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September 29, 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 **Reply Brief of the Joint Applicants**.

As indicated on the Certificate of Service, copies have been served upon Administrative Law Judge Emily I. DeVoe, Administrative Law Judge Ann Quimby and all parties of record.

If you have any questions, please contact me directly at 215.963.4603. Thank you.

Very truly yours,



Mark A. Lazaroff

MAL/ap

Enclosures

c: Per Certificate of Service (w/encls.)

DB1/ 174431500.1

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**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 ALPHA MERGER SUB, INC.	:	
FOR A CERTIFICATE OF PUBLIC	:	Docket Nos. A-2025-3058927
CONVENIENCE UNDER SECTIONS	:	A-2025-3058928
1102(A)(3) AND 2210(C) OF THE PUBLIC	:	A-2025-3058929
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	:	

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served true and correct copies of the **Reply Brief of the Joint Applicants** on the following individuals in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: September 29, 2026

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**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 ALPHA MERGER SUB, INC. FOR A	:	DOCKET NOS. A-2025-3058927
CERTIFICATE OF PUBLIC CONVENIENCE	:	A-2025-3058928
UNDER SECTIONS 1102(A)(3) AND 2210(C)	:	A-2025-3058929
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	:	
	:	
	:	
	:	

**REPLY BRIEF OF JOINT APPLICANTS AMERICAN WATER WORKS COMPANY, INC.,
ALPHA MERGER SUB, INC., ESSENTIAL UTILITIES, INC., AQUA PENNSYLVANIA, INC.,
AQUA PENNSYLVANIA WASTEWATER, INC., AND PEOPLES NATURAL GAS COMPANY
LLC**

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Dated: September 29, 2026

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I. INTRODUCTION

American Water Works Company, Inc. (“American Water”), Essential Utilities, Inc. f/k/a Aqua America, Inc. (“Essential”),¹ Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater, Inc. (“Aqua PA WW”),² Peoples Natural Gas Company LLC (“Peoples”), and Alpha Merger Sub, Inc. (“Merger Sub”) (collectively, “JA” or the “Joint Applicants”) file this Reply Brief in response to the Initial Briefs of the Chester Water Authority (“CWA”) and the Opposing Municipal Intervenors.³ CWA and the Opposing Municipal Intervenors (collectively, the “Non-Settling Parties”) are the only parties that oppose the Joint Petition for Non-Unanimous Settlement (“Joint Petition” or “Settlement”) filed on September 15, 2026 by the Joint Applicants, the Commission Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA” and, together with I&E and the OCA, the “Statutory Parties”).⁴

¹ Aqua America, Inc. changed its name to Essential Utilities, Inc. on February 3, 2020, following its acquisition of Peoples. The Pennsylvania Public Utility Commission (“PUC” or “Commission”) authorized the Peoples acquisition subject to the commitments and conditions set forth in a non-unanimous settlement as modified by the PUC’s Opinion and Order entered January 24, 2020, at Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 (“*Aqua-Peoples 2020*”).

² Unless otherwise specified herein, references to Aqua PA also include Aqua PA WW, which is a wholly-owned subsidiary of Aqua PA.

³ The Opposing Municipal Intervenors consist of Delaware County (“Delco”), Montgomery County (“Montco”), and East Whiteland Township (“East Whiteland”).

⁴ The Joint Applicants and the Statutory Parties are referred to collectively as the “Joint Petitioners.”

The Non-Settling Parties request that the Commission deny approval of the change in control of Aqua PA and Peoples to be effected by the merger of Essential and Merger Sub, a wholly owned subsidiary of American Water (the “Merger”). In the alternative, CWA recommends that the Commission impose conditions that CWA introduces for the first time in this proceeding in its Initial Brief after choosing not to submit any testimony and electing not to attend the evidentiary hearing in this case.⁵ After engaging in virtually no discovery in this proceeding, presenting limited direct testimony, and conducting slight cross-examination of a single JA witness, the Opposing Municipal Intervenor also request that the Commission now reopen the record and permit the Non-Settling Parties to engage in discovery and submit “record evidence” regarding the Settlement.

In their Initial Brief, the Joint Applicants demonstrated that the Merger and the Settlement, with extensive commitments – including \$82 million in customer rate credits, rate case stay-out provisions for Aqua PA and Pennsylvania-American Water Company (“PAWC”), enhancements to utility customer service, expanded low-income customer assistance programs, sustained charitable contributions, and community support – will deliver substantial affirmative benefits to Pennsylvania customers. In this Reply Brief, the Joint Applicants explain why the objections of the Non-Settling Parties to the Settlement and their requested relief should be rejected by the Commission as contrary to law and to the record evidence in this proceeding. For the reasons set forth in the Initial Brief and this

⁵ See Tr. at 668.

Reply Brief, the Commission should conclude that the Settlement, supported by the Statutory Parties, is in the public interest and approve the Merger.

II. NON-UNANIMOUS SETTLEMENT

A. The Non-Settling Parties' Comments Concerning Non-Unanimous Settlements Are Erroneous and Should Be Disregarded

In their Initial Brief, the Opposing Municipal Intervenors imply that the settling parties expect the Commission to apply a “presumption of reasonableness” in determining if Section 1103(a) of the Public Utility Code has been satisfied.⁶ This is not true. The Joint Applicants expect that the Commission will make an independent determination as to whether the Merger, as described in the Joint Application and supplemented by the terms of the Settlement, satisfies all applicable legal standards based on the substantial evidence contained in the record in this case.⁷ While the additional benefits generated by the terms of the Settlement and the support of I&E, the OCA, and the OSBA – the statutory parties in this proceeding charged with protecting the interests of customers – should be carefully considered and given due weight, the Joint Applicants do not contend that the existence of the Settlement in any way short-circuits the Commission’s consideration of the issues in this case.

All parties – including the Non-Settling Parties – had a full and fair opportunity to present evidence, cross-examine witnesses and submit briefs on all contested issues. I&E, the OCA, the OSBA, and other parties, including the Opposing Municipal Intervenors,

⁶ See Opposing Municipal Intervenors’ Initial Br., pp. 4-5, 17-18.

⁷ See Joint Applicants’ Initial Br., pp. 10-15.

presented written testimony on rates and concerns about affordability of water, wastewater, and natural gas rates in Pennsylvania, the Joint Applicants' commitments, and the adequacy of benefits for customers produced by the Merger.⁸ Those issues were fully litigated, and the Joint Applicants responded on the record to the concerns of both the Statutory Parties and the Opposing Municipal Intervenors and significantly expanded their merger commitments to provide additional public benefits, including a commitment to provide substantial shareholder-funded rate credits directly to customers. Notably, the Non-Settling Parties now rely heavily on testimony of the Statutory Parties to argue that the PUC should reject the Settlement, despite the fact that the Statutory Parties have explained that the expanded merger commitments reflected in the Settlement address their concerns and the Merger should be approved.⁹

⁸ See generally I&E St. 1 (Patel), pp. 7-43 & 1-SR (Patel), pp. 4-36; I&E St. 2 (Cline), pp. 4-8 & 2-SR (Cline), pp. 2-5; I&E St. 3 (Gobrecht), pp. 8-14; OCA St. 1 (Smith), pp. 9-89 & 1-SR (Smith), pp. 2-45; OCA St. 2 (Alexander), pp. 4-35 & 2-SR (Alexander), pp. 2-17; OSBA St. 1 (Kubas), pp. 3-4; OSBA St. 2 (Hashlamoun), pp. 4-20 & 2-SR (Hashlamoun), pp. 1-6; CAUSE-PA St. 1 (Cicero), pp. 2-88 & 1-SR (Cicero), pp. 2-47; Butler St. 1 (Dandoy), pp. 3-6; Delco St. 1 (Reuther), pp. 4-6 & 1-S (Reuther), pp. 2-16; East Whiteland St. 1 (Brown), pp. 4-6; Montco St. 1 (Ramkissoon), pp. 3-6; Montco St. 1-S (Ramkissoon), pp. 2-4.

⁹ See I&E Statement in Support, pp. 8-9 ("I&E submits that this Settlement balances the interest of the Joint Applicants, their customers, and the Joint Petitioners in a fair and equitable manner and presents a resolution for the Commission's adoption that best serves the public interest."); OCA Statement in Support, p. 54 (stating that the terms and conditions of the Settlement "represent a fair and reasonable resolution of the issues and claims arising this proceeding," are supported by substantial record evidence, and should be approved); OSBA Statement in Support, pp. 2 & 4 (stating that the Joint Petition "resolves the issues raised by [the OSBA] in this proceeding" and should be approved).

The fact that the Settlement is non-unanimous and that the Statutory Parties initially opposed the Merger does not undermine the benefits of the Settlement or its furtherance of the public interest, as CWA and the Opposing Municipal Intervenors suggest.¹⁰ The Commission has long recognized a strong public policy favoring settlements,¹¹ and recently explained the benefits of non-unanimous settlements:

This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. A full settlement of all these issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a Non-Unanimous Settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole, non-unanimous, or partial, benefits not only the named parties directly, but indirectly, all customers of the public utility involved in the case.¹²

The Settlement includes a number of significant benefits above and beyond the extensive merger commitments set forth in the Joint Applicants' initial filing. Moreover, the Statutory Parties specifically agreed that substantial litigation costs were avoided and that the Settlement addressed the specific issues raised in this proceeding by their respective

¹⁰ CWA Initial Br., pp. 5, 27-28; Opposing Municipal Intervenors' Initial Br., pp. 4, 19-20.

¹¹ 52 Pa. Code § 5.231(a).

¹² *Petition of UGI Utils, Inc. – Elec. Div. for Approval of a Default Serv. Plan for the Period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, 2025 WL 636873, at *5 (Opinion and Order entered Feb. 20, 2025); *see also, e.g., Pa. P.U.C. v. Pa.-Am. Water Co.*, Docket Nos. R-2020-3019369 and R-2020-3019371, 2021 WL 785069, at *22 (Feb. 25, 2021) (finding that a non-unanimous settlement benefits all parties in the same respect as a partial settlement by narrowing the contested issues before the ALJ).

witnesses in a fair and reasonable fashion.¹³ In sum, and consistent with other non-unanimous settlements approved by the Commission, the Settlement should be approved for the reasons set forth in the Joint Applicants' Initial Brief, the Statements in Support of the Settlement, and this Reply Brief.

B. The Commission Should Deny the Opposing Municipal Intervenors' Request to Reopen the Record and Conduct Discovery on the Settlement Terms

The Opposing Municipal Intervenors contend that approving the Settlement would violate the rights of the Non-Settling Parties because "the record was specifically directed toward the original transaction" and request that the Commission reopen the record to permit discovery on the Settlement and submission of additional record evidence.¹⁴ The Commission should deny this request for two principal reasons.

First, the Settlement addresses topics and concerns that were litigated throughout the proceeding. Although the Opposing Municipal Intervenors attempt to characterize record development as statically tied to the Joint Applicants' initial filing, the full record actually reflects the active participation of many parties in assessing benefits of the Merger and proposing alternative conditions and commitments. The Settlement terms address key areas of concern raised in the testimony of other parties, as reflected in the Statements in Support of the Settlement.

¹³ See I&E Statement in Support, pp. 9-43; OCA Statement in Support, pp. 9-53; OSBA Statement in Support, pp. 3-4.

¹⁴ Opposing Municipal Intervenors' Br., pp. 4-5.

The Opposing Municipal Intervenors had extensive opportunity to probe these areas and provide record evidence on their positions. For example, as part of the Joint Applicants' rebuttal case, the Joint Applicants submitted Exhibit CN-1R to update their original list of Merger commitments in response to recommendations made by other parties. The Settlement includes terms addressing all of the topic areas identified in that exhibit (i.e., the Merger's impact on rates, quality of service, local presence and commitments to employees, charitable contributions and community support, corporate organization and financial integrity, and reporting). Further, in response to the testimony of other parties, in written rejoinder testimony submitted prior to the evidentiary hearing in this case, the Joint Applicants proposed shareholder-funded rate credits totaling approximately \$30.8 million, which the Settlement only increased.¹⁵

The Opposing Municipal Intervenors chose to submit limited record evidence on Merger condition proposals,¹⁶ most of which were ultimately addressed in the Settlement, and, with the exception of narrow cross-examination of Ms. Arnold related to the DELCORA transaction,¹⁷ waived all cross-examination of the Joint Applicants on Merger conditions and commitments, including the affirmative benefits of any rate credit. Indeed, throughout the entire proceeding, the Opposing Municipal Intervenors sought very limited

¹⁵ JA St. 2-RJ (Bowler), pp. 3-4.

¹⁶ See Delco St. 1 (Reuther), pp. 4-6; Delco St. 1-S (Reuther), pp. 3, 5-9, 13-14; East Whiteland St. 1 (Brown), pp. 4-5; East Whiteland St. 1-S (Brown), p. 5; Montco St. 1 (Ramkissoon), pp. 3-5; Montco St. 1-S (pp. 1-3) (addressing at a high-level, rate protections, service quality, employee and workforce protections, and DELCORA).

¹⁷ See Tr., pp. 737-47; 750-52.

discovery.¹⁸ Any regrets the Opposing Municipal Intervenor may now have for not fully participating in this proceeding do not justify reopening of the record.

Second, the Commission has repeatedly found that due process is satisfied in the context of non-unanimous settlements when non-settling parties are served with the settlement and given the opportunity to present their disputed issues in briefing and/or comments in response to the non-unanimous settlement. For example, in a 2022 gas base rate proceeding, the Commission found that a complainant's due process rights were protected with regard to two non-unanimous settlements because he was given the opportunity to review, comment on, and object to terms of settlements and was not improperly excluded from settlement discussions.¹⁹ Here, the Opposing Municipal Intervenor was afforded due process in this case with full opportunity to develop and probe issues through discovery, testimony and cross-examination, provided with the ability to participate in settlement discussions, and served with the Settlement, and now have the opportunity to present their opposition to the Settlement in briefing (as well as through exceptions to any recommended decision).

Finally, the decisions cited by the Opposing Municipal Intervenor in support of their due process concerns are entirely inapplicable in this case, where the Non-Settling

¹⁸ The Opposing Municipal Intervenor served one set of interrogatories to the Joint Applicants during the course of this proceeding, certain questions of which were the subject of the *Interim Order Granting in Part and Denying in Part the Motion to Overrule Objections and Compel Production from Joint Applicants* (Docket Nos. A-2025-3058927 et al. (June 9, 2026)).

¹⁹ *Pa. P.U.C. v. Columbia Gas of Pa.*, Docket No. R-2022-3031211 (Order entered Dec. 8, 2022), p. 126.

Parties have been afforded full due process rights of presenting evidence, cross-examining witnesses, and briefing contested issues. In *Duquesne Light Co. v. Pennsylvania P.U.C.*²⁰ cited by the Opposing Municipal Intervenors, the Commonwealth Court of Pennsylvania (“Commonwealth Court”) found that a utility was not given adequate notice of the specific conduct being investigated by the Commission and, therefore, the Commission violated due process when it assessed liability based on an issue that the utility had not been afforded a reasonable opportunity to address at the evidentiary hearings. Similarly, in *Sunoco Pipeline LP v. Pennsylvania P.U.C.*,²¹ the Commonwealth Court found due process violations occurred where the assigned Administrative Law Judge raised certain federal regulations, sua sponte, for the first time in her Initial Decision. In short, the Commission should reject the request by the Opposing Municipal Intervenors to reopen the record.

III. LEGAL STANDARDS

There is no dispute regarding which provisions of the Public Utility Code and Commission regulations govern the issuance of a certificate of public convenience necessary for the Merger, as well as other necessary approvals for affiliated interest agreements and a determination that the Merger will not undermine natural gas competition in the Commonwealth. But as discussed in Section II above and in Sections IV and V *infra*, the Non-Settling Parties misapply those provisions and regulations in objecting to

²⁰ 507 A.2d 433, 437 (Pa. Commw. Ct. 1986).

²¹ 295 A.3d 37, 52 (Pa. Commw. Ct. 2023).

the Settlement.²² Where, as here, substantial evidence in the record supports a non-unanimous settlement of a merger application that will deliver substantial affirmative benefits to customers after full hearings, the Commission should conclude that the Settlement is in the public interest and approve the Merger.

IV. SUMMARY OF ARGUMENT

The voluminous record in this proceeding demonstrates that the Merger, as supplemented by the Settlement, will result in substantial affirmative public benefits. The Joint Petition and the Statements in Support submitted by the Joint Applicants, I&E, the OCA, and OSBA make clear that the Settlement adequately addresses concerns raised by various parties during the course of this proceeding and that it will result in numerous benefits for customers, Pennsylvania communities, and employees that would not be realized absent the Merger.

The Non-Settling Parties essentially ignore the record in this case and misconstrue the applicable legal standards in reaching their conclusion that the Commission should not approve the Merger. While the Non-Settling Parties may find a \$40 rate credit to every Aqua PA, PAWC, and Peoples customer “meaningless” and the agreed-upon Aqua PA and PAWC base-rate-case stay-outs immaterial, these measures will deliver tangible financial benefits to customers in the near-term. Customers will also benefit from agreed-upon

²² For example, as discussed *infra*, the Opposing Municipal Intervenors suggest that unquantified benefits are insufficient, see Opposing Municipal Intervenors’ Initial Br., p. 7, but the Pennsylvania Supreme Court has made clear that the standard articulated in *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“*City of York*”) can be met “without quantifying the specific effects of alleged savings.” *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1056 (Pa. 2007) (“*Popowsky*”).

customer-service and service-quality standards, the expansion of material assistance for low-income customers through additional hardship-fund contributions, faster arrearage forgiveness, coordinated enrollment and conservation programs, and the waiver of reconnection fees for qualifying households. The Merger will strengthen the combined company's balance sheet, cash flows, access to capital, procurement capabilities, technical expertise, and research and development resources. The Joint Applicants also agreed to terms that will protect employee benefits and compensation and guarantee minimum charitable contribution levels for three years.

Notably, the Non-Settling Parties' arguments largely rely upon the testimony sponsored by I&E, the OCA, and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA") witnesses – parties that now support or do not oppose the Settlement – while barely addressing the Joint Applicants' testimony or the negotiated commitments in the Settlement that directly respond to concerns raised in testimony during the proceeding. And CWA presented no testimony at all, and did not even attend the evidentiary hearing in this case.

The Non-Settling Parties also misstate the governing standard for the requested change in control of Aqua PA and Peoples. Section 1103(a) and *City of York* ask whether the Merger, as supplemented by the Settlement and viewed as a whole, will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way. That standard does not require every benefit to be quantified, a permanent rate freeze, or proof that one of the utilities involved in a transaction is failing. *Popowsky* recognizes that the Commission may make fact-based predictive determinations and need not quantify

benefits where doing so is impracticable, burdensome, or impossible, and the recent Pennsylvania Supreme Court decision in *Lawrence*²³ confirms that lower rates are not a prerequisite to approval and that a possible future rate increase is not considered a known harm.

The Commission should also deny the Opposing Municipal Intervenors' request to reopen the record. The Settlement addresses the same subjects litigated throughout this case, including rates, merger costs, service quality, affordability, workforce protections, local presence, competition, corporate safeguards, and reporting. The Opposing Municipal Intervenors had the opportunity to pursue discovery, present testimony, cross-examine witnesses, participate in settlement discussions, and brief their objections, and can file exceptions to the recommended decision if they so choose. Due process does not require reopening the record.

The Non-Settling Parties' concerns regarding competition likewise do not justify denial or CWA's extraordinary conditions introduced for the first time in its brief, nor do their remaining objections justify rejection of the Settlement. Aqua PA and Aqua PA WW will remain the same regulated entities after closing, and the Settlement requires them to honor existing service agreements and Commission obligations. Assertions that the Merger will upset agreements entered into by Aqua PA are false, and simply an attempt to detract attention from the numerous substantial affirmative public benefits provided by the

²³ *Lawrence v. Pa. P.U.C.*, 348 A.3d 108 (Pa. 2025) ("*Lawrence*").

Merger and Settlement. Furthermore, the record further shows no adverse effect on Pennsylvania's competitive retail natural gas market or Peoples' employees, and the proposed affiliate agreements use forms that were already approved by the Commission and unopposed in testimony.

The Commission should therefore approve the Settlement without modification and deny further proceedings and additional conditions.

V. ARGUMENT

A. Overall Position on the Transaction and Settlement

As demonstrated in the Joint Applicants' Initial Brief and the Statements in Support of the Settlement, the Merger and extensive suite of commitments agreed to in the Settlement will clearly result in substantial affirmative public benefits.²⁴ Those benefits include over \$80 million of rate credits for Aqua PA, PAWC, and Peoples customers in the near term and the flow-through of 100% of achieved Merger-related cost savings to Pennsylvania customers over the long term; commitments to improve customer service with specific metrics; enhancements to customer assistance programs, including additional contributions to hardship funds to support affordability of service; guaranteed charitable contributions and community support at levels recently provided by Aqua PA, PAWC, and

²⁴ See Joint Applicants' Initial Br., pp. 19-27; Joint Applicants' Statement in Support, pp. 8-21; I&E Statement in Support, pp. 9-44; OCA Statement in Support, pp. 9-53; OSBA Statement in Support, pp. 3-5.

Peoples for the next three years; and expanded career opportunities for Essential employees and commitments to maintain union staffing levels.²⁵

Notwithstanding the foregoing, CWA and the Opposing Municipal Intervenors oppose the Settlement and urge the Commission to reject the Merger outright.²⁶ Notably, several commitments ultimately agreed to by the Joint Applicants under the Settlement mirror those that the Opposing Municipal Intervenors sought in the first instance, such as rate credits, delays in seeking rate increases, and commitments to forgo recovery of certain merger costs.²⁷ As explained in the Joint Applicants' Initial Brief, those conditions are incorporated into the Settlement.²⁸ The Opposing Municipal Intervenors now characterize those same terms as "illusory" or "negligible" benefits for customers that should be disregarded.²⁹ As discussed below, the Non-Settling Parties do not offer a persuasive reason why the significant benefits outlined above are not sufficient to satisfy the *City of York* standard.

1. The Rate Relief Created by the Merger and the Settlement Will Substantially Benefit Customers

In their Initial Brief, the Joint Applicants described the meaningful rate benefits that the Merger and the Settlement will generate for Pennsylvania customers, which include an upfront \$40 bill credit through the \$82 million Rate Stabilization Fund, 100% of the

²⁵ See Joint Petition, ¶¶ 10, 13, 22-24, 34-46, 51-64, 67-71, 76.

²⁶ See, e.g., CWA Initial Br., p. 7; Opposing Municipal Intervenors' Initial Br., p. 2.

²⁷ See, e.g., Joint Petition, ¶¶ 10-19.

²⁸ See Joint Applicants' Initial Br., pp. 27-30.

²⁹ See Opposing Municipal Intervenors' Initial Br., pp. 2, 8, 10, 18-19.

ongoing synergy savings realized from the Merger in the form of lower cost of service than would have otherwise been the case in future rate cases, and more time before Aqua PA and PAWC general base rates can increase.³⁰ In their Statements in Support, I&E and the OCA explained that the agreed-upon rate credits and base rate case stay-outs reasonably address the concerns expressed by several parties in this case about the potential impact of the Merger on rates and provide financial relief to support affordability of service.³¹

CWA and the Opposing Municipal Intervenors discount the tangible rate relief created by the Merger and the Settlement as temporary or insubstantial and claim that those benefits should be afforded little weight by the Commission.³² The Commission should reject those criticisms and find that the \$82 million Rate Stabilization Fund and base rate stability for Aqua PA and PAWC customers provided by the Settlement, in conjunction with the other Merger commitments, will ensure that the Merger produces substantial public benefits for several reasons.

First, CWA and the Opposing Municipal Intervenors misstate the law in contending that the Merger cannot be approved absent a finding that the Settlement will guarantee a

³⁰ See Joint Applicants' Initial Br, pp. 16-17, 20-22. See also Joint Applicants' Statement in Support, pp. 8-11.

³¹ See I&E Statement in Support, pp. 13-17; OCA Statement in Support, pp. 14-15.

³² See CWA Initial Br., pp. 3-6, 11, 18-21; Opposing Municipal Intervenors' Initial Br., pp. 7-8, 10, 17-21. The Opposing Municipal Intervenors dedicate three pages of their Initial Brief (pp. 11-13) to the Joint Applicants' responses to discovery indicating that American Water has not yet projected Merger costs and savings or developed a detailed integration process as an alleged reason for the Commission to deny the Merger. However, this is simply a variation of the argument that the PUC cannot approve a transaction without guaranteed benefits or rate reductions for customers, which is without merit for the reasons discussed above.

specific amount of benefits or reduce rates for customers. The Opposing Municipal Intervenor contend that, for the purposes of the “affirmative benefit” standard articulated in *City of York*, unquantified benefits are indistinguishable from “no benefit at all”³³ and under CWA’s formulation, the standard requires guaranteed “measurable” benefits or “lower bills” for customers.³⁴ Neither interpretation is correct. The Supreme Court has made clear that the *City of York* test does not require applicants to prove, or the Commission to find, that a merger or acquisition will generate quantifiable benefits in all aspects of the utility’s operations or to all potentially affected stakeholders.³⁵ Most recently, the Pennsylvania Supreme Court held that a potential rate increase resulting from a transaction cannot automatically be categorized as a known harm, and that the affirmative public benefits test does not require that a transaction result in lower rates for customers.³⁶ Contrary to the contentions of CWA and the Opposing Municipal Intervenor, there is no legal requirement to quantify benefits or find that the Merger and Settlement would lower rates for customers to approve the requested change in control of Aqua PA and Peoples.

Second, the sole basis for the Non-Settling Parties’ sweeping dismissal of \$82 million of rate benefits under the Settlement flows from their speculation that a \$40 rate credit and the agreed-upon base rate case stay-outs are not sufficient to offset the purported

³³ Opposing Municipal Intervenor’s Initial Br., p. 18; *see also id.*, pp. 10-11, 17, 19-20.

³⁴ CWA Initial Br., pp. 3-6, 11, 18-21.

³⁵ *See Popowsky*, 937 A.2d at 1056.

³⁶ *Lawrence*, 348 A.3d at 129-31.

harms of the Merger, including future rate increases.³⁷ In contrast to the Non-Settling Parties' unsupported averments, the Joint Applicants presented substantial evidence that the Merger will not have an adverse impact on the rates paid by Pennsylvania customers for service from American Water and Essential.³⁸ In fact, As previously noted, the Joint Applicants are confident that the Merger will enable them to achieve synergies and cost savings over the long term, the benefit of which will accrue to the Pennsylvania utilities and ultimately flow to customers by reducing the size of future rate increase requests that would have otherwise been made absent the Merger.³⁹ The Joint Applicants' explicit commitments to not seek rate recovery of transaction costs or transition costs incurred prior to Merger closing and related accounting protections reflected in the Settlement squarely address concerns about transaction and transition costs raised by Delco, East Whiteland,

³⁷ See CWA Initial Br., pp. 22-26; Opposing Municipal Intervenor's Initial Br., pp. 9-13, 17-20. CWA mischaracterizes the record evidence in claiming that the Merger will raise rates in the long term across Pennsylvania. For example, CWA cites to I&E witness Ethan Cline's testimony, suggesting that PAWC and Aqua PA rates will be consolidated as a result of the Merger leading to rate hikes. See CWA Initial Br., pp. 22-23. Yet, JA witness Bowler's testimony confirms the opposite. Aqua PA and PAWC will remain separate entities after the Merger and any future consolidation or rate change would need Commission approval. See JA St. 2-R (Bowler), pp. 11-12; Joint Petition, ¶ 9, 77. Consistent with its pattern of ignoring the facts, CWA's Initial Brief (p. 19) erroneously contends that the Settlement requires no pass-through of realized savings. The Joint Applicants expressly committed to track and flow all synergy savings to Pennsylvania customers in the normal ratemaking process and agreed to accounting protections to ensure transaction costs and pre-Merger transition costs are not recovered from customers. See JA St. 2-R (Bowler), p. 19; JA Ex. CN-1R (Item 1); JA Ex. CN-2R (Item 5, 34, 38); Joint Petition, ¶¶ 13-24.

³⁸ See JA St. 1 (Norton), pp. 3-4, 7-9, 16-17; JA St. 2 (Bowler), pp. 5-6; JA St. 3 (Arnold), pp. 5-6, 11; JA St. 4 (Huwar), pp. 5, 10-11; JA St. 5 (Schuller), pp. 9-10.

³⁹ See JA St. 1 (Norton), pp. 8-9, 15-16; JA St. 1-R (Norton), pp. 10-12, 17-18; JA St. 3 (Arnold), pp. 8-9; JA St. 4-RJ (Huwar), pp. 2-3; JA St. 5 (Schuller), p. 7.

and Montco witnesses, which are repeated in the Opposing Municipal Intervenor's Initial Brief.⁴⁰ Moreover, as explained in the Joint Applicants' Initial Brief, the scale and enhanced financial strength of the combined company positions American Water operating utilities to finance and execute long-term infrastructure improvement plans at lower costs.⁴¹

Finally, the Non-Settling Parties simply ignore the fact that the Settlement reflects the Statutory Parties' individual and collective judgments that the \$82 million Rate Stabilization Fund and commitment to delay PAWC and Aqua PA general base rate increases, which CWA and the Opposing Municipal Intervenor's claim the Commission should dismiss, are benefits of the Merger that are both real and substantial.⁴² Indeed, the Commission has already found that shareholder-funded rate credits nearly three times lower than the amount provided under the Settlement constituted an affirmative public benefit supporting approval of the Peoples acquisition.⁴³

⁴⁰ See JA St. 2-R (Bowler), p. 19; JA Ex. CN-1R (Item 1); JA Ex. CN-2R (Item 5, 34, 38); Joint Petition, ¶¶ 13-24.

⁴¹ See JA St. 2 (Bowler), pp. 6-11; JA St. 2-R (Bowler), pp. 2-10.

⁴² While CWA's Initial Brief (pp. 21, 25-27) relies extensively on CAUSE-PA witness Cicero's testimony about affordability concerns for Aqua PA and PAWC customers under current rates, CAUSE-PA recognized in its letter of non-opposition to the Settlement that the agreed upon rate credits and base-rate case settlement are "important provisions that will assist low and moderate income customers."

⁴³ See *Aqua-Peoples 2020*, pp. 73, 175-79, 207.

2. CWA and the Opposing Municipal Intervenor Ignore Substantial Record Evidence of Benefits Provided by Commitments to Service Quality Improvements and to Enhance Customer Assistance Programs

In addition to disparaging the rate benefits provided by the Merger and Settlement, the Non-Settling Parties discuss a handful of Settlement terms and argue that any other purported benefits claimed by the Joint Petitioners should be disregarded as maintaining the status quo or protecting customers from harm created by the Merger.⁴⁴ The Non-Settling Parties essentially ignore record evidence of obvious and substantial benefits that the Commission has found satisfy Section 1103(a), including commitments to improve customer service, expand customer assistance programs, and continue charitable contributions.⁴⁵

In their Statement in Support and Initial Brief, the Joint Applicants describe the numerous specific and concrete Settlement commitments made to bolster the affirmative public benefits in the areas of service quality, customer service, customer assistance and

⁴⁴ See, e.g., CWA Initial Br., pp. 10, 18-19 (discussing employee-related protections, infrastructure investment commitments, and corporate-separateness and ring fencing protections); Opposing Municipal Intervenor Initial Br., pp. 19-20 (characterizing accounting protections and ring-fencing commitments as maintaining the status quo or preventing harm).

⁴⁵ See, e.g., *City of York and Popowsky, supra*; *Aqua-Peoples 2020*, pp. 119-20, 126-27, 175-77; *Re: UGI Utilities, Inc., et al.*, Docket No. A-2008-2034045 (Recommended Decision issued Aug. 7, 2008 and adopted by Order entered Aug. 21, 2008), pp. 21, 29; *In re: Amended Application of United Water Pa., Inc. and United Water Bethel, Inc. for all approvals and waivers (if any) which may be required under the Pub. Util. Code for the merger between Gaz de France and Suez, the ultimate corporate parent of United Water Pa., Inc. and United Water Bethel, Inc.*, Docket No. A-210013F0017, 2008 WL 80136816, at *11-*14 (Initial Decision issued June 23, 2008 and adopted by Order entered July 17, 2008).

charitable giving.⁴⁶ While the Opposing Municipal Intervenor claim that the Settlement fails to address “many of the very real concerns” raised in the testimony of the Statutory Parties,⁴⁷ the OCA and I&E Statements in Support describe how their extensive testimony in these areas was addressed by settlement terms that are in the public interest and provide affirmative public benefits.⁴⁸ To highlight a few examples of how Settlement commitments are not “vague” or a “farce”: (1) Aqua PA, PAWC, and Peoples will provide compliance reporting on performance objectives;⁴⁹ (2) PAWC has agreed to more rigorous call center performance objectives for a five-year period;⁵⁰ (3) Peoples will increase its Low-Income Usage Reduction Program budget by \$500,000 to a total of \$4 million annually, and increase its Emergency Furnace and Line Repair Program budget by 10%;⁵¹ (4) the Joint Applicants will make an additional annual contribution to Aqua PA’s and Peoples’

⁴⁶ See, e.g., Joint Applicants’ Initial Br., pp. 24-26, 29; Joint Applicants’ Statement in Support, pp. 11-16.

⁴⁷ Opposing Municipal Intervenor’s Initial Br., p. 9.

⁴⁸ See, e.g., OCA Statement in Support, pp. 11-13, 34-53; I&E Statement in Support, pp. 18-32, 35-36.

⁴⁹ See OCA Statement in Support, p. 44 (“The annual reports will provide the parties to this proceeding with specific information regarding the performance objectives beyond what is collected and reported on by [the Bureau of Consumer Services]. The compliance report also maintains a clear link between the Merger approval and the performance objectives.”).

⁵⁰ See OCA Statement in Support, p. 44 (“The Joint Applicants’ agreement to the call center performance metrics for PAWC represent a requirement for PAWC to improve their performance to match that of Aqua PA”).

⁵¹ See I&E Statement in Support p. 38; OCA Statement in Support p. 51.

hardship funds totaling \$600,000 each year for at least three years post-closing;⁵² and (5) for three years after closing, Aqua PA, PAWC, and Peoples will provide annual contributions to charities and municipalities/governmental bodies of at least their respective three-year average amounts pre-Merger.⁵³ The Commission should reject this transparent attempt to downplay the substantial affirmative benefits of the Merger by simply arguing that such benefits agreed to by the Joint Applicants and the Statutory Parties are inadequate to satisfy the Non-Settling Parties' incorrect interpretation of the *City of York* standard.

3. CWA Impermissibly Bases Arguments on Factual Assertions Outside the Record Evidence in This Case

As previously noted, CWA chose not to present any testimony or cross-examine any witness. Instead, it waited until its Initial Brief to unveil a multitude of unsupported claims and objections to the Merger. CWA now presents arguments about purported “harms” of the Merger that depend on alleged “facts” that appear only in CWA’s brief – for example, conclusions that investor-owned utilities invest in infrastructure to increase profits for shareholders and that municipal utilities can improve infrastructure at a lower cost to

⁵² The CWA Initial Br. (p. 21) claims that the additional contribution will ultimately be “funded by the entire customer base.” That assertion is false. The additional funding will be recorded below-the-line and will not be recovered from customers. The CWA Initial Brief (p. 10) also incorrectly claims that the Settlement does not address the allocation of these funds. The Joint Petition (¶51) states that these funds will be allocated proportionally between Aqua PA and Peoples based on the number of confirmed low income customers.

⁵³ Joint Petition, ¶ 76. The Settlement expands the Joint Applicant’s original commitment for charitable contributions and community support. See JA St. 1 (Norton), p. 16; JA Ex. CN-1R (Item 15).

customers,⁵⁴ allegations about Aqua PA rate increases following acquisitions,⁵⁵ and general concerns about privatization of the water and wastewater industry in Pennsylvania.⁵⁶

Pennsylvania courts have upheld the Commission's determination to reject new arguments after the record has closed where a party had every opportunity to introduce supporting evidence for its arguments and cross-examine other witnesses on related issues.⁵⁷ By waiting until the briefing stage to present any evidence in support of its general objections to the Merger, CWA denied the Joint Applicants an opportunity to respond to this evidence or the arguments based on it. Accordingly, the material that appears on pages 17-18 and 30-32 of CWA's Initial Brief should be accorded no evidentiary weight as a matter of law.

4. The Opposing Municipal Intervenor's Attempt to Make Prior or Pending Transactions with Aqua PA an Issue in this Case Is Misplaced and Should Be Rejected

The Opposing Municipal Intervenor's argue that prior transactions East Whiteland and the Delaware County Regional Water Quality Control Authority ("DELCORA") entered into with Aqua PA WW will be impacted by the Merger and the Settlement,⁵⁸ that neither municipality knew about or anticipated the Merger, and that it would be "unfair" to

⁵⁴ CWA Initial Br., pp. 17-18.

⁵⁵ *Id.*, p. 31

⁵⁶ *Id.*, pp. 30-32.

⁵⁷ *See, e.g., Hess v. Pa. P.U.C.*, 107 A.3d 246, 266-67 (Pa. Commw. Ct. 2014).

⁵⁸ Opposing Municipal Intervenor's Initial Br., pp. 15-16.

impose the change in control contemplated by the Merger upon Delco or East Whiteland.⁵⁹ These arguments should be rejected.

The Opposing Municipal Intervenors' argument that the Merger will result in East Whiteland and Delco being parties to agreements with Aqua PA WW under a different corporate structure than what was in place at the time they entered into agreements with Aqua PA⁶⁰ is a red herring. Neither East Whiteland nor Delco disputes that Aqua PA WW will remain a direct subsidiary of Aqua PA, an indirect subsidiary of Essential,⁶¹ and a separate certificated public utility providing wastewater service in Pennsylvania after closing of the Merger.⁶² The Merger does not change this fact. Aqua PA WW is, and will remain, the party to the agreements that East Whiteland and Delco claim may be impacted.

East Whiteland also specifically claims that there is "no assurance that the level of service East Whiteland bargained for will be maintained."⁶³ This ignores the commitments made by the Joint Applicants to, among other things, continue to maintain existing rates and tariffs in effect at the closing of the Merger, and to maintain current service quality.⁶⁴ It also ignores the additional rates, tariff, and service commitments made as a part of the

⁵⁹ *Id.*, p. 15.

⁶⁰ Opposing Municipal Intervenors' Initial Br., p. 15 (citing East Whiteland St. 1 (Brown), p. 3); *see also* Delco St. 1 (Reuther), p. 6.

⁶¹ Joint Application, ¶ 15, Ex. B.

⁶² JA St. 3-R (Arnold), pp. 3-4.

⁶³ Opposing Municipal Intervenors' Initial Br., p. 15 (citing East Whiteland St. 1 (Brown), p. 3).

⁶⁴ Joint Application, Ex. C, p. 1.

Joint Applicants’ rebuttal testimony.⁶⁵ And East Whiteland ignores the additional commitments made by the Joint Applicants as a part of the Settlement to not only maintain, but also improve, existing levels of service provided by each of the operating utilities, including Aqua PA WW, and commitments that the Merger will not impact any respective obligations under Aqua PA’s, Peoples’, or PAWC’s tariffs, prior Commission Orders, or existing service agreements, and that each utility will continue to honor the terms of its respective service agreements consistent with the terms of those agreements.⁶⁶ Not only do these commitments assure that existing levels of service will be maintained, but they also ensure substantial affirmative improvements to existing levels of service, which would not have been required absent the Merger.

The Opposing Municipal Intervenor’s Initial Brief also states that the Merger’s impact on the pending Asset Purchase Agreement (“APA”) between Aqua PA and DELCORA is a harm unique to Delco that will be impacted by the Merger.⁶⁷ The brief then repeats Delco’s baseless positions regarding its interpretation of the DELCORA APA, and its positions regarding the outcome of the ongoing DELCORA proceeding to argue that the Settlement does not address these issues.⁶⁸ The Joint Applicants anticipated and addressed these arguments in their Initial Brief.⁶⁹ Two points bear repeating.

⁶⁵ See, e.g., JA Ex. CN-2R (Item Nos. 63-64).

⁶⁶ See Settlement, ¶¶ 26-50, 88; Joint Applicants’ Statement in Support, pp. 11-15.

⁶⁷ Opposing Municipal Intervenor’s Initial Br., pp. 15-16.

⁶⁸ *Id.*

⁶⁹ Joint Applicants’ Initial Br., Section V.B.4.

First, the Joint Applicants reiterate that, regardless of the outcome of the instant Merger, Aqua PA WW will remain a stand-alone legal entity. Aqua PA WW will, therefore, remain the entity that entered into the DELCORA APA. Delco does not deny or contest this fact but instead attempts to distract from it as explained above.

Second, the Joint Applicants reiterate that Aqua PA WW's acquisition of the DELCORA wastewater system remains the subject of ongoing litigation before the PUC and other tribunals.⁷⁰ To the extent that Delco maintains a preference for a specific outcome related to DELCORA, it can advocate for that outcome in the separate, pending proceedings where PUC approval of that transaction is actually at issue. Delco's attempt to obtain its preferred outcomes related to DELCORA in this proceeding – which has nothing to do with the pending approval of the DELCORA transaction – should be denied as an improper end-run around the PUC's stay of the DELCORA proceeding.⁷¹

Finally, the Joint Applicants note that Delco's attempts to litigate the meaning of specific terms, conditions, requirements, or other items related to the DELCORA APA in this case should be rejected.⁷² This case does not involve the PUC's review or approval of the DELCORA APA; such review is the subject of a separate proceeding.

⁷⁰ *Id.*, pp. 31-32.

⁷¹ *Id.*, p. 33. The Joint Applicants further note that Delco appears to be attempting to renegotiate the prior purchase price included in the DELCORA APA. Opposing Municipal Intervenors' Initial Br., p. 16 (quoting Delco St. 1-S (Reuther), pp. 13-14). As the APA remains under review in pending proceedings before the PUC, the Joint Applicants submit that Delco's specific concerns regarding the purchase price should be dealt with in the DELCORA proceeding, and that attempts to litigate those issues in this case are improper.

⁷² Opposing Municipal Intervenors' Initial Br., p. 16.

B. Contested Conditions Requested by the Parties Opposing the Settlement

1. Concerns About Competition in the Private Water and Wastewater Market in Pennsylvania Do Not Provide a Basis for the Commission to Reject the Merger or Impose Conditions on Post-Merger Acquisitions

The Non-Settling Parties contend that placing PAWC and Aqua PA under common ownership will eliminate competition by creating a “sole buyer” for municipal water and wastewater systems and thereby harm the public.⁷³ This competition theory, however, does not justify rejection of the Merger or the extraordinary restrictions CWA asks the Commission to impose on future acquisitions,⁷⁴ and the Non-Settling Parties essentially ignore the record evidence in the proceeding and the Settlement terms addressing competition concerns raised in the proceeding.⁷⁵ CWA’s new proposed conditions are unsupported by testimony, and this proceeding is not the proper forum for litigating CWA’s dissatisfaction with the framework for fair market acquisitions under Section 1329⁷⁶ created by the legislature.

The Non-Settling Parties’ concerns regarding competition are focused on the continued ability of municipalities and authorities to maintain the same “leverage” selling a water or wastewater system.⁷⁷ These concerns should be rejected by the Commission for

⁷³ CWA Initial Br., pp. 33-34; Opposing Municipal Intervenors’ Initial Br., pp. 13-15.

⁷⁴ See CWA Initial Br., pp. 15-16, 34-38.

⁷⁵ See Joint Petition, ¶¶ 30, 32.

⁷⁶ See 66 Pa. C.S. § 1329.

⁷⁷ See CWA Initial Br., p. 33; Opposing Municipal Intervenors’ Initial Br., pp. 13-14. The Non-Settling Parties cite to I&E witness Patel’s testimony in support of their competition arguments, but I&E supports the Settlement and explicitly stated that issues

three reasons. First, the record does not support the claim that the combined company will become the only available purchaser of municipal water or wastewater systems in Pennsylvania. American Water's Chief Executive Officer Cheryl Norton testified that Pennsylvania's water and wastewater industry remains highly fragmented and that several companies other than American Water and Essential operate in Pennsylvania or have recently participated in municipal-system sales.⁷⁸ There is no evidence that the Merger will prevent those companies, or other qualified entities, from pursuing future acquisitions. Second, no municipality or municipal authority is required to sell its system to private companies. If a municipal system owner is not satisfied with the outcome of a proposed sale, it does not have to proceed; if it does, the resulting transfer will require Commission approval for proposed sales under the jurisdiction of the Commission. Third, the interests of municipalities and authorities like the Opposing Municipal Intervenors and CWA do not necessarily align with customers, as lower system sale prices may result in lower prices for customers.⁷⁹

Nevertheless, the Settlement contains terms expressly designed to preserve competition. Under the Settlement, the Joint Applicants commit to refrain from unfair trade practices and anticompetitive conduct affecting customers or other utilities, and American Water commits that PAWC and Aqua PA will not bid against one another for

raised in its testimony were resolved in discovery or addressed in the Settlement (I&E Statement in Support, ¶ 24).

⁷⁸ JA St. 1-R (Norton), pp. 16-17. *See also* JA St. 2-R (Bowler), p. 30.

⁷⁹ *See* JA St. 2-R (Bowler), p. 31.

acquisitions.⁸⁰ That latter provision adopts a condition proposed by CAUSE-PA witness Patrick Cicero.⁸¹ The Non-Settling Parties’ dissatisfaction that the Joint Applicants and other parties were able to reach consensus on this issue, in a manner that aligns with their municipal interests, is not a reason to reject the Merger or adopt CWA’s proposed conditions.

The Commission should also recognize CWA’s proposed conditions related to Section 1329 as what they are – an impermissible collateral attack on Section 1329. CWA relies on testimony by Mr. Cicero to claim that Section 1329 acquisitions have burdened customers with additional costs, ignoring Mr. Bowler’s testimony that systems are often sold because existing rates do not recover the cost of safe and adequate service or because the municipal owner lacks the financial or technical capacity to make necessary investments.⁸²

Each of CWA’s proposed conditions (none of which were proposed in testimony prior to the submission of CWA’s Initial Brief) should also fail on its own merits. CWA’s proposed 15-year prohibition on acquisitions of “healthy, functional, or non-distressed” systems⁸³ contradicts its stated desire to maintain more bidders to foster competition:⁸⁴ if the asserted problem is that municipalities will have too few potential purchasers as a result

⁸⁰ Joint Petition, ¶¶ 30, 32.

⁸¹ CAUSE-PA St. 1 (Cicero), pp. 50-51.

⁸² JA St. 2-R (Bowler), pp. 9-10, 31-33.

⁸³ CWA Initial Br., pp. 34-35.

⁸⁴ *Id.*, pp. 33-35.

of the Merger, the answer should not be to bar PAWC and Aqua PA from participating in acquisitions for 15 years. The condition would further reduce municipal choice while disadvantaging systems that may face substantial long-term investment, compliance, engineering, or operational needs that could be served by access to American Water’s procurement capabilities, technical professionals, research and development resources, and Central Laboratory described in Ms. Norton’s testimony in this case.

CWA’s proposed referendum condition fares no better.⁸⁵ No witness recommended this provision, and CWA itself characterizes referendum rights as a possible “legislative reform” immediately before asking the Commission to impose such a requirement here. CWA identifies no statutory basis or record evidence supporting a special 15-year election requirement for acquisitions by the combined company. Indeed, the proposal runs counter to limitations on the Commission’s authority, which is limited to those powers conferred by the legislature, and which must arise expressly from statutory language or by “strong and necessary implication therefrom.”⁸⁶ The Commission does not have statutory authority over the disposition of municipal assets or the conduct of local elections. The Commission should not use a condition in this change-of-control proceeding to create a new procedural prerequisite for hypothetical future municipal sales.

Finally, CWA’s request to prohibit use of Section 1329’s fair-market-value process for 15 years and require depreciated original cost⁸⁷ would displace the valuation framework

⁸⁵ *Id.*, p. 36.

⁸⁶ *See Loma, Inc. v. Pa. P.U.C.*, 682 A.2d 424, 430 (Pa. Commw. Ct. 1996).

⁸⁷ CWA Initial Br., pp. 38-40.

the General Assembly established for future Section 1329 acquisitions. While the Commission may apply that framework, evaluate probable rate impacts, and impose appropriate conditions in future acquisition cases, it should not make Section 1329 unavailable to PAWC and Aqua PA regardless of the facts presented in future acquisition proceedings.

2. CWA’s Proposed Condition Regarding Local Customer Advisory and Oversight Boards Is Not Supported by Record Evidence

In its Initial Brief, CWA proposes for the first time that the Commission require the Joint Applicants to establish local customer advisory and oversight boards to “monitor” rates, service quality, customer-service complaints, infrastructure investment, affordability, and acquisition activity.⁸⁸ CWA’s proposal should be rejected, as the Commission already does all of these things.⁸⁹ The Commission reviews proposed utility rates and proposed acquisitions, and monitors utility service, investments, and affordability. In addition, customers and other interested stakeholders have the opportunity to participate in rate proceedings and acquisition proceedings and file complaints and petitions at the Commission related to service quality and customer service. Furthermore,

⁸⁸ *Id.*, p. 37.

⁸⁹ The Pennsylvania Supreme Court has held that state law preempted, on the basis of field preemption, municipal ordinances that attempted to “co-regulate” utilities. *See PPL Elec. Utilities Corp. v. City of Lancaster*, 214 A.3d 639, (2019). The Court reaffirmed that the General Assembly intended utility regulation to be administered through a uniform statewide framework under the Commission’s authority and rejected local requirements that would create overlapping “co-regulators” or a patchwork of supplementary utility regulation. *Id.* at 650–52, 656–59. The proposed oversight and advisory boards should similarly be rejected to prevent undermining the Commission’s regulatory authority over its jurisdictional utilities.

CWA's claim that greater accountability may be needed with respect to the Merger ignores the many commitments contained in the Settlement related to reporting and coordinating with PAWC's, Aqua PA's, and Peoples' respective customer advisory groups.⁹⁰ There is no support in the record as to why these customer advisory boards are a necessary addition to the Commission's oversight of jurisdictional utilities, the many avenues for participation in Commission proceedings and seeking relief before the Commission, and the Settlement commitments that already address the concerns raised by CWA in its Initial Brief.

C. Impact on Pennsylvania's Competitive Retail Gas Market and Peoples Employees

In their Initial Brief, the Opposing Municipal Intervenors assert that the Merger will present no possible benefits for Peoples.⁹¹ The Joint Applicants fully address these concerns in their Initial Brief.⁹²

Importantly, however, the Opposing Municipal Intervenors concede that "the record reflects that the Merger would not necessarily result in anti-competitive conduct with respect to the retail market for natural gas in Pennsylvania."⁹³ With respect to the approvals sought under Section 2210(a), the Joint Applicants were required to present evidence sufficient to permit the Commission to "consider" whether the Merger "is likely to result in anticompetitive or discriminatory conduct,"⁹⁴ and the effect of the Merger "on the

⁹⁰ See Joint Petition, ¶¶ 13, 16, 20-22, 24, 34, 39, 45, 52, 54, 56, 57, 61, 63, 70, 76.

⁹¹ Opposing Municipal Intervenors' Initial Br., pp. 21-22.

⁹² See Joint Applicants' Initial Br., pp. 33-34.

⁹³ Opposing Municipal Intervenors' Initial Br., p. 21.

⁹⁴ 66 Pa. C.S. § 2210(a)(1).

employees of the natural gas distribution company.”⁹⁵ The Opposing Municipal Intervenor’s concession makes clear that Section 2210 has been satisfied.

Indeed, the Joint Applicants have demonstrated that the Merger will not have an adverse impact on Pennsylvania’s competitive retail gas market or Peoples employees, consistent with Section 2210(a) of the Code.⁹⁶ Further, the Joint Applicants have made clear that (1) the Merger will not result in anticompetitive or discriminatory conduct in the retail market for natural gas in Pennsylvania because American Water does not own or operate any companies that directly or indirectly compete with Peoples; (2) the Merger will not have an adverse impact on Peoples employees; (3) Peoples’ management team will remain in place, with the technical fitness necessary to operate a natural gas distribution system; and (4) operations will continue to be managed by local employees, including Michael Huwar as President of Peoples.⁹⁷ The Joint Applicants’ Initial Brief further explains the additional commitments as part of the Merger that directly benefit Peoples, its employees, and its customers.⁹⁸

Despite their concession and the evidence presented, the Opposing Municipal Intervenor’s cite various concerns regarding the inclusion of Peoples in the Merger.⁹⁹ None of these concerns pass muster.

⁹⁵ 66 Pa. C.S. § 2210(a)(2).

⁹⁶ Joint Applicants’ Initial Br., p. 33.

⁹⁷ *Id.*, pp. 33-34.

⁹⁸ *Id.*

⁹⁹ Opposing Municipal Intervenor’s Initial Br., pp. 21-22.

The Joint Applicants acknowledge, and have acknowledged, that the water and wastewater industries are distinct from the natural gas industry.¹⁰⁰ However, that fact does not automatically negate the substantial affirmative benefits that all Joint Applicants, including Peoples, will realize as a result of the Merger.

Moreover, since Peoples was acquired by Essential in 2020, it has demonstrated that “safety does not change or decline when parent company ownership changes.”¹⁰¹ The Joint Applicants have made the requisite commitments to maintain appropriate management and expertise of Peoples’ natural gas operations.¹⁰²

Finally, while the Opposing Municipal Intervenors attempt to cite concerns related to Peoples raised by the Statutory Parties, and in particular I&E witness D.C. Patel, this simply ignores that all of the Statutory Parties are signatories to the Settlement. The fact that the Statutory Parties are signatories and have supported the Settlement demonstrates that they believe sufficient commitments have been made to resolve the concerns the Opposing Municipal Intervenors now cite in their Initial Brief.¹⁰³ I&E’s Statement in Support specifically states that “all issues raised in testimony have been resolved through discovery . . . or are incorporated or considered in the resolution proposed in the

¹⁰⁰ See JA St. 1-R (Norton), p. 18; JA St. 4 (Huwar), pp. 4-5 (explaining that current management of Peoples involves a specific team of gas operations professionals, and that this management structure will continue post-closing of the Merger); JA St. 4-R (Huwar), p. 2.

¹⁰¹ JA St. 4-R (Huwar), p. 2.

¹⁰² *Id.*, pp. 7-8.

¹⁰³ See Joint Petition, ¶¶ 8, 90-92.

Settlement” and that the “Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences.”¹⁰⁴

Therefore, the Opposing Municipal Intervenors’ concerns regarding the benefits conferred upon Peoples after the closing of the Merger are unfounded. As the Joint Applicants made clear in the record and their Initial Brief, Peoples, including its employees and customers, will benefit and will not be adversely impacted by the Merger, and the Settlement sets forth a number of commitments that will benefit these groups. The Opposing Municipal Intervenors have failed to provide any evidence to the contrary, and their claim that the inclusion of Peoples “can only result in harm that weighs against approval” is unfounded.

D. Affiliated Interest Transactions

The Opposing Municipal Intervenors continue to ignore the record with their claim that the proposed new affiliate interest agreements, which will facilitate the sharing of services between American Water and Essential utilities if the Merger is approved, are not reasonable and in the public interest.¹⁰⁵ The Joint Applicants presented unrefuted testimony demonstrating that the new agreements, in the same form as already approved by the PUC for PAWC or Aqua PA, will give the combined company more operational flexibility to share best practices and take advantage of the synergies and cost savings the

¹⁰⁴ I&E Statement in Support, ¶ 24.

¹⁰⁵ Opposing Municipal Intervenors’ Initial Br., p. 22.

Merger is expected to produce.¹⁰⁶ In fact, no party, including the Opposing Municipal Intervenor, opposed those agreements on the record in this case, and the Joint Applicants will seek Commission approval for any changes to those agreements if needed after completion of the Merger integration process.¹⁰⁷

VI. CONCLUSION

For the reasons set forth above and in the Joint Applicants' Initial Brief, the Commission should approve the Joint Petition for Non-Unanimous Settlement filed September 15, 2026, without modification, and deny the relief and conditions sought by the parties opposing the Settlement.

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¹⁰⁶ See Joint Applicants' Initial Br., pp. 34-35.

¹⁰⁷ See JA Ex. CN-1R (Item 24); JA Ex. CN-2R (Item 7); Joint Petition, ¶ 85.

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