the Commission from considering foreseeable rate consequences in the present affirmative public benefit analysis.

16. A later rate case cannot cure or undo structural competitive harm caused by Merger approval.

17. The fixed-date stay-out provisions do not constitute meaningful long-term ratepayer protection in the context of this Merger.

18. The one-time \$40 credit and time-limited hardship contributions do not amount to sufficient long-term public benefits under the statutory standard.

19. Broad aspirational commitments without enforceable metrics, deadlines, targets, or pass-through requirements are insufficient to establish public benefit.

20. If the Commission finds that the Joint Applicants have satisfied the affirmative public benefit standard, it should impose significant conditions on approval.

21. If the Commission does not reject the Proposed Settlement, it should impose structural conditions to mitigate monopoly and ratepayer risks.

22. If the Commission approves the Proposed Settlement, the Commission should prohibit the Joint Applicants, for fifteen years, from acquiring healthy, functional, or non-distressed Pennsylvania municipal authorities.

23. If the Commission approves the Proposed Settlement, the Commission should prohibit the use of Section 1329 fair-value pricing for Pennsylvania municipal-authority acquisitions during that fifteen-year period and require depreciated original cost valuation.

24. If the Commission approves the Proposed Settlement, the Commission should require majority voter approval before the Joint Applicants may acquire any Pennsylvania municipal authority during that period.

25. If the Commission approves the Proposed Settlement, the Commission should require the Joint Applicants to establish local ratepayer advisory and oversight boards throughout the combined service territory.

26. The Commission should reject the Proposed Settlement.

APPENDIX C: PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Proposed Settlement is rejected.
2. That the Joint Applicants have not demonstrated on the present record that the proposed Merger/change in control transaction will affirmatively benefit the public or is necessary or proper for the service, accommodation, convenience, or safety of the public.
3. That the request for approval of the proposed Merger/change in control transaction is denied without prejudice.
4. That the Joint Applicants may file a further application or revised settlement proposal only upon such terms and conditions as are consistent with the Code and the public interest.