

**IN THE
COMMONWEALTH COURT OF PENNSYLVANIA**

William E. Ferguson,	:	
Petitioner	:	
v.	:	No. 876 C.D. 2025
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	

**BRIEF OF RESPONDENT
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Support of the Opinion and Order of the Pennsylvania Public Utility
Commission entered on June 18, 2025, at C-2023-3043109

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
COUNTER STATEMENT OF SCOPE AND STANDARD OF REVIEW	1
COUNTER STATEMENT OF QUESTIONS INVOLVED	4
COUNTER STATEMENT OF THE CASE	5
SUMMARY OF THE ARGUMENT	19
ARGUMENT	25
I. The Commission Correctly Determined That Mr. Ferguson’s Complaint Against Aqua Regarding The Purchased Wastewater Expense Must Be Dismissed Because, <i>Inter Alia</i> , He Failed To Carry His Burden Of Proof.....	25
A. Mr. Ferguson Failed To Carry His Burden Of Proof Under 66 Pa.C.S. § 332(a).....	25
II. The Commission Properly Determined That The Rules Against Retroactive Ratemaking And Single-Issue Ratemaking Bar Mr. Ferguson’s Claims	34
III. The Commission Properly Accounted For Mr. Ferguson’s Pro Se Status Throughout The Proceeding And In Reaching Its Determination	41
A. The Commission Informed Mr. Ferguson Of His Rights And Responsibilities As A Complainant	42
B. The Commission Properly Denied Mr. Ferguson’s Petition To Reopen The Record	46
IV. The Commission’s Determination Is Within Its Administrative Discretion And Supported By Substantial Evidence Of Record.....	50
CONCLUSION	56

TABLE OF AUTHORITIES

Cases

<i>Allied Mech. & Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.</i> , 923 A.2d 1220 (Pa. Cmwlth. 2007).....	2
<i>Aronson v. Pa. Pub. Util. Comm’n</i> , 740 A.2d 1208 (Pa. Cmwlth. 1999)	2
<i>Commonwealth ex rel. Butler v. Rundle</i> , 239 A.2d 426 (Pa. 1968)	28
<i>Consol. Edison Co. of New York v. Nat’l Labor Relations Bd.</i> , 305 U.S. 197 (1938).....	50
<i>Duquesne Light Co. v. Pub. Serv. Comm’n</i> , 117 A. 63 (Pa. 1922)	20, 28
<i>Duquesne Light Co. v. Pa. Pub. Util. Comm’n</i> , 715 A.2d 540 (Pa. Cmwlth. 1998).....	20-21
<i>Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm’n</i> , 25 A.3d 440 (Pa. Cmwlth. 2011).....	40, 51
<i>FirstEnergy Pa. Elec. Co. v. Pa. Pub. Util. Comm’n</i> , No. 42 MAP 2024, 2026 WL 61600 (Pa. Jan. 8, 2026).....	28, 30
<i>Global Tel*Link Corp. v. Dep’t of Corr.</i> , 109 A.3d 809 (Pa. Cmwlth. 2015).....	3
<i>Green Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n</i> , 642 A.2d 541 (Pa. Cmwlth. 1994).....	2
<i>Hess v. Pa. Pub. Util. Comm’n</i> , 107 A.3d 246 (Pa. Cmwlth. 2014)	<i>passim</i>
<i>HIKO Energy, LLC v. Pa. Pub. Util. Comm’n</i> , 209 A.3d 246 (Pa. 2019).....	51
<i>Hughes v. Pa. Pub. Util. Comm’n</i> , 322 A.3d 982 (Pa. Cmwlth. 2024).....	30
<i>In re Bosley</i> , 26 A.3d 1104 (Pa. Super. 2011)	52
<i>In re Ullman</i> , 995 A.2d 1207 (Pa. Super. 2010).....	50

<i>Lloyd v. Pa. Pub. Util. Comm’n</i> , 904 A.2d 1010 (Pa. Cmwlth. 2006).....	53
<i>Lyft, Inc. v. Pa. Pub. Util. Comm’n</i> , 145 A.3d 1235 (Pa. Cmwlth. 2016).....	2, 51
<i>Milkie v. Pa. Pub. Util. Comm’n</i> , 768 A.2d 1217 (Pa. Cmwlth. 2001).....	51, 52
<i>Miller v. Brass Rail Tavern, Inc.</i> , 664 A.2d 525 (Pa. 1995).....	51
<i>Morrison v. Dep’t of Pub. Welfare</i> , 646 A.2d 565 (Pa. 1994)	1
<i>Pa. Indus. Energy Coalition v. Pa. Pub. Util. Comm’n</i> , 653 A.2d 1336 (Pa. Cmwlth. 1995).....	40
<i>PECO Energy Co. v. Pa. Pub. Util. Comm’n</i> , 791 A.2d 1155 (Pa. 2002)	1
<i>Phila. Elec. Co. v. Pa. Pub. Util. Comm’n</i> , 502 A.2d 722 (Pa. Cmwlth. 1985).....	33, 36, 40
<i>Popowsky v. Pa. Pub. Util. Comm’n</i> , 642 A.2d 648 (Pa. Cmwlth. 1994).....	37
<i>Popowsky v. Pa. Pub. Util. Comm’n</i> , 706 A.2d 1197 (Pa. 1997).....	2, 33
<i>Ramich v. Worker’s Comp. Appeal Bd.</i> , 770 A.2d 318 (Pa. 2001)	1
<i>Respond Power, LLC v. Pa. Pub. Util. Comm’n</i> , 250 A.3d 547 (Table) (Pa. Cmwlth. 2021).....	50
<i>Rohrbaugh v. Pa. Pub. Util. Comm’n</i> , 727 A.2d 1080 (Pa. 1999).....	1
<i>Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n</i> , 686 A.2d 910 (Pa. Cmwlth. 1996).....	3, 20, 30
<i>Schneider v. Pa. Pub. Util. Comm’n</i> , 479 A.2d 10 (Pa. Cmwlth. 1984).....	42
<i>Taylor v. Unemployment Comp. Bd. of Review</i> , 378 A.2d 829 (Pa. 1977)	2
<i>Wheeling & Lake Erie Ry. Co. v. Pa. Pub. Util. Comm’n</i> , 778 A.2d 785 (Pa. Cmwlth. 2001).....	1

<i>Wise v. Unemployment Comp. Bd. of Rev.</i> , 111 A.3d 1256 (Pa. Cmwlth. 2015).....	30

Statutes

2 Pa.C.S. § 505.....	41
2 Pa.C.S. § 704.....	1, 4, 50
66 Pa.C.S. §§ 101, <i>et seq</i>	5
66 Pa.C.S. § 316.....	8
66 Pa.C.S. § 332.....	4, 25
66 Pa.C.S. § 332(a)	<i>passim</i>
66 Pa.C.S. § 335.....	30
66 Pa.C.S. § 701.....	27, 41
66 Pa.C.S. § 703(c)	23, 42
66 Pa.C.S. § 1301(a)	25, 26
66 Pa.C.S. § 1311(c)	6
66 Pa.C.S. § 1312(a)	26

Rules and Regulations

52 Pa. Code § 1.2	42, 46
52 Pa. Code § 1.2(a).....	47
52 Pa. Code § 1.2(c).....	47
52 Pa. Code § 1.2(d).....	45
52 Pa. Code § 5.242(a).....	42
52 Pa. Code § 5.243(a).....	42
52 Pa. Code § 5.431(b).....	16
52 Pa. Code § 5.571(b).....	16
52 Pa. Code § 5.571(c).....	23, 46
52 Pa. Code § 5.571(d).....	16, 47

Other Authorities

<i>Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township,</i> Docket No.A-2016-2580061, 2020 WL 7239820, at *1 (Order entered December 3, 2020)	5
<i>Pa. Pub. Util. Comm’n v. Aqua Pennsylvania Wastewater, Inc.,</i> Docket Nos. R-2021-3027386, <i>et al.</i> , 2022 WL 1732770, at *3 (Order entered May 16, 2022)	6-7
<i>Catherine J. Frompovich v. PECO Energy Company,</i> Docket No. C-2015-2474602, 2018 Pa. PUC LEXIS 160 (Order entered May 3, 2018)	29
<i>William Ferguson v. Aqua Pennsylvania Wastewater, Inc.,</i> Docket Nos. C-2023-3043109 <i>et al.</i> (Order entered June 18, 2025).....	<i>passim</i>

COUNTER STATEMENT OF SCOPE AND STANDARD OF REVIEW

Scope of review refers to the “confines within which an appellate court must conduct its examination.” *Morrison v. Dep’t of Pub. Welfare*, 646 A.2d 565, 570 (Pa. 1994) (*Morrison*). In other words, it refers to the matters, or “what,” the appellate court is permitted to examine. *Id.* Where an adjudication by the Pennsylvania Public Utility Commission (Commission or PUC) is on appeal, the scope of review is limited to determining whether: (1) a constitutional violation or error in procedure has occurred; (2) the decision is in accordance with the law; and (3) the necessary findings of fact are supported by substantial evidence. *PECO Energy Co. v. Pa. Pub. Util. Comm’n*, 791 A.2d 1155, 1160 (Pa. 2002); 2 Pa.C.S. § 704. Where there is a question of law, the Court’s scope of review is plenary. *Ramich v. Worker’s Comp. Appeal Bd.*, 770 A.2d 318, 321 (Pa. 2001). A court will only consider a question on appeal that was raised before the Commission. *Wheeling & Lake Erie Ry. Co. v. Pa. Pub. Util. Comm’n*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001); 2 Pa.C.S. § 703(a).

Standard of review refers to the manner, or “how,” the appellate examination is conducted or the “degree of scrutiny” that is to be applied. *Morrison* at 570. The Court will not substitute its discretion for that properly exercised by the Commission. *Rohrbaugh v. Pa. Pub. Util. Comm’n*, 727 A.2d 1080, 1085 (Pa. 1999). The Commission’s expert interpretation of an aspect of public utility

law is entitled to great deference and will not be reversed unless clearly erroneous. *Popowsky v. Pa. Pub. Util. Comm'n*, 706 A.2d 1197, 1203 (Pa. 1997). “In reviewing the PUC’s decision, this Court must defer to the interpretation of the governing statutes, regulatory pronouncements, and terms of the tariffs rendered by the PUC that has the particular expertise over public utility matters.” *Aronson v. Pa. Pub. Util. Comm'n*, 740 A.2d 1208, 1211 (Pa. Cmwlth. 1999).

The Commission, rather than the Administrative Law Judge (ALJ), is the ultimate fact finder. *Green Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 642 A.2d 541, 543 (Pa. Cmwlth. 1994). The Commission’s findings are conclusive where they are supported by substantial, competent evidence. *Taylor v. Unemployment Comp. Bd. of Review*, 378 A.2d 829, 832 (Pa. 1977). The Commission’s legal conclusions derived from findings of fact remain subject to judicial review. *Id.* “That the record may contain evidence that supports a different result than that reached by the PUC is irrelevant so long as the record contains substantial evidence supporting the PUC’s decision.” *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (*Lyft*). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. & Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007).

The Court will not overturn an administrative agency's exercise of discretion absent proof or fraud, bad faith, or blatant abuse of discretion. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 913 n. 2 (Pa. Cmwlth. 1996) (*Shenango*). "An abuse of discretion is not merely an error in judgment," but rather "occurs if, in reaching a conclusion, the law is overridden or misapplied or judgment exercised is manifestly unreasonable or is the result of partiality, prejudice, bias, or ill will." *Global Tel*Link Corp. v. Dep't of Corr.*, 109 A.3d 809, 817 n. 15 (Pa. Cmwlth. 2015).

COUNTER STATEMENT OF THE QUESTIONS INVOLVED

1. Did the Commission correctly determine that Petitioner William Ferguson's Formal Complaint against Aqua Pennsylvania Wastewater, Inc. regarding the Purchased Wastewater Expense must be dismissed because, *inter alia*, Mr. Ferguson failed to carry his burden of proof under 66 Pa.C.S. § 332(a)?

Suggested Answer: Yes.

2. Did the Commission properly determine that Mr. Ferguson's claims were barred by the law and no relief can be granted under the rule against retroactive ratemaking and single issue ratemaking?

Suggested Answer: Yes.

3. Did the Commission properly account for Mr. Ferguson's *pro se* status throughout the proceeding and in reaching its determination?

Suggested Answer: Yes.

4. Is the Commission's determination that Mr. Ferguson did not meet his burden of proof under 66 Pa.C.S. § 332 within its administrative discretion and supported by substantial evidence in accordance with Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704?

Suggested Answer: Yes.

COUNTER STATEMENT OF THE CASE

Aqua is a certificated public utility that provides wastewater service within the Commonwealth of Pennsylvania and is regulated by the Commission under the Public Utility Code (Code), 66 Pa.C.S. §§ 101, *et seq.*¹ In this instant appeal, Mr. Ferguson is challenging a portion of Aqua Pennsylvania Wastewater, Inc.'s (Aqua) rates that are being charged to its New Garden Township (New Garden) customers.

On December 3, 2020, the Commission approved Aqua's acquisition of the wastewater system assets of New Garden and the New Garden Township Sewer Authority and granted Aqua the right to begin to offer, render, furnish, and supply wastewater service to the public in portions of New Garden. *Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township*, Docket No. A-2016-2580061, 2020 WL 7239820, at *1 (Order entered December 3, 2020) (attached as Appendix A).

Subsequently, on August 20, 2021, Aqua filed a base rate case filing with the Commission seeking, *inter alia*, an increase in wastewater revenues of approximately \$11,500,997, or 31.02% of its total Pennsylvania jurisdictional wastewater operating revenues based on a fully projected future test year (FPFTY)

¹ Aqua also provides water public utility service to approximately 450,000 water customers in a certificated service territory that spans thirty-two counties across the Commonwealth of Pennsylvania.

ending March 31, 2023. (2021 Rate Case).² In particular, these proposed increases reflected the inclusion of the value of the used and useful assets of the New Garden system in its rate base and the allocation of a portion of the Company's wastewater revenue requirement to its water operations in accordance with the provisions of Section 1311(c) of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. § 1311(c). Aqua's 2021 Rate Case filing was docketed at Docket Nos. R-2021-3027386.

Aqua's 2021 Rate Case was assigned to Administrative Law Judge (ALJ) Mary D. Long. ALJ Long presided over six public input hearings related to Aqua's 2021 Rate Case filing. Mr. Ferguson, who received wastewater services from Aqua, testified during one of the public input hearings and expressed concerns over how the proposed wastewater rates were calculated but did not specifically challenge the subject pro forma wastewater treatment and disposal costs with respect to the New Garden rate division—Purchased Wastewater Expense. R. 462a-464a. Thereafter, ALJ Long conducted an evidentiary hearing, directed the filing of written testimony, and then issued a Recommended Decision. *See Pa. Pub. Util. Comm'n v. Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2021-

² For purposes of this appeal, only the wastewater portion of the 2021 Rate Case is relevant and addressed herein.

3027386, *et al.*, 2022 WL 1732770, at 4-7. (Order entered May 16, 2022) (*2021 Rate Case Order*) (attached as Appendix B).

On May 16, 2022, upon consideration of the parties Exceptions and Reply Exceptions to the Recommended Decision, the Commission entered an Order approving, *inter alia*, an annual revenue increase of \$18,740,978 to Aqua's *pro forma* revenue at present rates of \$37,076,494, or approximately 50.55%, for its wastewater service. *2021 Rate Case Order* at 1-2.

Subsequently, on September 19, 2023, Mr. Ferguson filed two Formal Complaints with the Commission against Aqua. The first Complaint, filed at Docket No. C-2023-3043108, alleged that there were irregularities in Aqua's calculations used to establish their wastewater tariff rates in the 2021 Rate Case (Revenue Complaint) (attached as Appendix C). Revenue Complaint at 7. The second Complaint, filed at Docket No. C-2023-3043109, alleged that Aqua was collecting revenue from New Garden ratepayers for costs that it was not incurring and, in particular, that Aqua estimated the "Purchased Wastewater" trucking expense to last through the full year despite switching to a cheaper alternative before the rate increase became effective (Purchased Wastewater Expense Complaint). R. 21a. The Purchased Wastewater Expense Complaint is the sole focus of the instant appeal. Pet. for Review at 1.

On October 10, 2023, Aqua filed an Answer and New Matter to the Purchased Wastewater Expense Complaint. Aqua denied that it was collecting revenue for a cost that it was not incurring, as “individual cost components frequently change from what is presented in a base rate proceeding,” and that this is not a “basis to change rates or order refunds after the conclusion of a base rate proceeding.” R. 28a. Aqua also noted that Mr. Ferguson testified at a Public Input Hearing held during the 2021 Rate Case, but did not challenge its claimed Purchased Wastewater Expense, and, in fact, no party challenged this particular operating expense. Aqua explained that the Recommended Decision in the 2021 Rate Case specifically considered Mr. Ferguson’s testimony, and that the *2021 Rate Case Order* disposed of all issues related to its proposed rates for New Garden wastewater operations. R 29a-30a. Aqua further averred that Mr. Ferguson’s Purchased Wastewater Expense Complaint was barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, and the doctrine of collateral estoppel because his concerns were already addressed during the 2021 Rate Case. R. 33a-37a. Additionally, Aqua argued that Mr. Ferguson’s claims, if granted, would result in impermissible retroactive ratemaking, constitute impermissible single-issue ratemaking, and violate the Commission-made rate doctrine. R. 37a.

On November 21, 2023, Administrative Law Judge (ALJ) Eranda Vero consolidated the Complaints and referred the consolidated matter to the

Commission's Mediation Unit. Consolidation Order at 5. Mediation sessions were held on January 23, 2024, and March 7, 2024, but the parties were unable to come to a resolution.

On May 23, 2024, Aqua initiated another base rate case with the Commission that was docketed at Docket Nos. R-2024-3047824, *et al.* (2024 Rate Case).³ On July 10, 2024, Aqua filed a Motion to Consolidate Mr. Ferguson's Revenue Complaint and Purchased Wastewater Expense Complaint with its 2024 Rate Case arguing that the filings were interrelated and involved common issues of law in fact. Aqua Motion to Consolidate at 6 (attached as Appendix D). Mr. Ferguson filed an Answer in opposition to Aqua's Motion to Consolidate on July 24, 2024, arguing that there was not a sufficient connection between the cases. Ferguson Answer to Aqua Motion to Consolidate at 5 (attached as Appendix E). On October 21, 2024, ALJ Vero denied the Motion to Consolidate and scheduled an evidentiary hearing in the Revenue Complaint and Purchased Wastewater Expense Complaint matter. Order Granting Motion to Consolidate at 8 (attached as Appendix F).

On November 15, 2024, Aqua filed a Motion to convert the scheduled evidentiary hearing to a prehearing conference or, alternatively, to continue the

³ See *Pa. Pub. Util. Comm'n v. Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047824, *et al.*

evidentiary hearing. Aqua Motion for Prehearing Conf. at 9 (attached as Appendix G). On November 30, 2024, ALJ Vero denied Aqua's Motion. Order Denying Motion for Prehearing Conf. at 1-2 (attached as Appendix H). An evidentiary hearing was held on November 25, 2024. Mr. Ferguson appeared *pro se* and sponsored 14 exhibits, which were admitted into the record, while Aqua was represented by counsel and sponsored seven exhibits, which were also admitted into the record. R. 45a-47a.

During the evidentiary hearing, Mr. Ferguson alleged that the \$1.2 million Purchased Wastewater Expense stopped accruing two months after the 2021 Rate Case was filed. R. 80a-81a. Mr. Ferguson claimed that, instead, Aqua activated an existing pipeline between the two facilities at a cost of \$600,000 to reduce the trucking expense. R. 74a. Mr. Ferguson argued that Aqua should have disclosed the reduction in its Purchased Wastewater Expense amount before the rate increase became effective on May 19, 2022. R. 85a, 156a. To remedy this, Mr. Ferguson asked the Commission to investigate Aqua's Purchased Wastewater Expense as reported in Aqua's filings, to determine new tariffs for the area, and to order refunds to customers if overcharges are found. R. 133a.

In response, Aqua provided the sworn testimony of Ms. Erin Feeney, Aqua's Manager of Rates. *See* R. 155a. Ms. Feeney explained that at the time of filing the 2021 Rate Case, Aqua was aware of the large Purchased Wastewater expense it was

incurring through trucking wastewater between the New Garden facilities.

R. 186a. Ms. Feeney also noted that no solution was found by that time and, thus, Aqua's filing reflected its belief that this trucking expense would continue until the end of the FPFTY—March 31, 2023. *Id.* Finally, Ms. Feeney explained that Aqua collected \$4.3 million in revenue from the New Garden division during the FPFTY, which was less than the \$4.4 million revenue the Commission authorized, meaning that Aqua did not collect all the revenue it was authorized to receive from its New Garden customers. R. 173a.

Additionally, during the evidentiary hearing, the parties elected to proceed without the filing of main briefs or reply briefs. R. 221a-225a. Thus, the record in this matter closed upon receipt of the Transcript on December 30, 2024.

On March 31, 2025, ALJ Vero issued an Initial Decision (I.D.) dismissing the Purchased Wastewater Expense Complaint. R. 469a. In the Initial Decision, ALJ Vero explained that the 2021 Rate Case was based on a FPFTY, which projected expenses and revenues for Aqua over a 12-month period ending March 31, 2023. ALJ Vero further explained that, at the time of the initial filing, Aqua was incurring a large Purchased Wastewater expense for transporting wastewater between two facilities in the New Garden division and was searching for an alternative solution with no solution yet available. R. 456a-457a. Thus, Aqua

believed that the trucking expense would continue until the end of the FPFTY.

R. 457a.

ALJ Vero also noted that, on February 18, 2022, the ALJ in the 2021 Rate Case issued a Recommended Decision which addressed, *inter alia*, the concerns Mr. Ferguson raised in his testimony regarding the calculation of Aqua's proposed wastewater rates. R. 463a-464a. ALJ Vero further noted that, on May 16, 2022, the Commission issued the *2021 Rate Case Order*, which authorized a lower increase in overall rates than what was proposed in Aqua's original filing and that, on May 23, 2022, Aqua implemented the lower, Commission-approved rates for New Garden Township in its wastewater tariff. R. 464a; *see 2021 Rate Case Order* at 1-2. Consequently, since the wastewater tariff provisions were approved by the Commission during the 2021 Rate Case, ALJ Vero noted that the tariff rates, as a whole, were *prima facie* reasonable and in order to overcome this *prima facie* reasonableness, Mr. Ferguson would have had to show that the facts and circumstances behind the tariff provisions have changed so drastically as to now render them unreasonable, which Mr. Ferguson failed to do. R. 464a-465a. Accordingly, after review of the record, ALJ Vero determined that Mr. Ferguson failed to prove that Aqua violated a statute, regulation, Commission order, or Aqua's wastewater tariff. R. 464a.

Additionally, ALJ Vero also explained that Mr. Ferguson's claims were barred by law for three reasons: (1) the rule against retroactive ratemaking prevents setting future rates to allow a utility to refund excess utility profits to consumers; (2) an isolated item of revenue cannot by itself be the subject of refund or recovery; and (3) single-issue ratemaking is prohibited if it impacts on a matter normally considered in a base rate case. R. 467a-468a. Thus, ALJ Vero dismissed the Purchased Wastewater Expense Complaint in its entirety. R. 469a.

On April 21, 2025, Mr. Ferguson filed Exceptions to the ALJ's Initial Decision and, on May 1, 2025, Aqua filed Reply Exceptions. Subsequently, on May 9, 2025, Mr. Ferguson filed with the Commission a Motion to Strike Certain Portions of the Reply Exceptions of Aqua Pennsylvania. R. 526a-529a. On that same day, he also filed with the Commission a Petition to Reopen the Record for Purpose of Taking Additional Evidence. R. 531a-538a. On May 19, 2025, Aqua filed separate answers to Mr. Ferguson's Motion to Strike and his Petition to Reopen the Record. R. 539a-552a.

On June 18, 2025, the Commission entered an Opinion and Order that denied Mr. Ferguson's Exceptions to the Initial Decision, adopted the Initial Decision consistent with its Order, and dismissed Mr. Ferguson's Purchased Wastewater Expense Complaint. *See William Ferguson v. Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. C-2023-3043109 *et al.* (Order entered June 18,

2025) at 1-2, 33. (*June 2025 Order*) (attached as Appendix I). Specifically, in the *June 2025 Order*, the Commission denied Mr. Ferguson's first exception, which argued that the ALJ erred in finding that he did not meet his burden of proof to overcome the *prima facie* reasonableness of Aqua's commission-approved tariff. The Commission noted that Mr. Ferguson did not acknowledge that although Aqua may have no longer used trucks to haul the water from one lot to another, Aqua still incurred reasonable and normal expenses that were not included in the 2021 Rate Case, such as additional power, labor, and outside contractor services costs related to its investment in the project to use underground piping to move water from one lot to another to provide service to its customers. R. 478a; *June 2025 Order* at 24-25. Additionally, the Commission determined that Aqua only collecting \$4.3 million rather than the \$4.4 million the Commission had authorized for its New Garden division, supported the ALJ's conclusion that Mr. Ferguson did not carry his burden of proof. *June 2025 Order* at 25.

In his second exception, Mr. Ferguson argued that the ALJ erred in finding that his claims were barred by law due to the rule against retroactive ratemaking. R. 482a. The Commission denied this exception, finding that Mr. Ferguson's request for a revised tariff and refunds of lawful incurred operating expenses to affected customers is tantamount to retroactive ratemaking. The Commission also noted that Mr. Ferguson's claim that he and other New Garden customers were

being charged incorrectly is a new argument, which cannot be raised at the Exceptions stage after the record has closed. *June 2025 Order* at 27.

Moreover, in his third exception, Mr. Ferguson argued that the ALJ erred in finding his claims were barred by law due to the prohibition against single-issue ratemaking. R. 484a. The Commission determined that Mr. Ferguson's Purchased Wastewater Expense Complaint was improperly seeking single-issue ratemaking based on the wastewater hauling expense. In this regard, the Commission noted that Aqua used the information available at the time of its 2021 Rate Case to complete its estimations but also collected less than the allowed revenues in 2023. Thus, the Commission denied this exception. *June 2025 Order* at 28.

Further, in his fourth exception, Mr. Ferguson argued that the ALJ failed to address and decide the substantive merits raised in his Purchased Wastewater Expense Complaint. R. 485a. The Commission denied this exception, noting that Mr. Ferguson acknowledged that the ALJ addressed his arguments. *June 2025 Order* at 31 (citing R. 485a, 490a). The Commission reiterated that Mr. Ferguson failed to meet his burden of proof and agreed with the ALJ that he failed to prove that Aqua had violated a statute, regulation, Commission Order, or tariff. *June 2025 Order* at 31.

Finally, in his fifth exception, Mr. Ferguson argued that the ALJ incorrectly found that collateral estoppel prevented Mr. Ferguson from seeking relief now.

R. 494a. The Commission denied this exception, noting that the ALJ explicitly did not address or apply the doctrine of collateral estoppel. The Commission explained that the ALJ instead dismissed the Purchased Wastewater Expense Complaint on the basis that the claims therein would violate the prohibition of retroactive ratemaking and single-issue ratemaking, and that Mr. Ferguson did not meet his burden of proof that Aqua violated a statute, regulation, commission Order, or tariff. *June 2025 Order* at 32.

In this same Order, the Commission denied Mr. Ferguson's May 9, 2025 Motion to Strike and denied his May 9, 2025 Petition to Reopen the Record.⁴ *June 2025 Order* at 33. The Commission noted that the burden is on the petitioner to show grounds for reopening the proceeding, including changes of fact or law that have occurred since the conclusion of the hearing. 52 Pa. Code § 5.571(b). *June 2025 Order* at 9. The Commission acknowledge that it may reopen the record after the presiding officer has issued a decision if there is reason to believe: (1) that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding; and (2) that the party seeking to reopen the proceeding has demonstrated "good cause" for the admittance of this evidence. 52 Pa. Code §§ 5.571(d), 5.431(b). *Id.*

⁴ The Commission also dismissed the Revenue Complaint. *June 2025 Order* at 33. However, as noted above, this appeal pertains only to the Purchased Wastewater Expense Complaint.

Regarding his Petition to Reopen the Record, Mr. Ferguson stated that its purpose was to (1) reemphasize the need for a Commission investigation into Aqua's rate case base behavior, and (2) request a limited reopening of the record to address the Company's wastewater hauling expense as detailed in the Purchased Wastewater Expense Complaint. *June 2025 Order* at 15. The Commission held that Mr. Ferguson did not present any material changes of fact or law, nor did he show good cause such that the record developed in the proceeding should be reopened. *Id.* at 17. The Commission found that the information Mr. Ferguson sought was discoverable and available prior to the closing of the record and stated that it was not persuaded by Mr. Ferguson's assertion that reopening the record was in the public interest. *Id.*

With respect to his Motion to Strike, Mr. Ferguson requested that the Commission strike and exclude from consideration the portions of Aqua's Reply Exceptions appearing in Parts II (A), (B), (C), and (D) because, according to him, Aqua's argument invoking the *prima facie* reasonableness of Commission-approved rates, the rule against retroactive ratemaking, the prohibition against single-issue ratemaking, and Aqua's objections to refunds are "inapt and irrelevant to this case." *Id.* at 18. The Commission found that Mr. Ferguson's Motion to strike was an attempt to reply to Aqua's Reply Exceptions and was, therefore, an improper and procedurally defective filing. *Id.* at 19. The Commission also held

that the Complainant provided no new facts in his Motion to Strike and merely reiterated the arguments from his Complaints and his Exceptions. *Id.*

Thus, for all these reasons, the Commission dismissed Mr. Ferguson's Purchased Wastewater Expense Complaint. *Id.* at 33.

On July 17, 2025, Mr. Ferguson filed a Petition for Review of the Commission's *June 2025 Order* with respect to the Expense Complaint alone. On August 29, 2025, this Court issued a Briefing Schedule. On September 18, 2025, Mr. Ferguson filed a request for extension of time to file his Brief and Reproduced Record, which this Court granted on September 22, 2025. On November 5, 2025, Mr. Ferguson filed a second request for an extension to file his Brief and Reproduced Record, which this court granted on November 6. Mr. Ferguson filed his Brief on November 10, 2025.

On November 24, 2025, the Commission filed an application for extension of time to file its Brief. The next day Aqua filed an application for extension of time to file its Brief. This Court granted these requests for extension on December 1, 2025. In accordance with the Briefing Schedule, the Commission hereby files the instant Brief in response.

SUMMARY OF THE ARGUMENT

This case originates from Mr. Ferguson’s Purchased Wastewater Expense Complaint filed with the Commission, at Docket No. C-2023-3043109, in which he contended that Aqua had included a \$1.2 million annual “Purchased Wastewater Expense” in its 2021 wastewater rate base request that the Company was no longer incurring for hauling wastewater. As such, in this appeal, Mr. Ferguson improperly asserts that Aqua’s wastewater rates that became effective, following a fully-litigated rate case and were charged to the New Garden customers, were impermissibly overstated and should be adjusted because they are not recoverable through rates. In the ALJ’s Recommended Decision, she noted that Mr. Ferguson had participated in Aqua’s 2021 Rate Case by providing sworn public input hearing testimony, on May 19, 2022. The ALJ also noted in the May 16, 2022 Opinion and Order, which authorized a lower increase in rates than what Aqua had proposed in its August 20, 2021 initial filing, the Commission had addressed the issues raised by Mr. Ferguson in his testimony.

Thereafter, Aqua timely filed its Compliance Tariff on May 23, 2022, in accordance with the Commission’s May 16, 2022 Opinion and Order and the Commission’s regulations. Importantly, Aqua’s Compliance Tariff filing was reviewed by the Commission before it was permitted to become effective by

operation of law and all active parties to the proceeding were served the Compliance Tariff and had an opportunity to file objections.

As to whether a rate charged by a utility is just and reasonable, the Pennsylvania Supreme Court has held that under the Public Services Company Law, there is a presumption that an existing rate is just and reasonable. *See Duquesne Light Co. v. Pub. Serv. Comm'n*, 117 A. 63, 66 (Pa. 1922) (*Duquesne Light I*). The Public Utility Code also provides that “the proponent of a rule or order has the burden of proof.” 66 Pa.C.S. § 332(a). Based on these statutory provisions, the ALJ determined that since Aqua’s wastewater rates at issue are existing rates, Mr. Ferguson, as the challenger to Aqua’s existing wastewater rate, bore the burden of establishing that Aqua’s Purchased Wastewater Expense were unjust or unreasonable under 66 Pa.C.S. § 332(a). Ultimately, the ALJ concluded that Aqua’s tariff provisions, which had been previously approved by the Commission, are *prima facie* reasonable and that a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changes so drastically as to render the application of the tariff provision unreasonable. *June 2025 Order* at 13; R. 464a-465a. *See Shenango Twp. Bd. of Sup’rs v. Pa. Pub. Util. Comm’n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996); *see also*

Duquesne Light Co. v. Pa. Pub. Util. Comm’n, 715 A.2d 540, 544 (Pa. Cmwlth. 1998) (*Duquesne Light II*).

The Commission, in reviewing the evidentiary record, and as the ultimate fact-finder, agreed with the ALJ’s conclusion that Mr. Ferguson failed to carry this heavy burden of proof. Specifically, the Commission found that he did not establish a *prima facie* case showing that Aqua breached some duty owed to him or that the Company violated the Code or a regulation or order of the Commission. The Commission determined that Aqua’s witness credibly testified that at the time the Company filed its 2021 Rate Case, it used the data available, and that Mr. Ferguson did not account for the costs required to upgrade the pipeline ultimately used as an alternative to Aqua’s trucking expenses.

The Commission also concluded that Mr. Ferguson did not meet his burden of proof to show that Aqua’s wastewater tariff is unreasonable. The Commission relied on Aqua’s sworn and un rebutted testimony that the Company still continued to incur purchased wastewater expenses that were not included in the 2021 Rate Case and the fact that Aqua received less than its allowed revenues in 2023 for its New Garden costs. When all the evidence was considered together, the Commission concluded that Mr. Ferguson failed to carry his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a).

Moreover, the Commission properly found that Mr. Ferguson sought unlawful retroactive rulemaking and single-issue ratemaking in his Complaint. Retroactive ratemaking is the regulatory principle that prohibits public utilities from adjusting current rates in an attempt to recover expenses or over/under-collect funds from *past* service periods, because rates are set prospectively (forward-looking) in order to recover future costs and not to correct past regulatory errors or budget shortfalls. As such, the rule against retroactive ratemaking prohibits utility commissions from either setting future rates to recover past losses or refund past excess profits. The Commission determined that Mr. Ferguson's request for a revised tariff and refunds to affected customers for Aqua's alleged over-collection of purchased wastewater expenses (excess profits) was tantamount to retroactive rulemaking. In reality, and as he testified during the evidentiary hearing, Mr. Ferguson was being charged consistent with a Commission-approved tariff. Additionally, with respect to his request to reexamine the "Purchased Wastewater Expense," a single rate element of the 2021 Rate Case, the Commission disagreed with Mr. Ferguson that something "more" existed to justify such reexamination. Further, the Commission noted that Aqua collected less than the allowed revenue in 2023 and New Garden wastewater customers paid less than the cost of providing them wastewater service. Accordingly, the long-recognized rules against retroactive and single-issue rulemaking apply here.

Next, the Commission properly accounted for Mr. Ferguson's *pro se* status throughout the evidentiary proceeding. The Commission provided Mr. Ferguson with due process, consistent with 66 Pa.C.S. § 703(c), and informed him of his rights and responsibilities as a complainant through a Hearing Notice, a Prehearing Order, and by directing him to the Commission's Rules of Practice and Procedure governing the hearing process. Moreover, the Commission appropriately denied Mr. Ferguson's Petition to Reopen the Record, which he filed pursuant to 52 Pa. Code § 5.571(c). The Commission held that Mr. Ferguson simply repeated the arguments that had been articulated in his Complaint and Exceptions after having failed to effectively elicit information during cross-examination and re-cross examination of Aqua's witness.

Finally, the Commission's determination is consistent with its administrative discretion and is supported by substantial evidence. Aqua testified that at the time of the 2021 Rate Case initial filing, the Company was aware of the purchased wastewater expense but had not yet found a solution to eliminate the cost. Aqua also explained that this expense was only reduced after the record for the 2021 Rate Case closed. Moreover, Aqua testified that, if the relief Mr. Ferguson sought was granted, the Company would be justified in charging higher rates to New Garden customers, not lower rates, due to the expenses incurred when the trucking costs ended. Based on this evidence, and more included below, it is clear that the

Commission had substantial evidence to support its finding. Thus, Mr. Ferguson's attempt to have this Court reevaluate the record evidence should be denied and proper deference should be granted to the Commission's administrative discretion.

Therefore, the Court should affirm the Commission's June 18, 2025 Order, at Docket No. C-2023-3043109.

ARGUMENT

I. The Commission Correctly Determined That Mr. Ferguson’s Complaint Against Aqua Regarding The Purchased Wastewater Expense Must Be Dismissed Because, *Inter Alia*, He Failed To Carry His Burden Of Proof

A. Mr. Ferguson Failed To Carry His Burden Of Proof Under 66 Pa.C.S. § 332(a)

Since Mr. Ferguson was challenging Aqua’s existing, Commission-approved wastewater rates, he bore the burden of proof under Section 332 of the Code, 66 Pa.C.S. § 332, of establishing that the portion of Aqua’s existing rate related to its Purchased Wastewater Expense rate was unjust and unreasonable. Mr. Ferguson acknowledges that he has the burden under Section 332(a) of the Code to prove his allegations by establishing under Section 701 a *prima facie* case “setting forth any act or thing done *or omitted to be done* by Aqua in violation of any law which the Commission has jurisdiction to administer [i.e., the Public Utility Code], or any regulation or order of the Commission.” Ferguson Br. at 32 (emphasis included). However, Mr. Ferguson inaccurately argues that he met his burden of proof by demonstrating that Aqua violated Section 1301(a) of the Code, 66 Pa.C.S. § 1301(a), by causing an unincurred expense to be included in New Garden Township customers’ rates and that Aqua’s claimed trucking expense ceased during the Company’s 2021 rate case. Ferguson Br. at 31-42. The Commission asserts that Mr. Ferguson failed to meet his burden of proof under Section 332(a)

of the Code, 66 Pa.C.S. § 332(a), because he did not overcome the *prima facie* reasonableness of Aqua's commission-approved tariff.

Chapter 13, Subchapter A, of the Code, governs rates. Notably, Section 1301(a) reads as follows:

Regulation.--Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission....

66 Pa.C.S. § 1301(a). In addition Section 1312 of the Code states:

Refunds.

(a) General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility *was unjust or unreasonable, or was in violation of any regulation or order of the commission*, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, *the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron*, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

66 Pa.C.S. § 1312(a) (emphasis added).

As to written complaints filed with and adjudicated by the Commission,

Section 701 of the Code states:

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. Any public utility, or other person, or corporation likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. The commission may prescribe the form of complaints filed under this section.

66 Pa.C.S. § 701. Related to Section 701 and applicable to this appeal is Section 332(a) of the Code, 66 Pa.C.S. § 332(a), which sets forth the respective burden of proof for the parties in a Commission complaint proceeding. Specifically, Section 332 states “[e]xcept as may be otherwise provided in section 315 ... or other provisions of this part or other relevant statute, *the proponent of a rule or order has the burden of proof.*” 66 Pa.C.S. § 332(a) (emphasis added). In other words, the “party seeking affirmative relief from the Commission” has the burden of proof. *Frompovich*, 2018 Pa. PUC LEXIS 160 at *16.

The gravamen of this appeal is whether Mr. Ferguson met his burden of proof in establishing that Aqua’s Purchased Wastewater Expense, which is embedded in its existing wastewater rates, is unjust and unreasonable. As to whether a rate charged by a utility is just and reasonable, the Pennsylvania Supreme Court has held that under the Public Services Company Law, there is a presumption that an existing rate is just and reasonable. *Duquesne Light Co. v. Pub. Serv. Comm’n*, 117 A. 63, 66 (Pa. 1922) (*Duquesne Light I*). As such, ALJ Vero noted, Mr. Ferguson had “a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable.” R. 464a-465a (citing *Shenango Twp. Bd. of Supervisors v. Pa. Pa Pub. Util. Comm’n*, 686 A.2d 910 (Pa. Cmwlth. 1996) (*Shenango*)). Even more, the Supreme Court of Pennsylvania has recently held that a challenger to an existing rate, which is what Aqua’s rates are in this case, bears the burden of establishing that the rate is unjust or unreasonable. *FirstEnergy Pa. Elec. Co. v. Pa. Pub. Util. Comm’n*, No. 42 MAP 2024, 2026 WL 61600 (Pa. Jan. 8, 2026).

The burden of proof is comprised of “two distinct burdens: the burden of production and the burden of persuasion.” *Id.* at *17; *see also Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426, 427 (Pa. 1968) (“The burden of proof really

consists of two separate burdens, the burden of production or going forward, and the burden of persuasion.”). As the Commission has explained in prior cases:

The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. It may shift between the parties during a hearing.

Catherine J. Frompovich v. PECO Energy Company, Docket No.

C-2015-2474602, 2018 Pa. PUC LEXIS 160 (Order entered May 3, 2018) at *17-18 (citations omitted). Once the proponent of the rule or Commission order introduces sufficient evidence to establish the “legal sufficiency of the claim,” *i.e.* a *prima facie* case, the burden of production shifts to the opposing party to rebut that evidence. *Id.* at *18. The burden of persuasion, however, never shifts.⁵ *Id.* at *19. The burden of persuasion “always remains on . . . the party seeking affirmative relief from the Commission.” *Id.*

Despite Mr. Ferguson’s claims that Aqua’s Commission-approved existing rates should be deemed unjust and unreasonable because he had proved that the Company’s claimed trucking expenses ceased during its 2021 rate case,⁶ there is substantial credible evidence in the record from Aqua to support the Commission’s

⁵ In determining whether the proponent has met the burden of persuasion, “the ultimate fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or part, and may accept or reject inferences from the evidence.” *Id.* at *19-20.

⁶ Ferguson Br. at 36-42.

findings to the contrary. *See Wise v. Unemployment Comp. Bd. of Rev.*, 111 A.3d 1256, 1262 (Pa. Cmwlth. 2015).

In this case, the ALJ correctly analyzed Mr. Ferguson's complaint under the applicable burden of proof for an existing rate — whether the facts and circumstances leading to the creation of the tariff had changed so drastically as to render the application of the tariff provision unreasonable. *See gen'ly Shenango and FirstEnergy Pa. Elec. Co. v. Pa. Pub. Util. Comm'n.* To this end, the ALJ appropriately concluded that Mr. Ferguson failed to prove by a preponderance of the evidence that Aqua had violated a Commission statute, regulation, order, or Aqua's wastewater tariff. R. 464a-465a. Subsequently, the Commission agreed with the ALJ's conclusion that Mr. Ferguson failed to meet his burden of proof of showing that all the evidence, taken together, produced an unreasonable tariff provision. *June 2025 Order* at 25.

As the ultimate factfinder, the Commission is empowered to review record evidence, make credibility determinations, and accord evidentiary weight. *See Hughes v. Pa. Pub. Util. Comm'n*, 322 A.3d 982 (Pa. Cmwlth. 2024); *see also* 66 Pa.C.S. § 335. The Commission used its discretion under Section 335 of the Code to credit the testimony of Aqua's witness, Ms. Feeney, the Company's Manager of Rates. The Commission explained:

Aqua was aware of the cost and expected this expense to continue through the FPFTY. Aqua explained that, after

the trucking expense ended, the Company incurred additional costs that were not included in the 2021 Rate Case filing for additional power, labor, and outside contractor costs. Tr. at 151. Mr. Ferguson testified that Aqua spent \$600,000 to reinstate a pipeline to be able to discontinue the trucking expense and that New Garden left the wastewater storage completely full in anticipation of the sale. *Id.* at 21. Mr. Ferguson testified that Aqua “trucked 6,000 to 8,000 gallons [sic] loads 12 hours a day for 8 to 10 months and [that] it cost over \$800,000.” *Id.* at 31. Mr. Ferguson acknowledged that the pipeline was idle for fifteen years and may have required hydrostatic pressure testing to determine its viability. *Id.* at 40. However, Mr. Ferguson did not acknowledge that there may have been a cost for the hydrostatic testing.

June 2025 Order at 24.

More specifically, Aqua’s witness testified during Mr. Ferguson’s cross-examination that of the \$1.2 million of purchased wastewater expense being contested, \$800,000 was for trucking while the remaining \$400,000 was for other purchased wastewater expenses to Kennett and Avondale. R. 185a. Additionally, Ms. Feeney testified that at the time of filing of its 2021 Rate Case with the Commission, the Company believed the trucking expense would occur until the end of the fully-projected future test year and that the historic test year usually ends four months before the Company files its base rate case; thus, Aqua filed with the best information available using rate-making estimates. R. 186a.

On redirect, Ms. Feeney added “[I]f expenses are found during the time that the record is open and they’re significant, we would go back and correct the filing.

During the time the record was open, we did not become aware of any significant changes to an increase or decrease of expenses that would result in us updating the filing.” R. 193a-194a.

In its review of the I.D., the Commission explained:

We agree with ALJ Vero that the Complainant has not met his burden of proof to show that the tariff is unreasonable. Aqua testified that the Company used the information available at the time of the filing. [R. 185a-187a.] Aqua incurred additional expenses not included in the 2021 Rate Case. Aqua received less than its allowed revenues in 2023 for the New Garden costs. The New Garden wastewater customers paid less than the cost of service. If Mr. Ferguson were granted the relief he has sought, Aqua may be justified in charging higher rates to New Garden customers, instead of lower rates. Tr. at 152-53. All of this evidence, when considered together, supports the finding that the Complainant has failed to show that the ALJ erred by concluding that the Complainant has failed to carry his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a).

Order at 25. Specifically, related to the revenue collected by Aqua in 2023, Ms. Feeney testified that Aqua collected \$4.3 million, which was less than the \$4.4 million that was authorized. R. 173a.

The Commission continued:

Aqua used data from New Garden, obtained during the Acquisition Proceeding, to determine usage by the New Garden wastewater customers. Aqua expected the wastewater hauling to continue through the FPPTY. Aqua incurred additional costs that were not part of the rate case when the costs for wastewater hauling ended. The Complainant acknowledges that the ALJ addressed

the Complainant's arguments. Exc. at 15, 20 (citing I.D. at 11-13). We find no error in the ALJ's evaluation of the Complainant's evidence and testimony. We agree with the ALJ that the Complainant failed to prove that Aqua has violated a statute, regulation, Commission Order, or tariff. See I.D. at 19, COL No. 10.

June 2025 Order at 31. The Commission appropriately concluded that Mr. Ferguson did not include the costs required to upgrade the pipeline or acknowledge that the costs Aqua incurred may have exceeded the monthly rates estimated by New Garden, as costs may have increased and New Garden left the wastewater storage completely full. *June 2025 Order* at 24.

In light of the substantial evidence undergirding the Commission's conclusion that Aqua's existing rates are just and reasonable, the Commonwealth Court should not substitute its judgment for that of the Commission, nor should it indulge in the processes of weighing evidence and resolving conflicting testimony. *Popowsky v. Pa. Pub. Util. Comm'n.*, 706 A.2d 1197, at 1201 (Pa. 1997) (quoting *Phila. Elec. Co. v. Pa. Pub. Util. Comm'n.*, 433 A.2d 620, 624, (Pa. Cmwlth. 1981)). The Commission correctly found that Mr. Ferguson failed to meet his burden of proof that Aqua violated a statute, regulation, Commission order, or tariff, and the evidentiary record does not show that the Company's tariff provisions are unjust or unreasonable.

II. The Commission Properly Determined That The Rules Against Retroactive Ratemaking And Single-Issue Ratemaking Bar Mr. Ferguson's Claims

To sustain his argument that Aqua's wastewater rates are unjust and unreasonable, Mr. Ferguson argues that the Commission erroneously concluded that his claims were barred by the law and no relief can be granted under the rule against retroactive ratemaking. Ferguson Brief at 46-52. Specifically, Mr. Ferguson argues that the rules against retroactive ratemaking and single-issue ratemaking do not apply here by claiming that the prohibitions are not absolute. *Id.* However, Mr. Ferguson fails to provide any persuasive argument that any exception to the rules against retroactive ratemaking and single-issue ratemaking applies here.

The rules against retroactive ratemaking and single-issue ratemaking were both developed due to the prospective nature of public utility ratemaking. In her I.D., the ALJ explained the use of a future test year and the prohibition against retroactive ratemaking and single-issue ratemaking, as follows:

Typically, a utility files a general rate case with a record of revenues and expenses for the past year and a projection of anticipated expenses and revenues for a future test year. See 66 Pa.C.S. § 315(e). The future test year is a projection of a future 12-month period reflecting anticipated or projected results of operations. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76. The use of a test year allows the prudently managed utility to recover all expenses and a reasonable return and, therefore, requires normalization or removal of all abnormal, non-recurring events from the test year. 52 Pa. Code § 53.56;

Columbia Gas, 613 A.2d at 76; *see also* Cawley & Kennard, Rate Case Handbook, 1983, pp. 54, 150-51. Based on the information provided, the Commission determines whether the utility has proved that its requested rates are just and reasonable. 66 Pa.C.S. § 315(a).

Because of the prospective nature of rates, a rule against retroactive ratemaking has developed. The rule against retroactive ratemaking prohibits a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. *Cheltenham & Abington Sewerage Co. v. Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942); *see also* Krieger, The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings, 1991 Univ. Ill. L. Rev. 983, 984. The policy reasons behind this rule are that if retroactive ratemaking is allowed, it makes the “test year” method of ratemaking meaningless and the general principle that those customers who use power should pay for its production rather than requiring future ratepayers to pay for past use. The Commonwealth Court has stated this rule as “[t]he Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations.” *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n*, 487 A.2d 118 (Pa. Cmwlth. 1985); *Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994).

Also, in *Philadelphia Electric Co. v. Pennsylvania Public Utility Commission*, 502 A.2d 722 (Pa. Cmwlth. 1985), the Commonwealth Court held that there should be no line-by-line examination of items in a rate case and an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery. Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. *Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

R. 465a-466a.

The Commission notes that retroactive ratemaking is the regulatory principle that prohibits public utilities from adjusting current rates in an attempt to recover expenses or over/under-collect funds from *past* service periods, because rates are set prospectively (forward-looking) in order to recover future costs and not to correct past regulatory errors or budget shortfalls. As such, the Commission agreed with the ALJ that the relief that Mr. Ferguson was seeking from the Commission related to Aqua's purchased wastewater was equivalent to unlawful retroactive ratemaking since Mr. Ferguson was essentially requesting the Commission to order Aqua to revise its tariff to remove a lawful expense embedded in Aqua's wastewater rates and then direct Aqua to provide refunds to the affected customers. Accordingly, the Commission properly dismissed Mr. Ferguson's Purchased Wastewater Expense Complaint.

Mr. Ferguson attempts to argue that exceptions to the retroactive ratemaking prohibition apply to the instant matter. However, his arguments are unsupported by law and the facts at hand. Mr. Ferguson first argues for a "windfall exception" to apply. The exception he is referring to has been applied only to allow a utility to raise rates to account for "expenses that are extraordinary and nonrecurring." *Phila. Elec. Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 722, 728 (Pa. Cmwlth. 1985). Consequently, this has typically occurred where a utility suffered unforeseen damages or large one-time expenses, such as expenses caused by weather damage.

See, e.g., Popowsky v. Pa. Pub. Util. Comm’n, 642 A.2d 648, 652 (Pa. Cmwlth. 1994) (collecting cases where weather-related expenses—or “acts of God”—qualify for this exception).

Yet, Mr. Ferguson argues that this exception can somehow also be applied to customers for unexpected *windfalls* to the utility, thus allowing customers to recover for “unforeseeable and extraordinary *increases* in the utility’s revenue.” Ferguson Brief at 49. However, Mr. Ferguson fails to cite a single Pennsylvania authority that supports this contention; he instead includes only two cases from other jurisdictions, one from Utah and one from Oklahoma, to support this purported claim that the “windfall exception” to retroactive ratemaking also allows customers to obtain refunds from a utility for an unforeseeable and extraordinary increase in its revenue. Even if this contention that customers could benefit from utility windfalls was true, which it is not, his claims that Aqua has received a windfall from recovering the Purchased Wastewater Expense are simply untrue. In his Brief, Mr. Ferguson asserts that Aqua “was rewarded with a substantial revenue windfall (\$3.3 million through the effective date of its 2024 rate case rates)” due to its failure to withdraw and eliminate the purchased wastewater expense. Ferguson Brief at 49-50. However, Mr. Ferguson fails to consider that Aqua’s rates would include the expenses that Aqua has incurred in finding an alternative to the trucking expense, such as “additional power costs, additional labor costs, [and]

additional outside contractor services costs.” R. 194a; *see also June 2025 Order* at 24 (“Mr. Ferguson . . . does not include, in his calculations, the costs required to upgrade the pipeline or acknowledge that the costs Aqua incurred may have exceeded the monthly rates estimated by New Garden, as costs may have increased . . .”). Additionally, as Ms. Feeney testified, Aqua actually received *less than* their approved revenues as established in the 2021 Rate Case for the 2023 calendar year. R. 173a. As such, there was no windfall to Aqua here.

Mr. Ferguson’s second claimed exception is the “explicit misconduct” exception, which is not currently recognized under Pennsylvania law. Mr. Ferguson alleges that the rule set forth in *Barasch* that “an unjust and unreasonable rate is unlawful” encompasses a misconduct exception. Ferguson Brief at 50. Even if this exception had been adopted in Pennsylvania, which has not occurred, Mr. Ferguson fails to provide any substantial credible evidence regarding misconduct by Aqua here.

Mr. Ferguson’s primary contention is that Aqua’s failure to disclose the cessation of its trucking expense during the course of the 2021 Rate Case proceeding. Mr. Ferguson bases this claim solely on an unsworn statement made by Mr. Todd Duerr, Aqua’s Vice President of Production, at a November 21, 2022 New Garden Township Board of Supervisors Meeting where he allegedly stated that the trucking expense had ended withing the first year Aqua owned the system.

R. 21a. Mr. Duerr’s unsworn remarks, which was recorded and posted on social media, occurred several months after (1) the record closed in the 2021 Rate Case, and (2) Aqua had filed its Compliance Tariff and the new rates had become effective, were not part of the 2021 Rate Case. Conversely, Ms. Feeney testified under oath and subject to cross-examination that Aqua had used all information available during the 2021 Rate Case in ascertaining its rates, and that it did not come to a solution to the purchased wastewater expense until after the case closed.

R. 194a. It should be noted that Ms. Feeney’s testimony was provided under oath both during the 2021 Rate Case and during the evidentiary hearing in the instant matter. Additionally, Aqua collected less than the allowed revenues in 2023, and the New Garden wastewater customers paid less than the cost of service. R. 173a, 176a. The Commission as the ultimate fact finder is “empowered to weigh the evidence and resolve conflicts in the testimony.” Under this well-accepted principle, the Commission considered the evidence of both Mr. Ferguson and Aqua and resolved the issue in favor of Aqua. *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 264 (Pa. Cmwlth. 2014).

As discussed in greater detail below, “the [appellate c]ourt should neither ‘substitute its judgment for that of the PUC when substantial evidence supports the PUC’s decision on a matter within the Commission’s expertise,’ nor should it indulge the process of weighing evidence and resolving conflicting testimony.”

Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm’n, 25 A.3d 440, 449 (Pa. Cmwlth. 2011). Substantial record evidence supports the Commission’s decision that there was no explicit misconduct in the instant matter.

Having debunked Mr. Ferguson’s argument that the long-recognized rule against retroactive ratemaking does not apply here because an exception to the general retroactive ratemaking prohibition is present here, we now turn to his claim regarding the applicability of single-issue rulemaking. Similar to retroactive ratemaking, single-issue ratemaking occurs when a party seeks recovery or a refund of a specific line item and “is prohibited if it impacts on a matter that is normally considered in a base rate case.” *See gen’ly Phila. Elec. Co. v. Pa. Pub. Util. Comm’n*, 502 A.2d 722 (Pa. Cmwlth. 1985) and *Pa. Indus. Energy Coalition v. Pa. Pub. Util. Comm’n*, 653 A.2d 1336, 1350 (Pa. Cmwlth. 1995).

Utility rates are principally set in general rate cases, where utility commissions set rates based on a holistic look at costs and revenues from across the utility’s operations as this perspective enables the Commission to set rates at a just and reasonable level overall. The purchased wastewater expense that Mr. Ferguson is contesting was set during the fully litigated 2021 Rate Case and was therefore approved by the Commission. Parties to the 2021 Rate Case, were free to challenge the Purchased Wastewater Expense, though none did. Mr. Ferguson is now asking for a revised tariff and refunds to affected customers on a singular rate

element embedded in Aqua’s wastewater rates—the wastewater trucking expense, which was fully considered in the 2021 Rate Case and approved by the Commission. However, an isolated item of expense may not be, without more, the subject of a refund or recovery. Mr. Ferguson’s request to alter only Aqua’s “Purchased Wastewater Expense” unequivocally amounts to single-issue ratemaking.

Accordingly, Mr. Ferguson has failed to provide any compelling reason to disregard the application of the rules prohibiting retroactive and single-issue ratemaking, and as such his claims were properly dismissed.

III. The Commission Properly Accounted For Mr. Ferguson’s *Pro Se* Status Throughout The Proceeding And In Reaching Its Determination

Mr. Ferguson incorrectly contends that the Commission’s *June 2025 Order* displayed a lack of appreciation of and concern for his *pro se* status and provided no nonlawyer assistance and representation to a nonlawyer *pro se* Section 701 complainant, 66 Pa.C.S. § 701, regarding the Commission’s practices and procedures. Ferguson Brief at 54. Mr. Ferguson wrongly claims that the Commission’s *June 2025 Order* ignored Section 505 of the Administrative Agency Law, 2 Pa.C.S. § 505 (relating to evidence and cross-examination), in its application of the rules of evidence when the Public Utility Code (Code) provides that all relevant evidence of reasonably probative value is admissible. *Id.* Moreover, Mr. Ferguson unconvincingly argues that the Commission’s denial of

his Petition to Reopen the Record, filed May 9, 2025, is contrary to the previous treatment of Section 701 nonlawyer *pro se* complainants under Section 1.2 of the Commission’s regulations, 52 Pa. Code § 1.2 (relating to liberal construction). *Id.* at 55.

The Commission is required to provide due process to the parties appearing before it. Procedural due process in matters before the Commission “is satisfied when the parties are afforded notice and the opportunity to appear and be heard.”

Schneider v. Pa. Pub. Util. Comm’n, 479 A.2d 10, 15 (Pa. Cmwlth. 1984).

Pursuant to Section 703(c) of the Code, during a hearing, the parties are “entitled to be heard in person or by attorney, and to introduce evidence.” 66 Pa.C.S.

§ 703(c). Hearings must be conducted in accordance with the Commission’s regulations. 66 Pa.C.S. § 703(c). The Commission’s regulations provide that “the party having the burden of proof, shall open and close,” unless otherwise directed by the ALJ, and that each party “has the right of presentation of evidence, cross-examination, objection, motion and argument.” 52 Pa. Code §§ 5.242(a), 5.243(a).

**A. The Commission Informed Mr. Ferguson Of His Rights
And Responsibilities As A Complainant**

With regard to the November 25, 2024 evidentiary hearing on his Complaint, Mr. Ferguson was provided information on at least two occasions—first in the October 22, 2024 Hearing Notice (Hearing Notice), then in the October 24, 2024 Prehearing Order (Prehearing Order)—regarding his rights and

responsibilities during the hearing, including those relating to the burden of proof, presentation of witnesses, cross-examination, and the admission of evidence.⁷

Hearing Notice at 1-2 (attached as Appendix J); Prehearing Order at 1-7 (attached as Appendix K).

In particular, the ALJ notified Mr. Ferguson that the complainant bears the burden of proof and must present sufficient evidence to demonstrate that the utility has violated the Code or a regulation or order of the Commission. Prehearing Order at 5; *see also* 66 Pa. C.S. § 332(a). The ALJ also directed Mr. Ferguson to the Commission’s Rules of Practice and Procedure governing the hearing process. Prehearing Order at 6; *see also* 52 Pa. Code Chapters 1, 3, and 5. In addition, the ALJ made Mr. Ferguson aware of readily accessible guidelines regarding the complaint proceeding, including the *Consumer Complaint Procedures Guide*.⁸

Prehearing Order at 7. The Hearing Notice stated, in pertinent part:

WITNESSES: If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the Conference and PIN numbers above.

* * *

⁷ The Formal Complaint Form on which Mr. Ferguson filed his Complaint also notified him of his responsibilities as a Complainant. Mr. Ferguson acknowledged these responsibilities when he certified that he would prove that “the facts set forth [in his complaint] are true and correct . . . at a hearing held in this matter.” Complaint at 4-5.

⁸ *Formal Complaints*, Pennsylvania Public Utility Commission, available at <https://www.puc.pa.gov/complaints/formal-complaints>; *Consumer Complaint Procedures Guide*, Pennsylvania Public Utility Commission (May 5, 2021) available at <https://www.puc.pa.gov/media/1492/consumer-complaints-procedures-guide-2021.pdf>.

REPRESENTATION. If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

PRESENTING EXHIBITS. If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to the Presiding Officer at [the ALJ's email address] and one (1) copy each must be sent to every other party. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly marked for identification purposes.

Hearing Notice at 1-2 (emphasis in original).

The Prehearing Order reiterated many of the points above and additionally informed Mr. Ferguson of the procedures for filing documents and serving documents on other parties and on the presiding officer. Further, the Prehearing Order directed Hoffman-Lorah to the Commission regulations governing the hearing at 52 Pa. Code Chapters 1, 3, and 5. Prehearing Order at 6.

Moreover, at the outset of the evidentiary hearing, ALJ Vero explained to Mr. Ferguson the way in which the hearing would progress and what was expected of the Complainant throughout the proceeding. R. 48a-51a. ALJ Vero also advised Mr. Ferguson that she was not acting as his attorney in this matter. R. 50a. ALJ Vero then inquired as to whether Mr. Ferguson understood the same and

whether he was prepared to proceed. Mr. Ferguson replied to both inquiries affirmatively. R. 51a.

For all these reasons, Mr. Ferguson's claims that the Commission did not properly treat Mr. Ferguson according to its regulations or account for Mr. Ferguson's *pro se* status are plainly false. The Commission provided Mr. Ferguson proper notice of the evidentiary hearing, which included specific information regarding the hearing process as well as his rights and responsibilities during that process. The Commission also directed him to the regulations governing the hearing process. *See* 52 Pa. Code Chapters 1, 3, and 5; *see also* 52 Pa. Code § 1.2(d) (the Commission liberally construes the requirements for *pro se* litigants). In addition, the Commission's website offered Mr. Ferguson readily accessible guidelines regarding the complaint proceeding, including the *Consumer Complaint Procedures Guide*.⁹

Following ALJ Vero explicitly informing Mr. Ferguson of the hearing process and confirming that he understood that process and was prepared to testify, Mr. Ferguson stated at the hearing that he was prepared to proceed. R. 49a-53a. Additionally, at a separate point during the evidentiary hearing, the ALJ, in

⁹ *Consumer Complaint Procedures Guide*, Pa. Public Utility Commission, available at http://www.puc.state.pa.us/General/publications_reports/pdf/Consumer_Complaints_Procedure_Booklet.pdf; *see also* Filing Complaints, Filing and Resources, Pa. Public Utility Commission, available at http://www.puc.state.pa.us/filing_resources/filing_complaints.aspx.

responding to counsel for Aqua, stated, “Now, you have to make some allowance for the fact that Mr. Ferguson is a *pro se* complainant. I know I am, and so is the [C]ommission.” R. 94a. Thus, it is apparent that throughout the evidentiary proceeding, the ALJ was cognizant of Mr. Ferguson’s *pro se* status and took that into consideration as she presided.

B. The Commission Properly Denied Mr. Ferguson’s Petition To Reopen The Record

Mr. Ferguson alleges that the Commission’s denial of his May 9, 2025 Petition to Reopen the Record (May 2025 Petition) runs contrary to its treatment of *pro se* complainants under Section 1.2 of its practice and procedure rules, 52 Pa. Code § 1.2 (relating to liberal construction), and contends that the Commission rejected his May 2025 Petition because of his lack of administrative litigation skills and knowledge of the Commission’s rules of practice and procedure. Ferguson Br. at 55. Mr. Ferguson incorrectly claims that the Commission abused its discretion and acted capriciously in handling this petition. *Id.* Petitioner filed his May 2025 Petition pursuant to 52 Pa. Code § 5.571(c) in a further effort to serve discovery and gather evidence related to the timing that the trucking expenses were incurred, which was the subject of his Complaint before the Commission.

Section 5.571(a) allows a party to petition to reopen the record in a proceeding at any time after the record is closed, but before a final decision is issued, for the purposes of taking additional evidence. However, to meet the burden

of proof required to reopen the record for additional evidence when an initial decision has been issued, as is the case here, the proponent must show that there is “reason to believe that conditions of fact or law have so changed as to require, or the public interest requires, the reopening of the record.” 52 Pa. Code § 5.571(d). The Commission may deny a request where evidence of all the additional facts alleged was available at the time of the hearing. *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246 at 266 n.12 (Pa. Cmwlth. 2014).

In his Brief, Mr. Ferguson posits that 52 Pa. Code § 1.2(a) and (c) permit the Commission to “disregard an error or defect of procedure which does not affect the substantive rights of the parties” and to “waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.” Ferguson Br. at 55. However, contrary to his claims, the Commission did not deliberately ignore relevant competent evidence in denying Mr. Ferguson’s Motion. Rather, the Commission held that Mr. Ferguson first failed to meet his burden when he did not present any material changes of fact or law to justify reopening the record. *June 2025 Order* at 17. In fact, in his May 2025 Petition, Mr. Ferguson states, “Here, the facts and law have not changed since record was closed. R. 532a.

Secondly, the Commission determined that Mr. Ferguson did not show good cause such that the record developed in the proceeding should be reopened.

Instead, the Commission held that Mr. Ferguson repeated the arguments he had articulated in his Expense Complaint and his Exceptions to the ALJ's I.D. *June 2025 Order* at 17. The Commission supported its decision by pointing to the hearing transcript and stating that Mr. Ferguson could have asked Aqua's witness at the evidentiary hearing for the information he sought. The Commission noted, "At the hearing" the ALJ explained repeatedly that the Aqua witnesses were available to answer his questions regarding matters for which he is now seeking to reopen the record." *June 2025 Order* at 17.

In fact, Mr. Ferguson mentioned the issues that were the subject of the May 2025 Petition during his testimony. For example, in one exchange during his testimony, Mr. Ferguson began to state his belief that Aqua was well aware of its trucking needs. The ALJ interjected, as follows:

THE COURT: Okay. I would suggest that if you have a question or you highlight it or set it aside, and that would be a question for Aqua's witnesses, okay, or witness in this case. You can ask the witness that question. That's why they're here today.

R. 66a. Later, during his testimony, the following exchange occurred:

THE WITNESS: I think it's also important of what was the date of the last truckload of water moved, and what was the date the pipeline first started pumping wastewater. All of those are integral to the question of when the cost ceased to exist and whether it should have been appropriately included in the rate-making process.

So I guess I will end my discussion there. I'll have a couple of things I can add later at a wrap-up.

THE COURT: But the questions that you posed, they are excellent questions for Aqua's witness. You have Aqua right there.

THE WITNESS: Okay.

THE COURT: And you can ask Aqua's witness those questions that you had with regard to this issue. They all pertain to this issue.

So that's why I said this is slightly different from a presentation to a wide audience. You have them in front of you and it's a -- if you may think of it as a well-organized questions-and-answers session. So, you say your piece and, once they have a chance to respond, you can ask them questions that you still have about their testimony.

R: 88a-89a. Mr. Ferguson simply neglected to ask questions to elicit this information when he participated in cross-examination and re-cross-examination of Aqua's witness. *June 2025 Order* at 17.

The Commission was well within its discretion, then, to conclude that the information Mr. Ferguson sought was discoverable and available prior to the closing of the record. With regard to *pro se* litigants, the Pennsylvania Superior Court has stated:

Although this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant. To the contrary, any person choosing to represent himself in a legal

proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing.

In re Ullman, 995 A.2d 1207, 1211-12 (Pa. Super. 2010). Based on the foregoing, there was neither new nor persuasive evidence sufficient to warrant reopening the record.

IV. The Commission's Determination Is Within Its Administrative Discretion And Supported By Substantial Evidence Of Record

Mr. Ferguson claims that the Commission's decision is unsupported by substantial evidence and that the Commission erred by adopting Aqua's arguments. Ferguson Brief at 42-46. However, this argument is simply a thinly veiled request to reweigh the evidence on appeal and should therefore be rejected.

The findings of fact that support an agency's adjudication must be supported by substantial evidence of record. 2 Pa.C.S. § 704. "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison Co. of New York v. Nat'l Labor Relations Bd.*, 305 U.S. 197, 229 (1938). In order to reverse the Commission's decision for lack of substantial evidence, the Court "must find that the agency's findings are 'totally without support in the record.'" *Respond Power, LLC v. Pa. Pub. Util. Comm'n*, 250 A.3d 547 (Table), at *7 (Pa. Cmwlth. 2021) (quoting *Emporium Water Co. v. Pa. Pub. Util. Comm'n*, 955 A.2d 456, 463 (Pa. Cmwlth. 2008)).

In reviewing a Commission Order, “the Court should neither ‘substitute its judgment for that of the PUC when substantial evidence supports the PUC’s decision on a matter within the Commission’s expertise,’ nor should it indulge the process of weighing evidence and resolving conflicting testimony.” *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm’n*, 25 A.3d 440, 449 (Pa. Cmwlth. 2011); *see also HIKO Energy, LLC v. Pa. Pub. Util. Comm’n*, 209 A.3d 246, 269 (Pa. 2019) (“It is not the proper function of [an appellate court] to reweigh the evidence and reassign credibility to findings made by the lower tribunals.”) (citing *Barasch v. Pa. Pub. Util. Comm’n*, 493 A.2d 653, 655 (Pa. 1985)). Significantly, “[t]hat the record may contain evidence that supports a different result than that reached by the PUC is irrelevant so long as the record contains substantial evidence supporting the PUC’s decision.” *Lyft v. Pa. Pub. Util. Comm’n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016).

In ascertaining the substantial evidence standard, the weight to be given to expert witness testimony is for the trier of fact to determine. *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995). The Commission is the “ultimate fact finder empowered to weigh the evidence and resolve conflicts in the testimony.” *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 264 (Pa. Cmwlth. 2014); *see also Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). The Commission has the discretion to accept or reject testimony and is

free to believe all, part, or none of the evidence presented. *In re Bosley*, 26 A.3d 1104, 1111 (Pa. Super. 2011). Such evidentiary weight decisions are within “the sole province of the Commission as fact-finder, and [the appellate court] will not disturb them on appeal.” *Milkie*, 768 A.2d at 1221.

Mr. Ferguson’s argument that the Commission’s decision is unsupported by substantial evidence is simply unfounded. At the evidentiary hearing on November 25, 2024, Aqua’s Manager of Rates, Ms. Erin Feeney, testified that at the time of the 2021 Rate Case filing, Aqua was aware of the purchased wastewater expense but had yet to find a solution to eliminate the incurred cost. R. 186a. Ms. Feeney explained that Aqua fully believed the trucking expense would continue until the end of the FPFTY, and that the trucking expense was only supplanted by the activated pipeline after the record for the 2021 Rate Case had closed. R. 193a-194a. However, Aqua was not authorized to charge for a different tariff rate than those approved in the 2021 Rate Case. R. 171a.

Moreover, even though the trucking expense may have been eventually eliminated, Aqua continued to incur a purchased wastewater expense as the expense was now attributed to the expenses related to investing and using a pipeline to migrate water. Aqua also incurred additional mitigating expenses that were not included in the 2021 Rate Case calculation, such as “additional power costs, additional labor costs, [and] additional outside contractor services costs.” R.

194a. It is well-accepted that a public utility is permitted to recover in its base rate expenses, those expenses that encompass all reasonable and normal expenses incurred to provide regulated service. Aqua should not be penalized after-the-fact by this Court for investing in plant and equipment that is used and useful in providing utility service as these substantial investments in new utility infrastructure are crucial to maintain the indispensable service customers expect from utilities. Also, as stated above, disallowing the recovery of such incurred expenses also violates the single issue ratemaking prohibition.

Furthermore, as Ms. Feeney testified, Aqua's actual revenue in 2023 was \$4.3 million, which is less than the \$4.4 million in revenue that the Commission authorized for recovery in the 2021 Rate Case. R. 173a. Also, Ms. Feeney testified that, if the relief sought by Mr. Ferguson was granted, the Company would be justified in charging higher rates to New Garden customers. R. 194a-196a. This is, in part, due to the additional expenses incurred by Aqua, but also due to rate design and where the consumption for the residential customer class is reflected. *Id.*

Mr. Ferguson attempts to discredit Ms. Feeney on appeal, arguing that her testimony was "a model of evasion." Ferguson Brief at 45. However, as set forth herein above, the Commission is the "ultimate fact finder" and has full discretion to weigh the testimony of witnesses. *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d

246, 264 (Pa. Cmwlth. 2014); *see also* *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010, 1028 (Pa. Cmwlth. 2006) (“The Commission apparently found [the witness’s] testimony credible, and we will not substitute our judgment for that of the Commission when substantial evidence supports its decision on a matter within the Commission’s expertise.”) (citing *UGI Utils. v. Pa. Pub. Util. Comm’n*, 863 A.2d 144 (Pa. Cmwlth. 2004)). The Commission determined that Ms. Feeney’s un rebutted sworn testimony was credible evidence which supported Aqua’s arguments, and thus her credibility should not be reevaluated on appeal.

Mr. Ferguson also argues that Mr. Todd Duerr, Aqua’s Vice President of Production, had given a presentation during the New Garden Township Board of Supervisors Meeting on November 21, 2022, that seemed to suggest the pipeline that replaced the purchased wastewater expense was completed around the time of the 2021 Rate Case. Ferguson Brief at 39. Importantly, Mr. Duerr’s statements came during unsworn remarks and were not part of the 2021 rate case as these remarks were given months after the close of the record and once Aqua’s wastewater rates had become effective. Mr. Ferguson claims that Ms. Feeney’s testimony “failed to rebut” this presentation. *Id.* However, “the mere fact that conflicting evidence may appear in the record does not mean that substantial evidence was lacking.” *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 265 (Pa. Cmwlth. 2014). The issue here is simply whether the Commission’s finding was

factually unsupported, and not whether every facet of Mr. Ferguson’s argument was methodically and summarily defeated—to do otherwise would be to ask this Court to “reweigh and accept the evidence” that had already been considered and “rejected by the Commission.” *Id.* Because the record provides substantial evidence to support the Commission’s decision, Mr. Ferguson’s attempt to reweigh the evidence should be denied.

Lastly, as previously discussed, the 2021 Rate Case included testimony from 55 witnesses during public hearings, was fully litigated before the Commission with interested parties participating in the evidentiary hearings, and the tariffs incorporating the established wastewater rates, including all of its sub-element expenses, was formally approved by the Commission. Throughout the litigation, no party to the 2021 Rate Case challenged the purchased wastewater expense. The Commission approval of the tariffs, the general rules against retroactive and single-issue ratemaking, and the doctrine of Commission-made rates, as well as Ms. Feeney’s testimony, all provide more than substantial evidence to support the Commission’s findings.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Pennsylvania Public Utility Commission respectfully requests that this Honorable Court affirm the Commission's Order entered June 18, 2025, at Docket No. C-2023-3043109.

Respectfully submitted,

/s/ Colin W. Scott

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Dated: January 29, 2026

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I hereby certify that this filing complies with the provisions of the
Case Records Public Access Policy of the Unified Judicial System of Pennsylvania
that require filing confidential information and documents differently than
non-confidential information and documents.

/s/ Colin W. Scott
Assistant Counsel
Attorney ID No. 311440

Date: January 29, 2026

**CERTIFICATE OF COMPLIANCE
WITH WORD COUNT LIMITATION REQUIREMENT**

This brief complies with the word count limitation requirement of Pennsylvania Rule of Appellate Procedure (Pa.R.A.P.) 2135(d) because it contains 12,857 words, excluding the parts of the brief exempted by Pa.R.A.P. 2135(b) as shown by the word processing system used to prepare the brief.

APPENDIX A

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 3, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
John F. Coleman, Jr.
Ralph V. Yanora

Application of Aqua Pennsylvania	:	
Wastewater, Inc. Pursuant to Sections	:	
1102 and 1329 of the Public Utility Code	:	A-2016-2580061
For approval of its Acquisition of the	:	
Wastewater System Assets of New Garden	:	
Township	:	

ORDER

BY THE COMMISSION:

We adopt as our action the Recommended Decision of ALJ Steven K. Haas, dated October 13, 2020;

THEREFORE,

IT IS ORDERED:

1. That the Application of Aqua Pennsylvania Wastewater, Inc., seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority, (2) the right of Aqua to begin to offer,

render, furnish and supply wastewater service to the public in portions of New Garden and Kennett Townships, Chester County, Pennsylvania, and (3) an order approving the acquisition that includes the ratemaking rate base of the New Garden wastewater system assets pursuant to 66 Pa. C.S. § 1329(c)(2), is granted.

2. That the rate base addition of \$29,500,000 is approved.

3. That the Commission's Secretary issue Certificates of Public Convenience evidencing Aqua Pennsylvania Wastewater, Inc.'s right under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3) and 1329(c)(2), to: (a) acquire, by sale, the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority, (b) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer, render, furnish and supply wastewater service to the public in portions of New Garden and Kennett Townships, Chester County, Pennsylvania, and (c) allow Aqua Pennsylvania Wastewater, Inc. to incorporate the ratemaking rate base of \$29,500,000 for the New Garden wastewater system assets in its next base rate case pursuant to 66 Pa. C.S. § 1329(c)(2).

4. That within ten (10) days after the closing of the transaction, Aqua Pennsylvania Wastewater, Inc. shall file a compliance tariff supplement containing the existing rates of New Garden Township and New Garden Township Sewer Authority at the time of closing.

5. That Aqua Pennsylvania Wastewater, Inc. include the New Garden Township Wastewater System in its next base rate case.

6. That Aqua Pennsylvania Wastewater, Inc. provide a separate cost of service study for the New Garden Township Wastewater System in its next base rate case.

7. That Aqua Pennsylvania Wastewater, Inc., in its next base rate filing, submit a plan to move rates for New Garden customers towards cost of service. As part of this filing, Aqua will propose to establish a rate zone for New Garden that will increase the rates of the System to an amount equal to Aqua's Zone 1 wastewater rates, unless such increase would be more than

two times the system-average increase for the wastewater division (calculated on a percentage increase basis). If the increase for the System would be more than two times the system-average increase of the wastewater division, Aqua will propose that the increase for the System be capped at two times the system-average wastewater division increase in this first base rate case.

8. That Aqua, New Garden, and the OCA will not challenge or oppose the above proposal in the first base rate case; provided, however, that Aqua, New Garden, and the OCA expressly recognize the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this paragraph, Aqua, New Garden, and the OCA may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

9. That, within the first 90 days of Aqua Pennsylvania Wastewater, Inc.'s ownership of the New Garden system, Aqua shall include a bill insert to the New Garden-area customers regarding its low income programs or, alternatively, shall include such information in a welcome letter to New Garden-area customers. The bill insert or welcome letter shall include, at a minimum, a description of the available low-income programs, the eligibility requirements for participation in the programs, and Aqua's contact information.

10. That Paragraph 7.b of the Assets Purchase Agreement between Aqua Pennsylvania Wastewater, Inc., New Garden Township, and New Garden Township Sewer Authority be amended to eliminate the two year rate freeze and ten year CAGR rate restriction, and the Commission issue certificates of filing under Section 507 of the Code for the Third Amendment to the Assets Purchase Agreement.

11. That Aqua Pennsylvania Wastewater, Inc., revise its Long-Term Infrastructure Improvement Plan to include New Garden Township and related projects before it begins charging its Distribution System Improvement Charge to New Garden customers. Projects related to New Garden customers are in addition to the projects already included in its approved LTIIIP.

12. That, regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Aqua, OCA, and New Garden reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The OCA's assent to this agreement is not to be construed to operate as its preapproval of Aqua's requests.

13. That Aqua Pennsylvania Wastewater, Inc., in future Section 1329 filings, will support the following position:

Market Approach: Speculative growth adjustments will not be used, consistent with the Commission's Order entered June 29, 2017.

14. That the Stipulation of Aqua, OCA, and New Garden as to the authenticity and admission into the remand record of the following testimony and exhibits is accepted and adopted:

i. The entirety of the evidentiary record, including all testimony and exhibits, in the original proceeding before Administrative Law Judge Haas;

ii. The Notice of Proposed Acquisition and Rate Base Addition attached as Appendix A to the Joint Petition for Approval of Settlement of Remand Proceeding being provided by Aqua to its water and wastewater customers;

iii. The Notice of Proposed Acquisition and Rate Base Addition attached as Appendix B to the Joint Petition for Approval of Settlement of Remand Proceeding being provided by New Garden Township to its wastewater customers;

iv. Additional evidence of rate impacts attached as Appendix C to the Joint Petition for Approval of Settlement of Remand Proceeding.

v. The current New Garden Township sewer ordinance attached as Appendix D to the Joint Petition for Approval of Settlement of Remand Proceeding.

vi. The Third Amendment to the Assets Purchase Agreement between Aqua Pennsylvania Wastewater, Inc. and New Garden Township attached as Appendix E to the Joint Petition for Approval of Settlement of Remand Proceeding.

15. That the following additional stipulations of the Joint Petitioners are accepted and adopted in this proceeding:

i. As directed by the Commonwealth Court, Aqua and New Garden Township have provided notice to all ratepayers. The Notices being provided by Aqua to its water and wastewater customers and by New Garden Township to its wastewater customers comply with the customer notice requirements of 52 Pa. Code § 53.45. Aqua and New Garden customers were provided an opportunity to be heard in response to the filing by filing written comments and/or requesting a hearing;

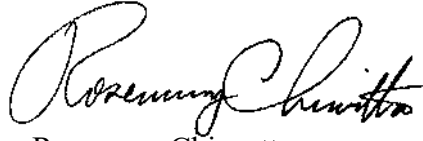
ii. As directed by the Commonwealth Court and consistent with *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972), rate impact has been addressed in a general fashion. The additional evidence of rate impact submitted as Appendix C shows the non-binding, estimated bill impact from the proposed rate base addition on New Garden customers, and on Aqua's existing water and wastewater customers;

iii. That a certificate of filing be issued for the Third Amendment to the Assets Purchase Agreement between Aqua Pennsylvania Wastewater, Inc. and New Garden Township.

iv. Weighing all factors for and against the transaction, including the impact on rates, there is substantial public benefit to support approval of the transaction.

16. That the application proceeding at Docket No. A-2016-2580061 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name "Rosemary" written in a larger, more prominent script than the last name "Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 3, 2020

ORDER ENTERED: December 3, 2020

APPENDIX B

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

Public Meeting held May 12, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Pennsylvania Public Utility Commission	R-2021-3027385
Bureau of Investigation and Enforcement	
Office of Consumer Advocate	C-2021-3028466
Office of Small Business Advocate	C-2021-3028509
Martha Bronson	C-2021-3028132
Neil Kugelman	C-2021-3028139
Geoffrey Rhine	C-2021-3028170
Theodore Voltolina	C-2021-3028194
Aaron Brown	C-2021-3028279
Darren Distasio	C-2021-3028285
Deena Denesowicz	C-2021-3028288
Vivian George	C-2021-3028310
Nick Panaccio	C-2021-3028331
Richard Regnier	C-2021-3028332
Gerald DiNunzio Jr.	C-2021-3028362
Nancy Reedman	C-2021-3028405
Michael McCall	C-2021-3028413
Raymond Cavalieri	C-2021-3028448
Byron Goldstein	C-2021-3028463
John Grassie	C-2021-3028663
Kyle Brophy	C-2021-3028712
Daniel Savino	C-2021-3028758
Michael Roberts	C-2021-3028869
Treasure Lake Property Owners Association Inc.	C-2021-3029004
Gerardo Giannattasio	C-2021-3029066
Aqua Large Users Group	C-2021-3029089

Erik McElwain	C-2021-3029135
Judy Burton	C-2021-3029152
Brian Edwards	C-2021-3029159
Richard Gage	C-2021-3029393
Joanne Smyth	C-2021-3029411
Jane O'Donovan	C-2021-3029532

v.

Aqua Pennsylvania, Inc.

Pennsylvania Public Utility Commission	R-2021-3027386
Bureau of Investigation and Enforcement	
Office of Consumer Advocate	C-2021-3028467
Office of Small Business Advocate	C-2021-3028511
Camp Stead Property Owners Association	C-2021-3028928
Dale Markowitz	C-2021-3028280
Keith Anthony	C-2021-3028444
Stephanie Boris	C-2021-3028443
Jennifer Buckley	C-2021-3028160
Carl Martinson	C-2021-3028312
Elizabeth O'Neill	C-2021-3028333
Erik and Ilisha Smith	C-2021-3028334
Curtis and Michele Tabor	C-2021-3028335
Gregory Valerio	C-2021-3028336
Jerome Perch	C-2021-3028356
Michael Brull	C-2021-3028361
James Blessing	C-2021-3028402
Elizabeth Yost	C-2021-3028407
Timothy Nicholl	C-2021-3028471
Alyssa Reinhart	C-2021-3028493
James Kolb	C-2021-3028497
Ronald Schneck	C-2021-3028547
Matthew Cicalese	C-2021-3028566
Ronald and Lora	C-2021-3028568
Kelly Frich	C-2021-3028665
Adam Anders	C-2021-3028670
Charleen Falsone	C-2021-3028760
Stephen Grugeon	C-2021-3028892

Lynne Germscheid	C-2021-3028860
Deborah and James Popson	C-2021-3028868
Masthope Mountain Community Association	C-2021-3028996
Treasure Lake Property Owners Association Inc.	C-2021-3029006
East Norriton Township	C-2021-3029019
Kevin Amerman	C-2021-3029063
James Wharton Jr.	C-2021-3029065
Peter and Kim Ginopolas	C-2021-3029096
Yefim Shnayder	C-2021-3029134
Andrea and Matthew Rivera	C-2021-3029154
Judy Burton	C-2021-3029139
Brian Edwards	C-2021-3029161
Edward Coccia	C-2021-3028870
John Day	C-2021-3028734
Robert Dolan	C-2021-3028798
Anthony Giovannone	C-2021-3028794
	C-2021-3028803
	C-2021-3028802
Sheila Gutzait	C-2021-3028634
Rudolph Hofbauer	C-2021-3028666
Ronald and Alexis Koenig	C-2021-3028483
Joan Lipski	C-2021-3028475
William and Ana Loftus	C-2021-3028617
Stephen and Teresa Mason	C-2021-3028576
David Monroe	C-2021-3028567
Lisa Rampone	C-2021-3028804
Lorraine Rocci	C-2021-3028499
David Ross	C-2021-3028479
Carolyn Sica	C-2021-3028446
Dean Swink	C-2021-3028604
Francine Weiner	C-2021-3028639
Tom Woodward	C-2021-3028927
Joseph Torello	C-2021-3029180
Donald Osinski	C-2021-3029413
Lake Associates LLC	C-2021-3029425
	C-2021-3029422
	C-2021-3029419
29 Estates LLC	C-2021-3029417

David Bowers
Joanne Smyth

C-2021-3029466
C-2021-3029411

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

Table of Contents

I.	Background.....	2
II.	History of the Proceeding.....	4
III.	Public Input Hearings	7
IV.	Legal Standards	7
V.	Impact of the Pandemic	12
	A. Positions of the Parties	12
	B. Recommended Decision.....	13
	C. OCA Exception No. 28 and Replies.....	14
	D. Disposition.....	16
VI.	Rate Base	18
	A. Plant in Service.....	19
	1. Positions of the Parties	19
	2. Recommended Decision.....	21
	3. Disposition	22
	B. Water Rate Base – Borough of Phoenixville	22
	1. Positions of the Parties	23
	2. Recommended Decision.....	28
	3. Aqua Exception No. 2 and Replies	30
	4. Disposition	34
	C. Additions to Rate Base – Cash Working Capital and Material & Supplies	44
	1. Positions of the Parties	44
	2. Recommended Decision.....	46
	3. Disposition	46
	D. Deductions from Rate Base – Customer Advance for Construction, Contributions in Aid of Construction and Accumulated Deferred Income Tax (ADIT).....	48
	1. Positions of the Parties	48
	2. Recommended Decision.....	49
	3. Disposition	49

VII.	Revenues and Revenue Requirement	50
A.	Revenue Requirement	50
1.	Positions of the Parties	50
2.	Recommended Decision.....	52
3.	Disposition	52
B.	Rider DRS Contracts	53
1.	Positions of the Parties	53
2.	Recommended Decision.....	56
3.	Aqua Exception No. 3, I&E Exception No. 1, and Replies	57
4.	Disposition	63
C.	Late Payment Charges.....	67
1.	Positions of the Parties	67
2.	Recommended Decision.....	69
3.	Disposition	71
D.	Escalation Provisions of Negotiated Water Contracts	72
1.	Positions of the Parties	72
2.	Recommended Decision.....	73
3.	Aqua Exception No. 4 and Replies	74
4.	Disposition	76
E.	Metered Residential Sale Adjustment	77
1.	Positions of the Parties	77
2.	Recommended Decision.....	79
3.	OCA Exception No. 1 and Replies	79
4.	Disposition	81
F.	Third Party Sales	84
1.	Positions of the Parties	84
2.	Recommended Decision.....	85
3.	Disposition	85
VIII.	Expenses	86
A.	Rate Case Expense	86
1.	Positions of the Parties	86
2.	Recommended Decision.....	86

3.	OCA Exception No. 6 and Replies	87
4.	Disposition	88
B.	General Liability Insurance Expense	90
1.	Positions of the Parties	90
2.	Recommended Decision.....	91
3.	Aqua Exception No. 5 and Replies	91
4.	Disposition	92
C.	Payroll	94
1.	Positions of the Parties	94
2.	Recommended Decision.....	95
3.	OCA Exception No. 5 and Replies	95
4.	Disposition	96
D.	Stock-based Incentive Compensation	96
1.	Positions of the Parties	96
2.	Recommended Decision.....	98
3.	OCA Exception No. 4 and Replies	99
4.	Disposition	100
E.	Supplemental Executive Retirement Plan (SERP).....	101
1.	Positions of the Parties	101
2.	Recommended Decision.....	102
3.	Aqua Exception No. 6 and Replies	103
4.	Disposition	105
F.	Non-Rate Case Legal Expense	105
1.	Positions of the Parties	105
2.	Recommended Decision.....	106
3.	OCA Exception No. 3 and Replies	106
4.	Disposition	107
G.	Purchased Water Expense	107
1.	Positions of the Parties	107
2.	Recommended Decision.....	108
3.	Disposition	109

H.	Dredging Expense	109
1.	Positions of the Parties	109
2.	Recommended Decision.....	110
3.	Disposition	110
I.	Advertising	110
1.	Positions of the Parties	110
2.	Recommended Decision.....	111
3.	OCA Exception No. 2 and Replies	111
4.	Disposition	112
J.	General Price Level Adjustment	113
1.	Positions of the Parties	113
2.	Recommended Decision.....	113
3.	Aqua Exception No. 7 and Replies	114
4.	Disposition	116
K.	Chemicals and Purchased Power (Water) Expenses	118
1.	Positions of the Parties	118
2.	Recommended Decision.....	118
3.	OCA Exception No. 1	119
4.	Disposition	119
L.	Depreciation - Amortization Expense Adjustment – Water – Phoenixville Acquisition	119
1.	Positions of the Parties	119
2.	Recommended Decision.....	120
3.	Aqua Exception No. 2	120
4.	Disposition	120
M.	Cash Working Capital	121
1.	Positions of the Parties	121
2.	Recommended Decision.....	122
3.	OCA Exception No. 1 and Replies	123
4.	Disposition	123
IX.	Taxes.....	126
A.	Payroll Tax Expense.....	126
1.	Positions of the Parties	126

2.	Recommended Decision.....	126
3.	Disposition	126
B.	Income Taxes	127
1.	Positions of the Parties	127
2.	Recommended Decision.....	127
3.	Disposition	127
C.	Tax Repair Deduction	128
1.	Positions of the Parties	128
2.	Recommended Decision.....	128
3.	OCA Exception No. 10 and Replies	130
4.	Disposition	130
X.	Rate of Return.....	131
A.	Proxy Groups.....	131
1.	Description of the Parties' Proxy Groups	131
B.	Capital Structure Ratios.....	134
1.	Positions of the Parties	135
2.	Recommended Decision.....	136
3.	OCA Exception No. 8 and Replies	137
4.	Disposition	138
C.	Cost of Debt.....	141
1.	Positions of the Parties	141
2.	Recommended Decision.....	141
3.	Disposition	142
D.	Cost of Common Equity.....	142
1.	Methods for Determining the Cost of Common Equity.....	143
2.	Leverage Adjustment and Management Performance	155
3.	Rate of Return on Common Equity.....	174
E.	Overall Rate of Return	178
1.	Positions of the Parties	178
2.	Recommended Decision.....	179
3.	Exceptions and Replies	180
4.	Disposition	180

XI.	Rate Structure	181
A.	Cost of Service	181
1.	Positions of the Parties	181
2.	Recommended Decision.....	183
3.	Disposition	183
B.	Cost of Service – Wastewater	183
1.	Positions of the Parties	183
2.	Recommended Decision.....	185
3.	Exceptions and Replies	185
4.	Disposition	189
C.	Revenue Allocation	191
1.	Positions of the Parties	191
2.	Recommended Decision.....	198
3.	Exceptions and Replies	203
4.	Disposition	224
D.	Tariff Structure and Rate Design	230
1.	Positions of the Parties	231
2.	Recommended Decision.....	251
3.	Exceptions and Replies	254
4.	Disposition	262
E.	Tariff Structure - Proposed Reconcilable Rider Mechanisms.....	276
1.	Energy Cost Adjustment Mechanism (ECAM) and Purchased Water Adjustment Clause (PWAC)	276
2.	Federal Tax Adjustment Surcharge.....	296
3.	Universal Service Rider	302
XII.	Miscellaneous Issues	320
A.	Universal Service Issues.....	320
1.	Consideration of Affordability and CAP Design	320
2.	Income Verification.....	333
3.	Application Process: Transitioning Helping Hand Customers to the New Customer Assistance Program.....	341
4.	Community Education and Outreach Plan	344

B.	Quality of Service.....	348
1.	Unaccounted for Water	348
2.	Pressure Measurements	350
3.	Isolation Valves.....	355
4.	Fire Hydrants.....	359
5.	Flushing	361
6.	Per- and Polyfluoroalkyl Substances (PFAS)	363
C.	Customer Service	364
1.	Calls Answered Commitment Under the <i>Aqua-Peoples Settlement</i>	365
2.	Calls Abandonment Commitment Under the <i>Aqua-Peoples Settlement</i>	369
3.	Commitment to Complete a Root Cause Analysis (RCA) of Customer Complaints.....	372
4.	Management Performance Adjustment to Aqua’s ROE Based Upon Asserted Levels of Customer Satisfaction	376
D.	Masthope Allegations of Inadequate Wastewater Service.....	381
1.	Positions of the Parties	381
2.	Recommended Decision.....	382
3.	Masthope Exception No. 1 and Replies	383
4.	Disposition	389
E.	COVID-19 Uncollectible Deferral	391
1.	Positions of the Parties	391
2.	Recommended Decision.....	394
3.	OCA Exception No. 7 and Replies	395
4.	Disposition	397
F.	Directed Questions of Commissioner Yanora.....	400
XIII.	Conclusion.....	411
	LIST OF ABBREVIATIONS	1
	Commission Tables Calculating Allowed Revenue Increase.....	4

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, Aqua, or the Company), the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Aqua Large Users Group (Aqua LUG), and Masthope Mountain Community Association (Masthope), filed on February 28, 2022, and the Exceptions of Mr. Donald C. Osinski (Mr. Osinski), filed on February 21, 2022, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued on February 18, 2022, in the above-captioned proceeding. Aqua, I&E, the OCA, the OSBA, and CAUSE-PA filed Replies to Exceptions on March 7, 2022.¹

For the reasons discussed below, we shall: (1) grant, in part, and deny, in part, the Exceptions filed by Aqua, I&E, and the OCA; and (2) deny the Exceptions filed by the OSBA, CAUSE-PA, Aqua LUG, Masthope, and Mr. Osinski.

Additionally, as discussed below, Aqua proposed rate changes that would have increased its total annual operating revenues for its water service by approximately \$86,118,612, or approximately 16.9%, and its total operating revenues for its wastewater service by approximately \$11,566,212, or approximately 31.2%, based on a fully projected future test year (FPFTY) ending March 31, 2023.² In this Opinion and Order, we shall approve an annual revenue increase of \$50,510,192 to the Company's *pro forma*

¹ Aqua LUG and Masthope each submitted a letter on March 7, 2022 indicating that they would not be filing Replies to Exceptions.

² As noted below, Appendix F of Aqua's Main Brief indicates an actual proposed revenue increase of \$85,489,328 for its water service and \$11,500,997 for its wastewater service.

revenue at present rates of \$510,006,687, or approximately 9.88%, for its water service and an annual revenue increase of \$18,740,978 to the Company's *pro forma* revenue at present rates of \$37,076,494, or approximately 50.55%, for its wastewater service.

I. Background

Aqua provides water and wastewater public utility service to approximately 450,000 water customers and 40,000 wastewater customers in a certificated service territory that spans thirty-two counties across the Commonwealth of Pennsylvania. Aqua is a subsidiary of Essential Utilities, Inc. (Essential Utilities). Aqua last filed for an increase in water and wastewater base rates in 2018, which the Commission addressed at *Pa. PUC, et. al v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2018-3003558 and R-2018-3003561, *et al.* (Order entered May 9, 2019) (*Aqua 2018 Rate Case*).

The Company made its current combined water and wastewater rate increase filing in accordance with the provisions of Section 1311(c) of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 1311(c).³ Aqua's requested increase was based

³ Aqua submitted separate revenue requirement studies for its water and wastewater operations. Further, the Company provided separate wastewater revenue requirement studies for its individual wastewater systems. This included a revenue requirement study for the individual wastewater systems that were presented in the *2018 Aqua Rate Case*, which it referred to as "Wastewater Base," and separate studies for each of the wastewater systems acquired since the *2018 Aqua Rate Case* as part of the Section 1329 Fair Market Value (FMV) acquisition process authorized under 66 Pa. C.S. § 1329. Aqua M.B. at 2. Therefore, the rate tables set forth in the Commission Tables Calculating Allowed Revenue Increase that are attached to this Opinion and Order contain separate sets of rate tables for Aqua's Water Division, as well as separate rate tables for each of the following wastewater systems: Wastewater Base, Wastewater Limerick, Wastewater East Bradford, Wastewater Cheltenham, Wastewater East Norriton, and Wastewater New Garden. Additionally, we have included Table Act 11 – Water and Wastewater Revenue Requirement – Summary and Table RevSum – Water and Wastewater Revenue Requirement – Summary.

upon the FPFTY ending March 31, 2023.⁴ The Company sought an increase in water revenues of approximately \$85,489,328, or 16.76% of its total Pennsylvania jurisdictional water operating revenues, and an increase in wastewater revenues of approximately \$11,500,997, or 31.02% of its total Pennsylvania jurisdictional wastewater operating revenues. These proposed increases reflected the allocation of a portion of the Company's wastewater revenue requirement to its water operations.⁵ Aqua M.B. at 1, Appendix F, Water and Wastewater Revenue Requirement - Summary.

Aqua stated that its principal reason for filing its rate increase request is the Company's continuing need to invest in utility infrastructure replacement. Aqua represented that since March 31, 2020, which was the end of the FPFTY used in the *Aqua 2018 Rate Case*, the Company has invested nearly \$330 million in utility infrastructure for its water and wastewater operations through the HTY ended March 31, 2021, which is the HTY the Company utilized in this current rate case. Aqua stated that it projects to invest another \$800 million through March 31, 2023, including making a meaningful investment in a new financial reporting system, SAP, which will replace the Company's legacy financial reporting system that has been in use for nearly twenty-five years. Aqua noted that increases to its operating and maintenance (O&M) expenses are also a contributing factor in making its rate case filing. Aqua M.B. at 1-2.

⁴ The future test year (FTY) ended March 31, 2022, and the historical test year (HTY) ended March 31, 2021. Aqua M.B. at 15.

⁵ In its Main Brief, Aqua stated that it sought an increase in water revenues of approximately \$86.118 million and an increase in wastewater revenues of approximately \$11.566 million. Aqua M.B. at 1. However, Appendix F, Water and Wastewater Revenue Requirement – Summary shows a final proposed water revenue increase of \$85,489,328 and a final proposed wastewater increase of \$11,500,997.

II. History of the Proceeding

On August 20, 2021, Aqua filed proposed Tariff Water-Pa P.U.C. No. 3 (Tariff Water No. 3) to become effective October 19, 2021. Under Tariff Water No. 3, the Company proposed to increase Aqua's total annual operating revenues for its water service by approximately \$86,118,612, or 16.9%. Also on August 20, 2021, Aqua filed proposed Tariff Sewer-Pa P.U.C. No. 3 (Tariff Sewer No. 3) to become effective October 19, 2021. Under Tariff Sewer No. 3, the Company proposed to increase Aqua's total annual operating revenues for its wastewater service by approximately \$11,566,212, or 31.2%.

On September 3, 2021, I&E filed a notice of appearance in both the water and wastewater rate filings. On September 8, 2021, the OSBA filed formal complaints at Docket Nos. C-2021-3028509 (water) and C-2021-3028511 (wastewater). On September 13, 2021, the OCA filed formal complaints at Docket Nos. C-2021-3028466 (water) and C-2021-3028467 (wastewater). Additionally, numerous ratepayers filed complaints. The names of these ratepayers and the Docket Numbers of their Complaints appear on the cover page of this Opinion and Order. CAUSE-PA filed a petition to intervene on September 20, 2021. Masthope filed a petition to intervene, and formal complaints on October 5, 2021 at Docket Nos. at C-2021-3028992 (Water) and C-2021-3028996 (Wastewater).

On September 16, 2021, Commissioner Ralph V. Yanora posed ten Directed Questions to be examined by the Parties as part of these proceedings.

By order entered on October 7, 2021, the Commission suspended the rate filings, pursuant to 66 Pa. C.S. § 1308(d), until May 19, 2022, and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the rate filings.

Forty-five customer complaints by individuals and property owner associations were filed opposing the proposed increase for water. Sixty-seven customer complaints were filed opposing the proposed wastewater rate increases. Three individual complainants requested to become a fully participating party of record: John Day (C-2021-3028734 (wastewater)); Francine Weiner (C-2021-3928639 (wastewater)); and Richard Gage (C-2021-3029393 (water)).

On October 15, 2021, ALJ Long conducted a prehearing conference. Counsel for Aqua, I&E, the OCA and the OSBA appeared. Additionally, counsel representing intervenor CAUSE-PA and complainants Aqua LUG (C-2021-3029089), East Norriton Township (C-2021-3029019), and Masthope, appeared and participated.⁶

At the prehearing conference, the petition to intervene of CAUSE-PA was granted without objection. Following a discussion, the Parties agreed to a schedule for the filing of written testimony, public input hearings, and evidentiary hearings which were scheduled to begin on December 20, 2021.

On October 14, 2021, Aqua filed a motion for a protective order. By interim order entered October 22, 2021, the motion was granted.

Six public input hearings were held November 8, 2021 through November 12, 2021. These public input hearings convened by telephone. A total of fifty-eight witnesses testified.

The active Parties engaged in discovery and served written direct, rebuttal, surrebuttal, and rejoinder testimony. The evidentiary hearing convened as scheduled on

⁶ The participants at the prehearing conference constitute the active Parties to this proceeding.

December 20, 2021. The Parties notified the ALJ that they had waived cross-examination of witnesses and requested to move their written testimony into the record. These testimony, exhibits, and hearing exhibits were admitted into the record without objection. All testimony was accompanied with written verification by the corresponding witness.

By interim order entered December 20, 2021, the Parties were provided with briefing instructions. As directed, each Party filed a main brief on January 11, 2022. Complainant John Day filed a letter in lieu of a brief on January 10, 2022. Reply briefs were filed on January 21, 2022. On January 20, 2022, Aqua filed a motion for the admission of a late filed exhibit. Aqua Post-Hearing Exhibit No. 1 was admitted by interim order entered January 24, 2022, and the record was closed.

In the Recommended Decision, issued on February 18, 2022, ALJ Long recommended that Aqua's Tariff Water No. 3 and Tariff Sewer No. 3, and the associated proposed revenue increases, be denied because the Company did not meet its burden of proving by a preponderance of the evidence the justness and reasonableness of every element of its requested increase. Instead, the ALJ recommended the approval of an increase in annual water operating revenue in the amount of approximately \$15.2 million, or approximately 2.97% over present rates, and an increase in annual wastewater operating revenue in the amount of approximately \$16.7 million, or approximately 45% over present rates. The ALJ also recommended that the Commission approve Aqua's universal service plan and universal service rider, proposed in its filings. Additionally, the ALJ made recommendations regarding pressure valve inspections and fire hydrants and recommended that the Commission approve Aqua's proposal for continued deferral of COVID-19 uncollectible expenses. R.D. at 1-2.

As previously noted, Mr. Osinski filed Exceptions to the Recommended Decision on February 21, 2022, and Aqua, I&E, the OCA, the OSBA, CAUSE-PA, Aqua LUG, and Masthope filed Exceptions on February 28, 2022.

On March 7, 2021, Aqua, I&E, the OCA, the OSBA, and CAUSE-PA filed Replies to Exceptions.

III. Public Input Hearings

As noted above, in the History of Proceeding, six public hearings were convened between November 8, 2021 and November 12, 2021 to hear from Aqua's customers regarding its proposed water and wastewater rate increases. Each of the public input hearings were conducted by telephone using a toll-free telephone number and a PIN. A total of 58 witnesses testified. For a summary of the public input hearings, see pages 4 to 15 of the Recommended Decision.

IV. Legal Standards

At issue here is the Company's request for a general base rate increase, which is governed by Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). Section 1308(d) of the Code provides the procedures for changing base rates, the time limitations for the suspension of the new rates, and the time limitations on the

Commission's actions. 66 Pa. C.S. § 1308(d).⁷ “Under traditional ratemaking, utilities may not change rates charged to customers outside of a base rate case.” *McCloskey v. Pa. PUC*, 127 A.3d 860, 863 n.2 (Pa. Cmwlth. 2015).

Section 1301(a) of the Code mandates that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.” 66 Pa. C.S. § 1301(a). Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.” *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). There is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pa. PUC*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975) (citations omitted). In determining a fair rate of return, the Commission must adhere to the constitutional standards established by the United States Supreme Court in the seminal cases *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679,

⁷ Among other things, Section 1308(d) of the Code requires the Commission to render a final decision granting or denying, in whole or in part, the general rate increase requested by a public utility, within a general time frame not to exceed seven months from the proposed effective date of the utility’s proposed tariff supplement. *See* 66 Pa. C.S. § 1308(d); *see also* 52 Pa. Code § 53.31 (requiring a tariff proposing a rate increase to be effective upon sixty days’ advance notice). Unless the utility voluntarily extends the suspension period, the Commission’s non-action within this timeframe means, by operation of law, the utility’s proposed general rate increase will go into effect, as proposed, at the end of such period. *See* 66 Pa. C.S. § 1308(d).

692-93 (1923) (*Bluefield*) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope Natural Gas*). In *Bluefield*, the Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 692-93. Twenty years later, in *Hope Natural Gas*, the Supreme Court reiterated:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope Natural Gas, 320 U.S. at 603.

The Commission is required to investigate all general rate increase filings. *Popowsky II*, 683 A.2d at 961. The burden of proof to establish the justness and reasonableness of every element of a public utility's rate increase request rests solely

upon the public utility in all proceedings filed under Section 1308(d) of the Code.

66 Pa. C.S. § 315(a); *see also*, *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (*Lower Frederick*); *see also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981). Section 315(a) of the Code provides as follows:

Reasonableness of rates. – In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). The evidence necessary to meet that burden must be substantial. *Lower Frederick* at 507.

In general rate increase proceedings, the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company's filing. The Pennsylvania Supreme Court has held:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

Berner v. Pa. PUC, 116 A.2d 738, 744 (Pa. 1955).

However, in proving that its proposed rates are just and reasonable, a public utility need not affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Pennsylvania Commonwealth Court has held:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted); *see also Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 301, 359-360 (1990).

Additionally, Section 315(a) of the Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. 66 Pa. C.S. § 315(a). The burden of proof must be on the party who proposes a rate increase beyond that sought by the utility. *Pa. PUC v. Metropolitan Edison Company*, Docket No. R-00061366, 2007 Pa. PUC LEXIS 5 (Order entered January 11, 2007). The mere rejection of evidence contrary to that presented by the public utility is not an impermissible shifting of the evidentiary burden. *United States Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983).

In her Recommended Decision, ALJ Long made 117 Findings of Fact and reached 13 Conclusions of Law. R.D. at 15-30, 137-39. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Finally, any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

V. Impact of the Pandemic

A. Positions of the Parties

The OCA urged the Commission to consider the economic repercussions of the COVID-19 pandemic and the hardships this ongoing reality continues to create for Aqua's ratepayers. In support, the OCA presented statistics on the effects of the pandemic in Pennsylvania and asserted that the Commission should consider these impacts when determining what constitutes a just and reasonable rate for the Company's customers. OCA M.B. at 5-15.

The OCA cited, in part, to job loss data and evidence specific to Pennsylvania residents showing that the lower the household's income the greater the impact the pandemic has on income loss. In addition, the OCA cited to data at the time of briefing showing a significant increase in active COVID-19 cases and deaths in Pennsylvania and rising unemployment rates in Aqua's service territory. The OCA also alleged that the Company charged significant levels of late fee payments during the pandemic, and during the moratorium on terminations. Thus, the OCA requested that the Commission take these factors into consideration when determining the appropriate return on equity (ROE) and the OCA's other recommendations related to the pandemic to keep the rate increase to the lowest possible cost for Aqua's customers. OCA R.B. at 3-4.

Aqua alleged that the OCA has taken an extreme position on a variety of issues, including rate of return, to propose that the Company be ordered to decrease its rates. According to the Company, rejecting any increase, in the face of overwhelming evidence that a rate increase is justified under traditional ratemaking principles, is not a balancing of customers' and investors' interests. Aqua argued that the OCA is attempting to establish a new ratemaking standard that rate increases can be granted or denied based upon subjective assessments of whether a sufficient number of customers will have trouble paying increased rates. The Company submitted that such a standard imperils the execution of needed safety investments in the short term and does long-term harm as investors assess whether to continue to invest in Pennsylvania utilities or shift investment to other states or other enterprises. Aqua R.B. at 2-3 (citing *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2020-3018835, *et al.* (Order entered February 19, 2021) (*Columbia Gas*)).

The Company also cited to a drop in the unemployment rate since the *Columbia Gas* decision and a fall in the number of Aqua's customer accounts at risk for termination falling below pre-pandemic levels. Aqua asserted that it understands the difficulties faced by customers with an inability to pay. According to the Company, it implemented programs and practices during 2020 and 2021 to help customers who struggled to pay their bills and will provide further assistance with its new Customer Assistance Program (CAP) going forward. However, Aqua argued that it will not be able to meet its obligation to provide safe and reliable service, while also providing for the health and safety of its employees, without appropriate rate relief. Aqua R.B. at 3-4.

B. Recommended Decision

In the Recommended Decision, the ALJ indicated that neither she nor the Commissioners are unmindful of the important concerns raised by the OCA and CAUSE-PA regarding the affordability challenges faced by low-income customers. However, the

ALJ explained that the Commission has repeatedly taken the position that the existence of the pandemic does not suspend the consideration of utility rate increases. R.D. at 35 (citing *Columbia Gas* at 47-52).

The ALJ stated that utilities are expected to continue to provide reasonable service and safe and reliable facilities. Here, the ALJ noted that no Party has challenged Aqua's infrastructure improvement spending or the value of its proposal to continue that spending in this proceeding. Rather, the ALJ continued, some Parties have recommended Aqua put into place additional universal service programming and customer service improvements, which require financial investment to implement. Thus, the ALJ reasoned that her recommendations are an attempt to balance the many competing concerns of the ratepayers with the Company's ongoing challenge to consider the affordability of service while also meeting the increasing environmental and infrastructure obligations in pursuit of safe and reliable service. R.D. at 35

C. OCA Exception No. 28 and Replies

In its Exception No. 28, the OCA argues that the ALJ did not adequately account for the impact of the pandemic on Aqua's ratepayers when setting rates in this proceeding. In support, the OCA submits that it provided unrefuted testimony showing that the economic crisis is ongoing and continues to severely impact the lives of Aqua's ratepayers. The OCA also contends that portions of Aqua's service territory in Northumberland and Columbia counties have the highest hospitalization rates for COVID-19 in the United States. OCA Exc. at 39.

Although the OCA acknowledges that the existence of the pandemic should not suspend the consideration of utility rate increases, the OCA argues that the continued impact of the COVID-19 pandemic should be taken into account in the Commission's consideration of the appropriate return on equity and the OCA's other recommendations

related to the pandemic. Further, the OCA asserts that the ALJ's reliance on the Parties' lack of opposition to Aqua's infrastructure spending and the Parties' recommendations regarding improvements to universal service programming and customer service, which require financial investment, inappropriately shifts the burden of proof in this proceeding. The OCA argues that it is not required to challenge the Company's infrastructure spending in order to offer recommendations regarding universal service programming or customer service. OCA Exc. at 39-40.

The OCA notes that additional universal service programming and customer service improvements require financial investment to implement but contends that those financial investments are meant to mitigate the impact of unaffordable rates for Aqua's most vulnerable customers. According to the OCA, the costs of these programs would be fully recovered through surcharges or base rates and the OCA's witnesses took these additional costs into account in their analyses as appropriate means of addressing Aqua's proposed rate increase in this proceeding. *Id.* at 40.

In its reply, Aqua argues that the OCA's Exception No. 28 identifies no specific adjustments to be made. Aqua reiterates that the proper, and constitutional, approach to deal with lingering effects of the pandemic is to implement programs that support those with payment difficulties. According to the Company, this focuses the solution on the problem, rather than hampering Aqua's ability to continue to provide safe, exceptional service by denying adequate rate relief that is supported by the evidence and prior rulings. Aqua submits that its comprehensive, new CAP, including arrearage forgiveness, and its Hardship Fund, along with new federal assistance programs for water customers, will provide that support to payment-troubled customers. The Company contends that the OCA's Exception No. 28, to the extent it seeks to encourage the Commission to rule adversely on issues simply to produce a lower result, should be rejected. Aqua R. Exc. at 23.

D. Disposition

Upon review, we consider the OCA's Exception No. 28 to be a global, generalized objection to the overall recommendations set forth in the Recommended Decision. Here, the OCA does not identify any specific adjustments that should be made. Essentially, the OCA contends that the ALJ failed at a conceptual level to consider the impact of the pandemic when setting rates. However, in the context of this Exception, it is unclear what specific measures or calculations the ALJ should have applied to address the financial impact related to COVID-19.

The Parties' arguments pertaining to each particular issue in the rate proceeding are addressed in detail in this Opinion and Order. Our disposition related to each issue and the resulting calculations are more properly addressed within the context of those issues below. Thus, we decline here to apply an undefined and potentially subjective reductive factor to the following determinations and calculations based on the impact of COVID-19. Overall, we find no error in the ALJ's conclusion that she attempted to balance the competing interests of the ratepayers, the affordability of service, and the increasing environmental and infrastructure obligations to provide safe and reliable water and wastewater utility service.

The Commission has repeatedly determined that the existence of the pandemic does not suspend the consideration of rate cases. *See e.g., Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered November 19, 2020), *Pa. PUC v. UGI Utilities, Inc. - Gas Division*, Docket No. R-2019-3015162 (Order entered October 8, 2020) (*UGI Gas*), and *Pittsburgh Water and Sewer Authority*, Docket Nos. R-2020-3017951, R-2020-3017970 (Order entered December 3, 2020). Further, in *Columbia Gas*, we explained that under the traditional set of ratemaking norms there is a consideration and weighing of important factors or

principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability.

This is true in normal circumstances as well as extraordinary circumstances, such as this pandemic. Indeed, in our opinion, the applicable legal standards that require the Commission to balance between the interests of the utility's customers, investors, and the public interest, require the Commission, by necessary implication, to weigh evidence or unique considerations related to changes in service, market forces, and the economy. Thus, it is our responsibility under the applicable legal and constitutional standards to weigh evidence and unique considerations related to the COVID-19 pandemic in setting just and reasonable rates, and our continued use of traditional ratemaking methodologies permit our consideration of important ratemaking principles, like gradualism and rate affordability, in relation to this pandemic. Moreover, the traditional ratemaking methodologies permit consideration of evidence presented regarding the risks, uncertainties, and impact of the COVID-19 global pandemic in determining various components of a utility's cost of service, or revenue requirement.

Columbia Gas at 48.

We have and will continue to apply traditional ratemaking methodologies which include the consideration of unique circumstances such as the risks, uncertainties, and impact of the COVID-19 pandemic. Thus, to the extent that the OCA is requesting such action by the Commission in this proceeding, we find the Exception to be unnecessary.

As a final matter, we find the OCA's contention that the ALJ improperly shifted the burden of proof by noting the lack of opposition to infrastructure spending and improvements to universal service programming and customer service as lacking merit. The ALJ's statement did not – nor could it – operate to shift the burden of proof

with respect to Aqua's burden to establish the justness and reasonableness of every component of its rate request. There is no indication in the Recommended Decision that this burden somehow shifted to the OCA with respect to its proposed adjustments to the universal service or customer assistance programs.

Accordingly, we shall deny OCA Exception No. 28.

VI. Rate Base

Rate base, also known as measure of value, is the depreciated original cost of a utility's investment in plant a utility has in place to serve customers plus other additions and deductions that the Commission determines to be necessary in order to keep the utility operating and providing safe and reliable service to its customers. Rate base is one part of the financial equation used by the Commission to determine the appropriate revenue that a utility is granted in a rate proceeding. I&E M.B. at 17.

Aqua's rate base claim calculation includes depreciated original cost plant in service plus additions of Materials and Supplies (M&S) and Cash Working Capital (CWC) as well as deductions of contributions in aid of construction (CIAC) and customer advances for construction (CAC), deferred income taxes, and Investment Tax Credit as shown on Schedule G-1 on Aqua Exh. 1-A through 1-G. *Id.*

Additionally, the depreciated original cost is determined by subtracting the book reserve, which is the accumulation of all prior annual depreciation expense, and other items such as salvage value, from the original cost of the plant in service that is projected to be used and useful in the public service. The depreciated original cost of the plant in service is determined by taking a "snapshot" look at the depreciated original cost value of used and useful utility plant in service at the end of the FPFTY. I&E M.B. at 17-18.

Further, for a utility plant to be included in rates, the plant must be used and useful in the provision of utility service to the customers. Therefore, by definition, only plant currently providing or capable of providing utility service to customers or plant projected to be completed and in service by the end of the FPFTY is eligible to be reflected in rates. I&E M.B. at 18.

A. Plant in Service

1. Positions of the Parties

No Party to this proceeding challenged the Company's claim for water or wastewater utility plant in service at the end of the FPFTY, except for the challenge regarding the Company's \$2,437,305 positive acquisition adjustment associated with the Borough of Phoenixville Water System, which we shall discuss in the next section, below. R.D. at 36; Aqua M.B. at 18.

The Company's claim for both water and wastewater utility plant in service begins with the actual HTY ending balance for each segment of its operations. Aqua St. 2 at 14. As shown in Table 1, below, the HTY ending balance for water was \$4,909,729,427 and the HTY ending balance for wastewater was \$500,221,311. Aqua M.B. at 16; Aqua St. 2 at 14; see also Aqua Exh. 1-A, Sch. G-2; Aqua Exhs. 1-B through 1-G, Sch. G-2.

The HTY figures for water and wastewater were then increased to reflect FTY and FPFTY plant additions, net of retirements, and utility plant acquisition

adjustments (UPAA)⁸ associated with certain acquired systems. Aqua M.B. at 16; Aqua St. 2 at 14-15; Aqua St. 2, Attachment 1.

For the FTY for its water operations, the Company projected additions totaling \$402,940,579 and retirements totaling (\$36,896,955). Aqua St. 2, Attachment 1 at 1. For the FPFTY for its water operations, the Company projected additions totaling \$314,771,304 and retirements totaling (\$28,466,740). Aqua M.B. at 16-17; Aqua St. 2, Attachment 1 at 2.

For the FTY for its wastewater operations, the Company projected additions totaling \$34,134,821 and retirements totaling (\$3,416,157). Aqua St. 2, Attachment 2 at 1. For the FPFTY, the Company projected additions totaling \$38,897,468 and retirements totaling (\$3,014,299). Aqua M.B. at 18; Aqua St. 2, Attachment 2 at 2.

Aqua Proposed Plant In Service						
Operations	HTY	FTY Additions/Retirements		FPFTY Additions/Retirements		FPFTY
	Plant In Service	Additions	Retirements	Additions	Retirements	Plant In Service
Water	\$4,909,729,427	\$402,940,579	(\$36,896,955)	\$314,771,304	(\$28,466,740)	\$5,562,077,614
Wastewater	\$500,221,311	\$34,134,821	(\$3,416,157)	\$38,897,468	(\$3,014,299)	\$566,823,145

Table 1: Aqua-Proposed Plant In Service for Water and Wastewater Operations.

Accordingly, the Company's FPFTY claim for its water utility plant in service is \$5,562,077,614 (Aqua Exhibit 1-A, Schedule G-2) and the FPFTY claim for its wastewater utility plant in service is \$566,823,145. Aqua M.B. at 18; Aqua Exhs. 1-B through 1-G, Sch. G-2.

⁸ The Company's HTY figures presented on Schedule G-2 do not reflect the Company's proposed UPAA. Adjustments related to proposed UPAA are reflected in Schedule G-3 of Aqua Exhibits 1-A and 1-G through 1-G. All UPAA shown have been previously approved by the Commission, with the exception of the Borough of Phoenixville acquisition. Aqua M.B. at 16, n. 4.

I&E recommended that the Company provide the Commission's Bureaus of Technical Utility Services (TUS) and I&E with an update to Schedule G-2 of Aqua Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, and 1-G, no later than July 1, 2022 which should include actual capital expenditures, plant additions, and retirements by month for the twelve months ending March 31, 2022 and an additional update for actuals for the year ending March 31, 2023, no later than July 1, 2023. I&E reasoned that, through the use of an FPFTY, a utility is allowed to require ratepayers, in essence, to pre-pay a return on a utility's projected investment in future facilities that are not in place and providing service at the time the new rates take effect and are not subject to any guarantee of being completed and placed into service. According to I&E, while the FPFTY provides for such projections, there should be some timely verification of the projections. I&E further submitted that the use of a FPFTY has become common practice by Pennsylvania utilities, including Aqua, and the Company agreed to provide such projections as part of its previous base rate case in which it made use of the FPFTY. I&E further noted that the Company did not challenge I&E's recommendation to continue to provide the requested updates. I&E M.B. at 21-22.

2. Recommended Decision

Except for the Company's proposed positive acquisition adjustment of \$2,437,305 to its water rate base associated with the Phoenixville System (addressed in Section VI.B, below), the ALJ recommended that the remainder of the Company's proposed adjustments to its water utility plant in service and all of the Company's adjustments to its wastewater utility plant in service at the end of the FPFTY be adopted. R.D. at 36.

The ALJ also recommend that I&E's reporting request be approved. In making this recommendation, the ALJ noted that this is a reporting requirement consistent with Section 315(e) of the Code, 66 Pa. C.S. § 315(e), which requires that

when a utility utilizes a FPPTY in any rate proceeding and such FPPTY forms a substantive basis for the Commission's final rate determination, the utility shall provide, as specified by the Commission in its Final Order, appropriate data evidencing the accuracy of the estimates contained in the FPPTY. R.D. at 39.

3. Disposition

Aside from the positive acquisition adjustment proposed by the Company with regard to its Phoenixville Water System (addressed immediately below), no other Party filed Exceptions on the Company's remaining proposed adjustments to its plant in service. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment.

B. Water Rate Base – Borough of Phoenixville

In 2019, the Commission approved Aqua's acquisition of the water system assets of the Borough of Phoenixville, Chester County, PA (Borough) that included all of Phoenixville's water service territories located outside of its municipal borough boundaries (*i.e.*, extraterritorial water system) (hereinafter, Phoenixville Water System).⁹ In this proceeding, the primary adjustment to rate base is related to the Company's

⁹ *Joint Application of Aqua Pennsylvania, Inc. and the Borough of Phoenixville for approval of (1) the acquisition by Aqua of the water system assets of Phoenixville used in connection with the water service provided by Phoenixville in East Pikeland and Schuylkill Townships, Chester County, and Upper Providence Township, Montgomery County, PA; (2) the right of Aqua to begin to supply water service to the public in portions of East Pikeland Township, Chester County, and Upper Providence Township, Montgomery County, PA; and (3) the abandonment of Phoenixville of public water service in East Pikeland Township, Chester County, and Upper Providence Township, Montgomery County, and certain locations in Schuylkill Township, Chester County, PA, Docket Nos. A-2018-2642837, A-2018-2642839, et al. (Recommended Decision dated September 13, 2019), adopted as final (Order entered October 24, 2019) (Aqua-Phoenixville Order).*

proposal to include recovery of the acquisition premium that Aqua paid for the Phoenixville Water System. The depreciated cost of the Phoenixville Water System was \$1,026,724, and Aqua paid \$2,437,305 more for the assets than the depreciated original cost, creating a total purchase price of \$3,464,029. R.D. at 18, FOF No. 20.

The OCA and I&E opposed this recovery, as well as the Company's related amortization expense claim. They argued that because the Company failed to provide sufficient evidence that the Borough was failing to render reasonable and adequate service at the time the Phoenixville Water System was acquired by Aqua pursuant to Section 1327(a) of the Code, the Company should not be permitted to recover the acquisition premium in rate base. R.D. at 43. The ALJ agreed with the OCA and recommended that \$2,437,305 be removed from Aqua's rate base, and the concomitant adjustments be made to the accrued depreciation reserve and annual amortization expense. R.D. at 44. The details concerning this issue are more fully discussed immediately below.

1. Positions of the Parties

The Company requested that the Commission permit it to include an acquisition adjustment¹⁰ of \$2,437,305 in water rate base (see Aqua Exh. 1-A, Sch. C-5.1, line 3) for the price it paid beyond the depreciated original cost to acquire a portion of the Phoenixville Water System consistent with Section 1327 of the Code, 66 Pa. C.S.

¹⁰ Section 1327 (a) provides that "If a public utility acquires property from another public utility, a municipal corporation or a person at a cost which is in excess of the original cost of the property when first devoted to the public service less the applicable accrued depreciation, it shall be a rebuttable presumption that the excess is reasonable and that excess shall be included in the rate base of the acquiring public utility, provided that the acquiring public utility proves that [it has met the requirements of included in Section 1327(a)(1)-(9)]."

§ 1327(a).¹¹ The Company further proposed that the acquisition adjustment be amortized over a period of twenty years. Aqua M.B. at 15. Aqua reflected \$2,315,440 in the positive acquisition adjustment as of the end of the FPFTY as set forth in Aqua Exh. 1-A, Schedule G-3. *Id.* at 19.

Aqua based its acquisition adjustment claim on the fact that it paid more than the depreciated original cost for the assets, and it is therefore allegedly entitled to include the excess in rate base, because it meets the nine criteria set forth in Section 1327(a) of the Code to show that the Phoenixville Water System was a troubled water system on the date it was acquired. Aqua M.B. at 24-26; Aqua St. 2 at 16.

Aqua explained that the genesis of its purchase of the assets of the Phoenixville Water System that previously served the water customers located outside of the Borough's municipal boundaries was the result of the Borough's 2013 Petition and the Commission's 2015 Order on same. The Borough had requested that the Commission declare that the Phoenixville Water System is not subject to the Commission's jurisdiction so that it could better economize and manage its limited resources by reducing regulatory compliance costs and administrative costs.¹² R.D. at 42; *Phoenixville Petition Order* at 4. In its petition, the Borough explained that it was deterred from seeking rate relief for service to the extraterritorial customers because the cost and manpower required to prepare and defend a rate filing posed a strain on Borough resources. R.D. at 42. As a result, the Borough's territorial customers were subsidizing

¹¹ R.D. at 39-44; Aqua St. 2 at 16; Aqua Exh. 3-A; Aqua M.B. at 16-19; I&E M.B. at 6-7, 18, 21-22; OCA M.B. at 17; Aqua R.B. at 9-10; I&E M.B. at 6-7, 18, 21-22; Aqua R.B. at 9-10; I&E RB at 3, 16; OCA R.B. at 6.

¹² *Petition of the Borough of Phoenixville for a Declaratory Order that the Provision of Water and Wastewater Service to Isolated Customers in Adjoining Townships Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2013-2389321 (Order entered May 19, 2015) (*Phoenixville Petition Order*).

service to the Borough's extraterritorial customers. *Id.* In denying the petition, the Commission acknowledged that seeking rate relief could be perceived as "burdensome," but observed that the Borough had the option to seek relief from regulatory burdens by approaching nearby systems owned by Aqua Pennsylvania and Pennsylvania-American Water Company. *Id.*; *Phoenixville Petition Order* at 7-8. Thereafter, the Borough reached an agreement with Aqua for the transfer of the system. As noted, the Joint Petition for Settlement of the acquisition was approved by the Commission in 2019. *Id.*

Aqua argued that the Phoenixville Water System was a troubled water system on the date it was acquired because it was not being maintained to provide adequate, efficient, safe, and reasonable service and facilities to customers outside the Borough limits. This was allegedly due to the following factors: (1) the Borough was manually reading residential and commercial meters; (2) non-revenue (unaccounted for) water was estimated to be 68%; and (3) 30%, or 32 out of the 105 system fire hydrants, needed to be repaired or replaced. Accordingly, Aqua argued, pursuant to Section 1327(a) of the Code, it is entitled to "a rebuttable presumption that the excess [it paid beyond the depreciated original cost] is reasonable, and that excess shall be included in the rate base of the acquiring utility." Aqua M.B. at 22 (citing Aqua St. at 16 and Aqua Exh. 3-A).

Aqua also argued that the high level of 68% for non-revenue or unaccounted-for water is extremely poor and indicates substantial leaks and metering issues. Aqua M.B. at 25. Aqua cited the Commission's Statement of Policy in Section 65.20(4) of the Commission's Regulations, 52 Pa. Code § 65.20(4), on water conservation which notes that unaccounted-for water levels above 20% have been considered by the Commission to be excessive. *Id.* Thus, Aqua opined that the high level of non-revenue or unaccounted-for water, estimated at 68%, is extremely poor and indicates substantial leaks and metering issues and that "[h]aving non-revenue water of

approximating 68%, and having to replace 30% of all hydrants in the system is a clear indication that this was a troubled system.” Aqua M. B. at 25; Aqua St. 2-R at 8.

The Company also submitted that after it purchased the Phoenixville Water System, it proactively performed leak surveys, verified hydrant pressures, and checked valve operations and then placed the system on its ongoing maintenance program. Aqua M.B. at 28 (citing Aqua St. 2-R at 8-9). According to Aqua, in view of the fact that it investigated significant unaccounted-for water issues and targeted the resolution of these issues via its maintenance program makes clear that the Borough had failed to maintain its fire hydrants and repair leaking water lines during its ownership. *Id.* Aqua contended that “fire protection is a significant safety and reliability issue which the Company addressed by inspecting 105 fire hydrants, replacing 13 hydrants, and repairing 19 hydrants.” Aqua M.B. at 28 (citing Aqua St. 2-R at 8). In addition, the Company contended that its meter replacement efforts addressed issues related to meter reading and billing of customers. Aqua M.B. at 29 (citing Aqua St. 2-R at 9). For all of the above reasons, Aqua believed it has adequately satisfied the requirement of Section 1327(a)(3)(v) that the Borough’s water system was troubled at the time it was acquired.

Both I&E and the OCA argued that the \$2,437,305 acquisition adjustment should not be permitted because the reasons provided by Aqua are not sufficient to satisfy the extensive Section 1327(a)(3) criteria. I&E St. 3-SR at 2-7; I&E M.B. at 18-21; OCA St. 2 at 11; OCA M.B. at 17-21. I&E and the OCA contended that there is no evidence that Aqua’s Phoenixville Water System acquisition was necessitated by the inability of the Borough to render reasonable and appropriate service to customers. *Id.* I&E and the OCA argued that Aqua’s rate base claim for its water operations should be denied, and the total annual amortization expense claimed by the Company should be reduced to \$409,015 (\$530,879 - \$121,865). R.D. at 39; I&E M.B. at 18-21; I&E St. 3-SR at 3-7; OCA M.B. at 17-21.

Regarding the Company's citation to the Commission's Statement of Policy on water conservation measures in 52 Pa. Code § 65.20 in support of its position that any water provider with unaccounted-for water above 20% is considered a troubled water system, I&E acknowledged that Section 65.20(4) does mention that unaccounted-for water levels should be kept within reasonable amounts, noting that levels above 20% have been considered by the Commission to be excessive. I&E M.B. at 14-15. However, I&E asserted that Section 65.20(4) does not stand for the presumption that a system experiencing above 20% unaccounted-for water is a *de-facto* troubled water system. I&E M.B. at 15. I&E noted there are various other end-of-service plant issues that were known or knowable that could be the cause, and Section 65.20 merely advises that water conservation measures may be necessary. *Id.*

Specifically, I&E argued: (1) hydrants are utility plant that require periodic replacement based on known and knowable service life; (2) Aqua provided no detail to indicate that there were substantial service issues or failed systems causing the 68% non-revenue water; and much of this non-revenue water could be due to other end-of-service plant issues that were known or knowable; (3) the motivation of an owner to sell is not listed in the Section 1327(a) criteria; and (4) small, private water and wastewater systems do not have the ability to increase taxes and issue bonds that a municipality such as the Borough has, so not every troubled system has the capability of funding necessary repairs. I&E M.B. at 19-20.

The OCA agreed with I&E and added that: (1) the Company did not provide any evidence that the Borough was in violation of statutory or regulatory requirements of the Pennsylvania Department of Environmental Protection or the Commission when the Company acquired the Phoenixville Water System assets; (2) in approving the acquisition, the Commission itself made no findings of inadequate financial, managerial, or technical ability of the Borough; (3) the Commission found no deficiencies concerning the availability of water, the palatability of water, or the

provision of water at adequate volume and pressure when the assets were owned by the Borough; and (4) the Commission found no issues with the acquired assets that would require necessary improvements to the plant or distribution system. OCA St. 2 at 11-12. In addition, the OCA argued that the acquisition was only for a portion of the Borough's system (*i.e.*, the portion located outside its municipal boundaries), and that the Borough continues to operate a system serving water and wastewater customers, as well as providing wholesale water supply to Aqua, which is evidence that the Borough was not providing inadequate service at the time of the acquisition. OCA St. 2 at 13-14.

With regard to Aqua's argument that the Commission's encouragement for the Company to sell the Phoenixville assets provides further support that the Company has satisfied the requirements of Section 1327, the OCA responded that while this may be true, it is not dispositive of the issue of whether the system was failing. OCA R.B. at 7. The OCA asserted that the Commission encouraged the sale of the Phoenixville assets to Aqua, in part, to resolve the Borough's inability to fund rate cases before the Commission, since as the Borough described, the costs of rate filings are significant and disproportionate to the "minimal revenues recovered from the Borough's small extraterritorial customer base." Aqua M.B. at 20 (citing *Phoenixville Petition Order* at 3-4). However, the OCA noted that the Commission has found that if a system does not have the financial resources to supply service outside of its service territory, or to remedy water quality problems near its territory, this does not indicate that the system was failing to maintain adequate, efficient, safe, and reasonable service and facilities at the time of the acquisition. OCA R.B. at 7 (citing *Pa. PUC v. Citizens Util. Water Co.*, 1996 Pa. P.U.C. LEXIS 167 at *20, *27-28).

2. Recommended Decision

The ALJ agreed with I&E and the OCA that they have successfully rebutted the presumption of the reasonableness of the excess paid for the Phoenixville

Water System. The ALJ found that there is no evidence that the Borough was failing to render reasonable and adequate service to its extraterritorial customers at the time it was acquired by Aqua. In addition, the ALJ explained that the Commission expects Class A public utilities, such as Aqua, to have completed a thorough analysis of the system's condition as part of any acquisition prior to making an offer, reaching an acquisition price, and closing on a transaction. R.D. at 43.

The ALJ further stated that all systems need ongoing maintenance and investment, and Aqua's meter replacement activity and routine maintenance only indicates that the Company is fulfilling its role as the new owner of the system. The ALJ noted that, while it is true that the estimated lost and unaccounted-for water is a concern and should be addressed, there may be a number of factors other than the failure of the facilities which contributed to the unaccounted-for water. However, the ALJ concluded that those factors alone do not support a conclusion that the service rendered by the Borough was inadequate within the meaning of Section 1327. R.D. at 43.

For the above reasons, the ALJ recommended that \$2,437,305 be removed from Aqua's rate base, and the concomitant adjustments be made to the accrued depreciation reserve¹³ and annual amortization expense which is expressed as a depreciation expense in this filing.¹⁴ R.D. at 44.

¹³ See Aqua M.B. at 18.

¹⁴ These adjustments are reflected in the Appendix to the Recommended Decision in Table II - Water, Rows "Acquis. Adj. – Phoenixville" and "Amort. Phoenixville Acquis. Adj."

3. Aqua Exception No. 2 and Replies

In its Exception No. 2, Aqua disagrees with the ALJ's decision to adopt I&E's and the OCA's positions to disallow the proposed acquisition adjustment in rate base and its amortization over a twenty-year period. Aqua Exc. at 15.

First, the Company argues that the Recommended Decision ignores the regulatory requirements imposed by the Commission in its *Phoenixville Petition Order* which prompted the acquisition. R.D. at 16. In this regard, Aqua contends:

[T]he RD fails to analyze, or even acknowledge, the Commission's prior findings that (a) recognized Phoenixville's inside-the-borough customers were subsidizing the service provided to outside-the-borough customers, and the defense of a base rate filing had deterred it from seeking rate relief to invest in its system, (b) the Commission had previously directed Phoenixville to avail itself of an acquisition to alleviate these burdens, and (c) Aqua PA's acquisition of the system is consistent with the regulatory requirement established in the *Phoenixville Petition Order*.

Aqua Exc. at 16 (footnotes omitted). In addition, the Company notes that the Commission also previously concluded, as a matter of law, that through the *Phoenixville Petition Order*, the Commission "encouraged the Borough to pursue a sale of its water system assets." Aqua Exc. at 16 (citing *Aqua-Phoenixville Order* at 19, Conclusion of Law ¶ 14).

Next, Aqua submits that the ALJ's recommendation is also incorrect that there is no evidence that the Borough was failing to render reasonable and adequate service at the time of the acquisition. Aqua maintains its argument that the Borough was failing to render reasonable and adequate service when it was acquired because the Borough was still manually reading meters, the system experienced 68% of

unaccounted-for water, and 30% of the system fire hydrants required repair or replacement. Aqua Exc. at 16.

Aqua asserts that the ALJ attempted to sidestep the above facts by arguing that those conditions are matters that reflect ongoing maintenance and investment requirements and that high levels of unaccounted-for water were not indicative of system failure. Aqua contends that the sidestepping of these issues divorces the existence of the conditions from the reasons the Borough was unable to address them during its ownership. Aqua cites to the following excerpt from the *Phoenixville Petition Order* in support of its argument that the Borough was not able to address the conditions prior to the acquisition:

In past years, the disproportionate cost of rate filings compared to the minimal revenues recovered from the Borough's small extraterritorial customer base has deterred the Borough from seeking rate relief and created cost subsidies flowing from inside-borough customers to outside-borough customers.

Aqua M.B. at 17 (citing *Phoenixville Petition Order* at 3 (quoting Borough Petition); Aqua M.B. at 29-30).

Aqua also submits that the ALJ's conclusion that the Company completed a thorough analysis of the system prior to making an offer and closing on the acquisition similarly misses the point. Aqua notes that it addressed this very argument, raised by I&E, in its Reply Brief:

First, the fact that poor conditions are known or knowable at the time of the acquisition is not the test; and if it was, it would completely undermine the purpose of Section 1327. Second, the assertion that the conditions were "known or knowable" actually supports the fact that the system was troubled at the time it was acquired, and that Aqua PA has

satisfied the requirements of Section 1327(a)(3), which is to encourage acquisition of troubled systems.

Aqua Exc. at 17 (citing Aqua R.B. at 13). Aqua argues that Section 1327 would be a “legal nullity” if the public utility’s showing under Section 1327 could be successfully rebutted by the claim that the poor conditions of the system were “known or knowable” at the time of the acquisition, or that the public utility conducted a thorough investigation of the system prior to acquiring it. Aqua contends that this would make it impossible to identify a troubled system for acquisition consistent with Section 1327 and Commission policy, because the identification of the poor conditions that would satisfy Section 1327 would also render it ineligible for the rebuttable presumption established by this section. Aqua Exc. at 17-18.

Lastly, the Company avers that the ALJ ignored the Commission’s policy statement in Section 69.711 of its Regulations, 52 Pa. Code § 69.711, which encourages regionalization and the acquisition of smaller troubled systems by larger capable public utilities. Aqua Exc. at 18. Aqua maintains that it presented credible testimony that the Phoenixville Water System was a prime candidate for using this policy and that the acquisition here is consistent with the Commission’s policy. *Id.* at 18 (citing Aqua St. 2-R at 8, Aqua M.B. at 30; and Aqua R.B. at 13).

In reply to Aqua’s Exceptions, I&E asserts that Aqua’s arguments do not accurately reflect the ALJ’s recommendation. First, I&E submits that Aqua erroneously argues that the ALJ failed to recognize that the Borough’s water customers within the Borough’s boundaries were subsidizing the water service provided to the extraterritorial borough customers. I&E R. Exc. at 6 (citing Aqua Exc. at 16). According to I&E, Aqua’s argument is irrelevant in that such subsidization is a rate structure concern internal to the Borough. I&E points to the testimony it provided that the Borough (unlike

a small private system) had many funding options to alleviate this problem. I&E R. Exc. at 7 (citing I&E St. 3-SR at 6; I&E St. 3 at 7-9).

I&E also asserts that Aqua's decision to pay in excess of the depreciated original cost for the subject assets does not guarantee recovery. I&E R. Exc. at 7. I&E cites the ALJ's observation that the excess Aqua chose to pay for the Phoenixville Water System created a rebuttable presumption and the ALJ determined that the presumption was successfully rebutted by I&E and the OCA. I&E R. Exc. at 7 (citing R.D. at 43). I&E further avers that the Commission's notation in the *Phoenixville Petition Order* that the Borough could explore a possible acquisition does not justify Aqua's decision to pay more than book value. *Id.*

I&E disagrees that the ALJ sidestepped Aqua's argument about the conditions of the Borough's water system prior to its acquisition (*i.e.*, manually reading meters, 68% of unaccounted-for water, and 30% of the system fire hydrants requiring repair or replacement) and, thus, the acquired Phoenixville Water System was non-viable at the time of acquisition. I&E asserts that the ALJ considered the factors raised by Aqua and rebutted by I&E and the OCA and clearly concluded that those factors alone do not support a conclusion that the service rendered by the Borough was inadequate within the meaning of Section 1327. I&E R. Exc. at 7.

I&E also contends that Aqua's regionalization argument is irrelevant to Aqua's choice to pay more than book value for the system and further notes that the regionalization concept also would have applied if Aqua had paid less than book value. I&E R. Exc. at 7. In closing, I&E explains that "the Commission expects Class A public utilities, such as Aqua, to have completed a thorough analysis as part of any acquisition to factor the condition of a system prior to making an offer and closing on a transaction." *Id.* at 7 (citing R.D. at 43).

The OCA's replies on this issue comport generally with those of I&E. OCA R. Exc. at 1. In addition, the OCA submits that the Company incorrectly claimed that the Commission, in its *Phoenixville Petition Order*, "directed" the Borough to consider selling its extraterritorial assets, thereby allegedly indicating that the Borough was not providing adequate service. OCA R. Exc. at 2 (citing Aqua Exc. at 16). The OCA clarifies that the Commission did not "direct" the Borough to consider selling. *Id.* The OCA notes the ALJ's finding that the Commission simply "observed" that the Borough had the "option to seek relief from regulatory burdens" by transferring its systems to an investor-owned utility like Aqua. OCA R. Exc. at 2 (citing R.D. at 42). Because there is no evidence in the record that the Borough was providing inadequate service at the time of the Company's acquisition, the OCA avers that the ALJ properly rejected the Company's proposal for a positive acquisition adjustment for the Phoenixville Water System, along with its associated \$121,865 amortization expense, which is expressed as a depreciation expense in this filing. OCA R. Exc. at 2 (citing OCA M.B. at 21; OCA Table II (Water)).

4. Disposition

Aqua based its acquisition adjustment claim on the fact that it paid more than the depreciated original cost for the assets, and it is therefore entitled to include the acquired facilities in rate base because it meets the nine criteria set forth in Section 1327(a) of the Code. Aqua M.B. at 24-26; Aqua St. 2 at 16. For convenience, Section 1327(a) is stated in its entirety below:

(a) Acquisition cost greater than depreciated original cost.--If a public utility acquires property from another public utility, a municipal corporation or a person at a cost which is in excess of the original cost of the property when first devoted to the public service less the applicable accrued depreciation, it shall be a rebuttable presumption that the excess is reasonable and that excess

shall be included in the rate base of the acquiring public utility, provided that the acquiring public utility proves that:

- (1) the property is used and useful in providing water or sewer service;
- (2) the public utility acquired the property from another public utility, a municipal corporation or a person which had 3,300 or fewer customer connections or which was nonviable in the absence of the acquisition;
- (3) the public utility, municipal corporation or person from which the property was acquired was not, at the time of acquisition, furnishing and maintaining adequate, efficient, safe and reasonable service and facilities, evidence of which shall include, but not be limited to, any one or more of the following:
 - (i) violation of statutory or regulatory requirements of the Department of Environmental Resources [¹⁵] or the commission concerning the safety, adequacy, efficiency or reasonableness of service and facilities;
 - (ii) a finding by the commission of inadequate financial, managerial or technical ability of the small water or sewer utility;
 - (iii) a finding by the commission that there is a present deficiency concerning the availability of water, the palatability of water or the provision of water at adequate volume and pressure;
 - (iv) a finding by the commission that the small water or sewer utility, because of necessary

¹⁵ The Department of Environmental Resources, referred to in Section 1327(a)(3)(i), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources (DCNR) and the Pennsylvania Department of Environmental Protection (PADEP). R.D. at 42, n.24.

improvements to its plant or distribution system, cannot reasonably be expected to furnish and maintain adequate service to its customers in the future at rates equal to or less than those of the acquiring public utility; or

(v) any other facts, as the commission may determine, that evidence the inability of the small water or sewer utility to furnish or maintain adequate, efficient, safe and reasonable service and facilities;

(4) reasonable and prudent investments will be made to assure that the customers served by the property will receive adequate, efficient, safe and reasonable service;

(5) the public utility, municipal corporation or person whose property is being acquired is in agreement with the acquisition and the negotiations which led to the acquisition were conducted at arm's length;

(6) the actual purchase price is reasonable;

(7) neither the acquiring nor the selling public utility, municipal corporation or person is an affiliated interest of the other;

(8) the rates charged by the acquiring public utility to its preacquisition customers will not increase unreasonably because of the acquisition; and

(9) the excess of the acquisition cost over the depreciated original cost will be added to the rate base to be amortized as an addition to expense over a reasonable period of time with corresponding reductions in the rate base.

66 Pa. C.S. § 1327(a).

For the reasons detailed below, we agree with the ALJ's recommendation to deny the Company's request to include \$2,437,305 in rate base to reflect the amount beyond the depreciated original cost that it paid the Borough to acquire the Phoenixville Water System, that is, that portion of the Borough's extraterritorial water system. R.D. at 43-44.

Our review of the record leads us to conclude that Aqua failed to demonstrate that the proposed acquisition adjustment related to the Phoenixville Water System satisfies the requirements of Section 1327(a). As noted, none of the Parties have disputed that Aqua has satisfied Section 1327(a)(1)-(2) and (4)-(8).¹⁶ Thus, the contention among the Parties centers on Section 1327(a)(3) and (9), and particularly on Section 1327(a)(3)(v), which requires a finding by the Commission that "evidenc[es] the inability of the small water or sewer utility to furnish or maintain adequate, efficient, safe and reasonable service and facilities" at the time it was acquired by the acquiring utility. For the reasons discussed in more detail below, we find that the Company failed to meet its burden of proof of providing sufficient un rebutted evidence to demonstrate that the proposed positive acquisition adjustment should be included in rate base.

I&E and the OCA disputed the facts presented by the Company in response to Section 1327(a)(3), and particularly, Section 1327(a)(3)(iv). Section 1327(a)(3) specifically requires that Aqua must first provide sufficient evidence showing that "the

¹⁶ We disagree with the Company's statement that none of the Parties disputed that the Company has satisfied Section 1327(a)(9). The Company's statement implies that no one objected to the requirement that "the excess of the acquisition cost over the depreciated original cost will be added to the rate base to be amortized as an addition to expense over a reasonable period of time with corresponding reductions in the rate base." However, because I&E and the OCA are of the opinion that the Company has not met its burden of proving that the Borough's water system was a troubled system prior to its acquisition pursuant to Section 1327(a)(3) requirement, it stands to reason that I&E and the OCA also dispute that Aqua has satisfied the requirement of Section 1327(a)(9).

public utility, municipal corporation or person from which the property was acquired was not, at the time of acquisition, furnishing and maintaining adequate, efficient, safe and reasonable service and facilities.” Section 1327(a)(3) further requires that the evidence presented to illustrate that the Borough was a troubled water system must “include, but not be limited to, any one or more” of the following:

- (i) violation of statutory or regulatory requirements of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service and facilities;
- (ii) a finding by the commission of inadequate financial, managerial or technical ability of the small water or sewer utility;
- (iii) a finding by the commission that there is a present deficiency concerning the availability of water, the palatability of water or the provision of water at adequate volume and pressure;
- (iv) a finding by the commission that the small water or sewer utility, because of necessary improvements to its plant or distribution system, cannot reasonably be expected to furnish and maintain adequate service to its customers in the future at rates equal to or less than those of the acquiring public utility; or
- (v) any other facts, as the commission may determine, that evidence the inability of the small water or sewer utility to furnish or maintain adequate, efficient, safe and reasonable service and facilities;

66 Pa. C.S. § 1327(a)(3).

As noted, *supra*, Aqua provided responses to Items (i) – (v) in its checklist in Aqua Exhibit 3-A. With regard to Item (i), the Company indicated that the Borough did not have any statutory or regulatory violations of the Department of Environmental

Resources (now the DCNR and the PADEP) at the time of acquisition. With regard to Item (ii), the Company indicated that there were no Commission findings to show that the financial, managerial, or technical ability of the Borough was inadequate. With regard to Item (iii), the Company indicated that there are no Commission findings to show that there is a present deficiency concerning the availability of water, the palatability of water or the provision of water at adequate volume and pressure. With regard to Item (iv), the Company indicated that there were no findings by the Commission to show that, because of necessary improvements to its plant or distribution system, the Borough cannot reasonably be expected to furnish and maintain adequate service to its customers in the future at rates equal to or less than those of the acquiring public utility. And with respect to Item (v), which is the contested item here, the Company indicated, as discussed above, that at the time of acquisition, the Borough was unable to furnish or maintain adequate, efficient, safe and reasonable service and facilities because: (a) the Borough was manually reading residential and commercial meters; (b) non-revenue water was estimated to be at 68%; and (c) 30% (32/105) of the Borough of Phoenixville's system hydrants needed to be repaired or replaced.

In the Recommended Decision, the ALJ stated that the only evidence proffered by the Company to demonstrate the acquired water system was troubled at the time of acquisition involved: (1) manually reading meters; (2) 68% unaccounted-for water; and (3) a need to repair or replace 32 out of 105 fire hydrants. R.D. at 42. The ALJ agreed with I&E and the OCA in finding that the evidence submitted by the Company was vague and does not provide sufficient evidence that the Borough was failing to render reasonable and adequate service to its extraterritorial customers at the time it was acquired by Aqua. The ALJ determined that the manual meter readings and hydrant replacement primarily are routine maintenance matters not related to troubled water companies that indicate simply that Aqua is fulfilling its role as the new owner of the system. With regard to the estimated 68% unaccounted-for water, the ALJ stated that, while the amount of unaccounted-for water is a concern and should be addressed,

there may be a number of factors that contribute to the loss of water, but those factors alone, also do not support a conclusion that the service rendered by the Borough was inadequate within the meaning of Section 1327.

In its Exceptions, the Company maintains its argument that the manual meter readings, the need to replace 32 out of 105 hydrants, and the high level of unaccounted-for water are sufficient reasons to prove that the Borough was failing to render reasonable and adequate service at the time of the acquisition, and that the ALJ attempted to sidestep these facts in her Recommended Decision. We disagree with the Company. In our opinion, the ALJ appropriately ruled that the Company has not presented sufficient evidence to demonstrate that the Phoenixville Water System acquisition was necessary because the Borough was unable to render reasonable and appropriate service to customers at the time it was acquired by Aqua. We agree with the ALJ that the three items proffered by the Company in response to Section 1327(a)(3)(iv) are vague and not convincing. In our view, the Company failed to present substantial evidence pursuant to Section 1327(a) that the Borough was not maintaining reasonable service and thus, Aqua was not entitled to an acquisition adjustment presumption. In addition, the evidence presented by I&E and the OCA was sufficient to rebut the evidence presented by the Company.

The simple fact that the Borough's territorial customers were subsidizing service to the Borough's extraterritorial customers is not tantamount to the provision of unreasonable or inadequate service. Furthermore, the Company offered no convincing record evidence such as the number and type of customer complaints that were filed prior to or at the time of the acquisition or any proof to indicate whether the quality of the water or other services performed by the Borough were inferior and similar to those issues normally experienced by a troubled water company.

The Company also argues in its Exceptions that the ALJ did not “analyze or even acknowledge” that Phoenixville’s territorial customers were subsidizing the service provided to extraterritorial customers, and the defense of a base rate filing had deterred it from seeking rate relief to invest in its system. We disagree with the Company that the ALJ did not acknowledge this issue. Our review of the Recommended Decision indicates that the ALJ acknowledged the subsidization of water service to the Borough’s extraterritorial customers by the Borough’s territorial customers on page 41 of the Recommended Decision. The ALJ reasoned, however, that the issue was not pertinent to the relevant inquiry. In this regard, we agree with I&E’s position in its Reply Exceptions that, in this particular proceeding, the subsidization issue is irrelevant for the purpose of casting the Borough as a troubled water company. Rather, the subsidization issue is a rate structure concern internal to the Borough.

The Commission has handled numerous troubled water system acquisitions. Stated plainly, it generally is known at the time of the acquisition whether the water system to be purchased is a troubled system and it is often stated to be such and acquired pursuant to relevant statutory provisions. In this instance, nothing in the record demonstrates that the Borough was operating a troubled water system. The record reflects that the primary reason for the acquisition in this case was the Borough’s desire to be relieved of Commission jurisdiction so that it could avoid the high costs the Borough would incur in filing rate cases with the Commission for its extraterritorial water system. The important matter here is whether the customers in the acquired portion of the Borough’s system were receiving inferior service or whether the Company was not able to properly maintain the system facilities. The fact that the Borough chose to subsidize its extraterritorial customers with its territorial customer revenues rather than to file a rate case with the Commission to increase the rates for its extraterritorial customers, is not convincing evidence of the acquired water system being troubled.

We determine that the Company’s arguments regarding manual meter reading, relatively high unaccounted-for water levels, and hydrant repair/replacement issues do not rise to the level of rendering the Phoenixville Water System “troubled at the time of acquisition.” *See* Aqua R.B. at 13. The Company discusses at length its examination of the acquired assets post-acquisition and its findings of inadequacies. Aqua also vehemently argues against the I&E position that a “known or knowable” system flaw would render an acquisition adjustment claim under Section 1327 unavailable – making the statutory provision effectively a nullity. Aqua Exc. at 17.

We observe that recent orders of this Commission have directed acquiring utilities to present evidence supporting the inclusion of acquired assets in rate base and any claims of a Section 1327 acquisition adjustment be made in the first base rate case following application approval. *See e.g., Application of Columbia Water Company* Docket Nos. A-2021-3027134 and S-2021-3027145 (Order entered February 3, 2022). Thus, an acquiring utility is not prohibited from seeking an acquisition adjustment and enjoying the rebuttable presumption that such an adjustment should be made, should it: (1) discover system deficiencies; and (2) present sufficient evidence that establishes sufficiently that the acquired system was troubled at the time of acquisition. Section 1327 allows for this. In our view, an adequate measure of evidence simply was not presented by Aqua in the instant matter, when the underlying history of the sale is considered, and the discovered system inadequacies are evaluated.

The Company also filed Exceptions arguing that the Commission should approve its acquisition adjustment because “the Commission had previously *directed* Phoenixville to avail itself of an acquisition to alleviate these burdens.”¹⁷ Aqua Exc.

¹⁷ In its Main Brief, Aqua also incorrectly submitted that “the Commission imposed a regulatory requirement that Phoenixville sell the assets used to serve the extraterritorial customers, if it wanted to avoid the regulatory burdens associated with the Commission’s jurisdiction.” Aqua M.B. at 20 (emphasis provided).

at 16. It appears that Aqua filed this Exception in support of its position that the Borough was not providing adequate service. However, as the OCA noted in its Replies to Exceptions, it is important to note that this Commission never “*directed*” the Borough to sell its extraterritorial assets. OCA R. Exc. at 2. In the *Phoenixville Petition Order*, it is clear that we only suggested that the sale of the extraterritorial water system was a viable option for the Borough to consider:

Finally, the Commission would be remiss if we did not acknowledge Phoenixville’s concern regarding the regulatory “burden” related to Commission jurisdiction. However, the Commission believes these so-called “burdens” are justifiable and if reasonable, recoverable from ratepayers. Commission oversight provides voiceless extraterritorial customers with service protections and it ensures reasonable rates that will provide for safe and reliable service over the long term. Similarly, the Commission would also be remiss if we did not acknowledge that unlike in the prior municipal corporation cases, there are viable options for the Borough, namely, PAWC’s provision of public utility service in Upper Providence Township and Aqua Pennsylvania’s provision of public utility service in Schuylkill Township. In conclusion, Phoenixville clearly has options to these perceived regulatory “burdens” which may prove beneficial to explore.

Phoenixville Petition Order at 7-8. Notwithstanding Aqua’s mischaracterization of the Commission’s Order, we are of the opinion that even if the Commission had “directed” the Borough to sell its unwanted assets, the Company’s argument does not support its position that the Borough was not providing adequate water service and, thus, the acquisition cost beyond the depreciated original cost should be included in rate base. We agree with the ALJ that the Commission’s comment to the Borough regarding a possible acquisition does not justify Aqua’s decision to pay more than book value for the Phoenixville Water System. R.D. at 43.

In accordance with the above discussion, we shall deny the Company's Exception No. 2 and adopt the ALJ's recommendation that removes \$2,437,305 from Aqua's rate base and makes the concomitant adjustments to the accrued depreciation reserve and annual amortization expense, which is expressed as a depreciation expense in this filing. Thus, the Company's claimed depreciation expense will be reduced by \$121,865. These adjustments are reflected in Table II – Water, which is included in the rate tables that outline the Commission Tables Calculating Allowed Revenue Increase, which are attached to this Opinion and Order.

C. Additions to Rate Base – Cash Working Capital and Material & Supplies

1. Positions of the Parties

CWC is the capital requirement arising from the difference between: (1) the lag in the receipt of revenue for rendering service; and (2) the lag in the payment of cash expenses incurred to provide that service. R.D. at 44.

The Company's CWC claims for its water and wastewater operations include the working capital that is necessary for its O&M expense, taxes, and interest.¹⁸ *Id.* The Company claimed a CWC amount of \$1,736,000 for its water operations¹⁹ and a CWC amount of \$550,000 for its wastewater base operations.²⁰ *Id.*

¹⁸ See Aqua Exhibit 1-A(a), Schedule G-5; *see, e.g.*, Aqua Exhibit 1-B(b), Schedule G-5. Schedule G-5 in Exhibits 1-C through 1-G reflect the CWC amounts claimed for each of the individual wastewater operations claimed in this proceeding.

¹⁹ Aqua Exh. 1-A(a), Schedule G-5.

²⁰ Aqua Exh. 1-B(b), Schedule G-5.

No Party challenged the Company's lead/lag study²¹ or its calculation of: (a) the average lag days in payment of expenses, taxes, or interest; (b) the average lag day in receipt of revenues; or (c) the average lag days between payment of expenses and receipt of revenue.²² *Id.*

However, I&E recommended an adjustment to the CWC only for the water operations based on its recommended adjustments to revenue, O&M expenses, and taxes.²³ *Id.* I&E did not recommend any adjustments to wastewater base operations, or any individual wastewater operations because the proposed adjustments did not result in material changes to the respective CWC claims. R.D. at 44-45 (citing I&E St. 1 at 30).

The OCA's proposed adjustments to CWC were initially limited to the interest component of CWC. R.D. at 45 (citing OCA St. 1 at 24-25). However, the OCA subsequently revised its recommendations to reflect updates of operating expenses based on the OCA's proposed adjustments to operating expenses. *Id.* (citing OCA St. 1-SR at 12).

Aqua adjusted its claims for CWC based on the OCA's recommended adjustments to rate base, O&M expenses and taxes. The pertinent tables in the Appendix of the Recommended Decision reflect those adjustments. R.D. at 45.

Aqua also included an addition of \$7,672,303 for materials and supplies to its water operations rate base. R.D. at 45 (citing Aqua St. 1 at 27; Aqua Exh. 1-A, Sch. G-4). This amount was developed by averaging the monthly balances in the M&S

²¹ See Aqua St. 1 at 27 (describing the results of the lead/lag study).

²² See, *i.e.*, I&E St. 1 at 30 (agreeing with the Company's use of the lead/lag study method).

²³ I&E St. 1 at 30-31; *see also* Aqua St. 1-R at 10.

account for water operations for the thirteen months ended March 31, 2021.²⁴ Aqua’s wastewater filing includes a Schedule G-4, but “Aqua PA does not maintain a significant amount of standby materials and supplies for wastewater operations and, therefore, material and supplies [for wastewater operations] are expensed as they are purchased.” Aqua St. 1 at 27.

No Parties challenged the Company’s claim for an addition to rate base for materials and supplies.

2. Recommended Decision

The ALJ recommended that the Company’s claim for CWC be adopted, as adjusted by the Company, to reflect the recommended adjustments by I&E and the OCA to rate base, O&M expenses, and taxes. The ALJ also adopted the Company’s claim for an addition to rate base for M&S. R.D. at 45. The claims and pertinent adjustments recommended by the ALJ are reflected in the rate tables included in the Appendix to the Recommended Decision. A description of each of the tables is included on the first three pages of the Appendix.

3. Disposition

None of the Parties filed Exceptions regarding the ALJ’s recommendation on the Company’s remaining proposed adjustments to its plant in service. We find the ALJ’s recommendation to be reasonable and shall adopt it. As will be discussed in more detail in Section VIII.M of this Opinion and Order, *infra*, regarding the Company’s expense claims, a net increase of \$275,473 will be applied to the CWC component of

²⁴ Aqua St. 1 at 27.

Aqua's water rate base. This figure reflects, in part, our downward adjustment to O&M expenses of \$1,900,892.

Additionally, a net increase of \$362,667 will be applied to the CWC component of Aqua's wastewater rate base, which reflects, in part, our downward adjustment to wastewater O&M expenses of \$232,643. This is broken down as follows: (1) a net increase to the CWC component for Wastewater-Base of \$216,340, which reflects, in part, our downward adjustment to O&M expenses of \$150,101; (2) a net increase to the CWC component for Wastewater-Limerick of \$76,673, which reflects, in part, our downward adjustment to O&M expenses of \$27,778; (3) a net increase to the CWC component for Wastewater-East Bradford of \$9,669, which reflects, in part, our downward adjustment to O&M expenses of \$7,802; (4) a net increase to the CWC component for Wastewater-Cheltenham of \$54,249, which reflects, in part, our downward adjustment to O&M expenses of \$16,469; (5) a net increase to the CWC component for Wastewater-East Norriton of \$24,706, which reflects, in part, our downward adjustment to O&M expenses of \$14,318; and (6) a reduction to the CWC component for Wastewater-New Garden of \$18,970, which reflects, in part, our downward adjustment to O&M expenses of \$16,175.

In making the above adjustments, we have applied the same methodology utilized by Aqua and the ALJ and agreed upon by I&E and the OCA. Additionally, these adjustments are reflected in Table II-Adjustments in each of the sets of Commission Tables Calculating Allowed Revenue Increase that are attached in the Appendix to this Opinion and Order.

D. Deductions from Rate Base – Customer Advance for Construction, Contributions in Aid of Construction and Accumulated Deferred Income Tax (ADIT)

1. Positions of the Parties

“A customer advance for construction or ‘CAC’ is funds paid to a utility for an extension of service that is refunded over time to the applicant for service.” Aqua St. 2-R at 9. Similarly, “[c]ontributions in aid of construction or ‘CIAC’ are amounts furnished by applicants for facilities that may not be subject to a refund.” Aqua M.B. at 33; Aqua St. 2-R at 9. Both CAC and CIAC are treated as a reduction to a utility’s rate base.

With respect to its water operations, the Company’s claim for CAC and CIAC²⁵ reduced rate base by (\$178,784,735). R.D. at 45; Aqua Exh. 1-A, Sch. G-6. With respect to wastewater base operations, the Company’s claim reduced rate base by (\$20,965,154). Aqua Exh. 1-B, Sch. G-6.²⁶ Although the OCA initially proposed adjustments to CAC and CIAC, those proposals were subsequently withdrawn. OCA M.B. at 23; OCA R.B. at 9.

Additionally, Aqua claimed a total of \$392,515,121 for water and \$9,356,312 for wastewater in ADIT.²⁷ R.D. at 46. These amounts included normalized ADIT and the unamortized balance of excess ADIT resulting from various federal income tax rate reductions. Aqua St. 8 at 14. In rejoinder testimony, Aqua identified an

²⁵ Schedule G-6 of Aqua Exhibits 1-A and 1-B contain the Company’s proposed reductions to rate base for CAC and CIAC.

²⁶ No adjustments for CAC and CIAC were included in Exhibits 1-C through 1-G.

²⁷ See Aqua St. 8 at 14; *see also* Aqua Exh. Nos. 1-A(a) through 1-G(g), Sch. G-7.

additional \$6.1 million to be deducted from water rate base associated with the Company's claim regarding the treatment of uncertain tax positions in computing the flow-through deduction for tax repairs (FIN 48 adjustment). R.D. at 46; Aqua St. 8-R at 7; Aqua St. 8-RJ at 3. This adjustment was reflected by Aqua in its rate case tables attached to its Main Brief.²⁸

The OCA accepted the additional rate base deduction associated with uncertain tax positions, even though the OCA continued to oppose the Company's treatment of uncertain tax positions in computing the flow-through deduction for tax repairs. R.D. at 46; OCA St. 1-SR at 13-15.

2. Recommended Decision

The ALJ accepted Aqua's treatment of uncertain tax positions in computing the flow-through deduction for tax repairs. The ALJ noted that any other adjustments to ADIT as a result of other rulings are accounted for in the rate tables included in the Appendix to the Recommended Decision. R.D. at 46.

3. Disposition

No Party filed Exceptions on this issue. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment.

²⁸ See Aqua Table I Water, Column "Company Adjustments."

VII. Revenues and Revenue Requirement

A. Revenue Requirement

A utility's revenue requirement represents the total revenue that the utility needs to collect through the rates charged to the public to cover its cost of service. See https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf, accessed on March 18, 2022, (*PUC Rate Case Handbook*) at 102. The formula to calculate the utility's revenue requirement is set forth, as follows:

$$RR=T+E+D+(RB \times ROR)$$

Where: RR=Revenue Requirement

T=Taxes

E=Operating Expense

D=Depreciation Expense

RB=Rate Base

ROR=Overall Rate of Return

I&E M.B. at 42, n.169. The central issue in a base rate case involves identifying the appropriate cost of service, or revenue requirement, for the company, in this case Aqua.²⁹ *PUC Rate Case Handbook* at 102.

1. Positions of the Parties

Aqua's final proposed revenue requirement on a total Company basis was approximately \$644,073,506, representing a proposed revenue increase of \$96,990,325 over *pro forma* revenues at present rates of \$547,083,180. After allocating a portion of

²⁹ We have discussed the Company's rate base, *supra*, and will discuss the remaining components of the Company's Revenue Requirement formula in the sections that follow.

the wastewater revenue requirement to water customers, this consisted of a proposed water revenue requirement of \$595,496,015, representing a proposed revenue increase of \$85,489,328 over water revenues at present rates of \$510,006,687; and a proposed wastewater revenue requirement of \$48,577,490, representing a proposed revenue increase of \$11,500,997 over wastewater revenues at present rates of \$37,076,493. Aqua M.B. at Appendix F, Water and Wastewater Revenue Requirement – Summary.³⁰

I&E recommended a revenue requirement of \$584,241,297 for Aqua, on a total company basis. I&E's proposal would result in a total revenue increase of approximately \$33.9 million over revenues at present rates of \$550,331,987. After allocating a portion of the wastewater revenue requirement to water customers, this consisted of a water revenue requirement of \$530,478,098, representing an increase of approximately \$17.223 million to the Company's water revenues of \$513,225,494 at present rates; and a wastewater revenue requirement of \$53,763,149, representing an increase of approximately \$16.687 million to the Company's wastewater revenues of \$37,076,443 at present rates. I&E M.B. at 5; M.B., Appendix A, Table VII-Water-Act 11 Allocation.

The OCA proposed a final revenue requirement of \$549,967,611 on a total Company basis, representing a revenue reduction of approximately \$12.142 million. OCA M.B. at 16; Appendix A, Summary Table.

³⁰ As previously noted, the Company stated in the body of its Main Briefs that its final revenue increase request was approximately \$97.6 million, which consisted of a claimed increase in water revenues of \$86.118 million and a claimed increase in wastewaters revenues of approximately \$11.566 million. Aqua M.B. at 2. However, Appendix F, Water and Wastewater Revenue Requirement – Summary, which is set forth in the Company's Main Briefs, shows a final proposed increase of \$85,489,328 in water revenues and \$11,500,997 in wastewater revenues, representing a total combined requested revenue increase of approximately \$96,990,325.

Although CAUSE-PA did not propose a specific revenue requirement in this proceeding, it stated that it supported and adopted the position of the OCA. CAUSE-PA M.B. at 12.

2. Recommended Decision

The ALJ recommended an overall revenue requirement of approximately \$582.2 million for Aqua on a total Company basis, based on the various adjustments she adopted in her Recommended Decision, resulting in an overall distribution revenue increase of approximately \$31.9 million. After allocating a portion of the wastewater revenue requirement to water customers, the ALJ's recommendation consisted of: (1) a revenue requirement of \$528.4 million for Aqua's water service, representing an increase of approximately \$15.2 million over *pro forma* present rate water revenues; and (2) a revenue requirement of \$53.8 million for Aqua's wastewater service, representing an increase of approximately \$16.7 million over *pro forma* present rate wastewater revenues. The ALJ's recommendation represented an increase of approximately 2.97% in water operating revenue and an increase of approximately 45% in wastewater operating revenue. R.D. at 1, 140, Appendix Table Act 11 – Water and Wastewater Revenue Requirement - Summary.

3. Disposition

Based upon our findings regarding certain inputs to Aqua's rate base, *supra*, and to Aqua's revenues, expenses, cost of common equity, and overall rate of return, discussed, *infra*, we shall approve an overall revenue requirement of \$617,476,255, on a total company basis, which will result in a maximum allowed overall distribution revenue increase of \$69,251,169, on an annual basis. After allocating a portion of the wastewater revenue requirement to Aqua's water customers, we shall approve: (1) a revenue requirement of \$561,658,784 for Aqua's water service,

representing a revenue increase of \$50,510,192, on an annual basis; and (2) a revenue requirement of \$55,817,471³¹ for Aqua’s wastewater service, representing a revenue increase of \$18,740,978,³² on an annual basis. These amounts are depicted on Table Act 11 Water and Wastewater Revenue Requirement – Summary, which is part of the Commission Tables Calculating Allowed Revenue Increase that are attached to this Opinion and Order.

B. Rider DRS Contracts

1. Positions of the Parties

Aqua proposed updated FPFTY *pro forma* revenues at present rates as set forth in Schedule B-1 of Aqua Exhibits 1-A(a) through 1-G(g). As a part of its direct case on revenue requirement, Aqua included an explanation of the basis for a number of water resale contracts charging discounted rates pursuant to Aqua’s tariff Rider DRS – Demand Based Resale Service (Rider DRS). *See* Tariff Water No. 3, Original Page 20. Aqua noted that “Rider DRS is available to existing or new customers that intend to purchase water from the Company for resale and have a viable competitive alternative to service from the Company.” Aqua St. 2-R at 11. Customers that can satisfy the requirements of Rider DRS may qualify for customer-specific contracts at

³¹ As set forth in Table Act 11 – Water and Wastewater Revenue Requirement – Summary, which is included in the Commission Tables Calculating Allowed Revenue Increase, attached to this Opinion and Order, this amount consists of the following individual wastewater revenue requirements: \$25,849,065 for Wastewater-Base Operations, \$7,249,205 for Wastewater-Limerick, \$1,663,639 for Wastewater-East Bradford; \$12,044,410 for Wastewater-Cheltenham, \$4,582,750 for Wastewater-East Norriton, and \$4,428,399 for Wastewater-New Garden.

³² This amount consists of the following individual allowed annual revenue increases: \$6,837,304 for Wastewater-Base Operations, \$3,270,632 for Wastewater-Limerick, \$649,070 for Wastewater-East Bradford; \$4,785,671 for Wastewater-Cheltenham, \$1,658,983 for Wastewater-East Norriton, and \$1,539,319 for Wastewater-New Garden. *See Id.*

discounted rates designed to maintain sales that would otherwise be lost to water service alternatives. *Id.*

Rider DRS further provides that, in order to qualify for discounted rates, a customer must have a competitive alternative:

The Company shall require documentation to establish, to the Company's satisfaction, the existence of a competitive alternative. Such documentation may include, but is not limited to, an affidavit of the customer or, if the customer is a corporation, an affidavit of one or more of its officers.

Tariff Water No. 3, Original Page 20.

In the Joint Petition for Settlement (2018 Settlement) approved by the Commission in the *Aqua 2018 Rate Case*, the Company agreed to provide “documentation of the existence of a viable competitive alternative to water service provided by the Company for the following Rider DRS customers and any new Rider DRS customers added after the date of this [2018 Settlement]”:

Rider DRS Customers

Chemung County Industrial Development Agency [(Chemung)]
New Wilmington Municipal Authority [(New Wilmington)]
Warwick Township Water and Sewer Authority [(Warwick)]
Borough of Sharpsville [(Sharpsville)]
City of Hubbard [(Hubbard)]
Horsham Water Authority [(Horsham)]
Schwenksville Borough Authority [(Schwenksville)]

2018 Settlement at ¶ 24.

Aqua also agreed in the 2018 Settlement “to date each competitive alternative analysis that is submitted regarding the above Rider DRS customers or new Rider DRS customers, and provide dates for when the competitive alternative analysis

was last considered, if applicable.” 2018 Settlement at ¶ 25. In addition, Aqua agreed to provide “a competitive alternative for the rates charged to [Aqua Ohio’s Masury Division (Masury)] area customers in its next water base rate filing.” 2018 Settlement at ¶ 26. Finally, it was noted in ¶ 27 of the Joint Petition that any party to same “reserves the right to review and challenge any contract and/or rate in future Aqua base rate filings, or in subsequent litigation related to this proceeding.”

I&E reviewed the updated information provided by Aqua regarding the Rider DRS customers and found that the documentation was inadequate to demonstrate a competitive alternative for certain customers. Thus, I&E proposed adjustments related to the “cancellation” of certain negotiated contracts that provide for sales for resale of water.³³ See I&E St. 4-SR at 17-18, I&E M.B. at 25-29.

I&E argued that several of the contracts do not qualify for the tariff discount and that these customers should pay full tariff rates when the rates resulting from this base rate case become effective. Specifically, I&E contended that resale customers are only eligible for discounted rates in a negotiated contract upon demonstration of the existence of a “viable competitive alternative” to service by the Company, and that the customer or prospective customer intends to select that alternative. In addition, I&E argued that unless and until the contract between Aqua and Masury – which was filed with the Commission as an affiliated interest agreement in November 2021 – is approved, Masury should be billed at full tariffed rates. I&E St. 4-SR at 20, I&E M.B. at 28.

³³ I&E originally sought to have additional discount contract customers moved to full tariff rates but withdrew its requests in surrebuttal testimony based upon the Company’s demonstrated evidence of available competitive alternatives.

2. Recommended Decision

The ALJ agreed with I&E that the documentation supplied by many of the discount rate customers was insufficient to demonstrate the existence of a competitive alternative. R.D. at 47. The ALJ reasoned that while an analysis of a competitive alternative need not be complex, more is required than simply a self-serving statement that competitive alternatives exist. The ALJ concluded that it is not burdensome to require the customer to include at least some description of the available alternatives and that it is not reasonable for Aqua to be satisfied by a dearth of information. The ALJ thus recommended that the Chemung and Horsham customers should be subject to Aqua's full tariffed rates. R.D. at 48.

The ALJ also agreed with I&E that the contract with New Wilmington does not comply with the terms of Rider DRS, and likewise should be subject to full tariff rates. *Id.* The ALJ determined that the only competitive alternative identified in the documentation supporting the discounted sale rate for the Borough of Sharpsville was the potential construction of an expensive new water treatment plant. The ALJ found that there was no evidence that this alternative is financially viable or that Sharpsville could purchase water from other sources and, accordingly, found that the contract with the Borough of Sharpsville does not qualify for Rider DRS. *Id.* at 48-49.

In contrast, the ALJ found that the documentation provided by the Executive Director of Schwenksville Borough is sufficient to demonstrate that the competitive contract satisfies the language of Rider DRS regarding the availability of competitive alternatives. Although not in the form of an affidavit, the ALJ determined that the letter is sufficiently reliable for the purpose of determining Schwenksville's qualification for Rider DRS. The ALJ concluded that it is reasonable for the Company to be satisfied by this description of a competitive alternative for the purpose of offering discounted service. *Id.* at 49.

In addition, the ALJ noted that Aqua provides water to Masury under a special tariff rate, that Aqua and Masury have negotiated a new contract under Rider DRS, but that the contract is an affiliated interest agreement that must be approved by the Commission pursuant to 66 Pa. C.S. § 2101, *et. seq.* R.D. at 49. Explaining that the agreement was filed with the Commission on November 30, 2021, and is pending a decision, the ALJ reasoned that, until the Commission makes a determination regarding the agreement, Masury should be charged full tariff rates, because doing otherwise would be premature. The ALJ recommended that Aqua's present rate revenues should be increased accordingly. R.D. at 49-50.

In summary, the ALJ recommended that the Commission direct Aqua to charge Sharpsville, Chemung, Horsham, and New Wilmington the full tariffed rates specified in Aqua's rate schedules upon the effective date of new base rates in this proceeding. She noted that this was without prejudice to the affected customers' ability to provide specific supporting documentation to Aqua that would satisfy the requirements of Rider DRS, including evidence that the affected customer has a viable competitive alternative and intends to select that alternative in the absence of a discounted rate. R.D. at 49. The ALJ also recommended that Masury be charged full tariff rates pending Commission consideration of the filed affiliated agreement. *Id.* at 46-50.

3. Aqua Exception No. 3, I&E Exception No. 1, and Replies

In its Exception No. 3, Aqua claims that the ALJ erroneously directed the Company to cancel certain Rider DRS contracts and charge those customers full tariff rates. The Company notes that the contracts were negotiated in good faith, in some cases, many years ago, and that cancellation of these arrangements could likely negatively impact current Aqua customers, create unnecessary litigation, and force local governments to build infrastructure, which they previously relied upon as being unnecessary. Aqua Exc. at 18-20.

Aqua claims that Rider DRS permits Aqua to enter into customer specific contracts at prices designed to maintain sales that would otherwise be lost to water service alternatives for customers that can satisfy the requirements of the rider. Aqua M.B. at 38-40. Aqua submits that the ALJ erred by agreeing with I&E's focus on the requirement that such customers must have a "competitive alternative" to qualify for the rate discount. Aqua notes that the contracts at issue include those between Aqua and Sharpsville, Schwenksville, Chemung, Horsham, and New Wilmington. Aqua Exc. at 18-21 (citing I&E St. 4-SR at 18). Aqua also disagrees with the ALJ's conclusion that charging Masury discounted rates is "premature." Aqua Exc. at 19 and 21-22.

Aqua claims that the ALJ's recommendations ignore the specific language of Rider DRS, which provides that:

The Company shall require documentation to establish, to the Company's satisfaction, the existence of a competitive alternative. Such documentation may include, but is not limited to, an affidavit of the customer or, if the customer is a corporation, an affidavit of one or more of its officers.

Tariff Water No. 3, Original Page 20 (emphasis added). Aqua Exc. at 19.

Emphasizing that the Company is required to adhere to its tariff pursuant to 66 Pa. C.S. § 1303, Aqua asserts that the ALJ's conclusions undermine the Company's ability to essentially exercise its judgment in evaluating the information supplied by potential contracting parties, and thus, adhere to its tariff as it is obligated to do under the Code. Aqua Exc. at 19. Additionally, Aqua argues that the ALJ disregarded the basis upon which the parties entered into these contracts and that her recommendation undermines the benefits these contracts provide to other customers. Aqua Exc. at 19-20 (citing Aqua M.B. at 41-42). Aqua claims that, by recommending that the Commission adopt the position of I&E, the ALJ supports I&E's "second guessing of documentation, contracts and decisions made by entities in the past." Aqua Exc. at 20. Aqua avers that

the ALJ's recommendation is erroneous because it "ignores the realities of these long-term contracts and seeks to analyze them in a vacuum, divorced from the specific facts and circumstances that existed at the time the contracts were entered into." *Id.* Aqua further claims that the Recommended Decision fundamentally alters the good faith, arms-length negotiations of the parties when they entered into the contracts over a decade ago. Aqua Exc. at 20 (citing Aqua M.B. at 42). Aqua submits that this ultimately eliminates approximately \$974,405 in benefits to other existing Aqua customers.³⁴ *Id.* (citing Aqua M.B. at 38-39).

Aqua next addresses the recommendations specific to each of its contracts with Chemung, Horsham, Sharpsville, New Wilmington, and Masury. Taking the Chemung, Horsham, and New Wilmington contracts together, Aqua claims that the ALJ erroneously concludes that the documentation provided by Chemung and Horsham is only "a self-serving statement that competitive alternatives exist" and that "[i]t is not reasonable for Aqua to be satisfied by so little information." Aqua Exc. at 20. Aqua submits that the statement in the Chemung contract is not "self-serving," but rather, it is a legally binding representation by this municipality, that forms the basis for the contract itself. *Id.* (citing Aqua M.B. at 47). Aqua argues that effectively, the ALJ appears to insinuate that the representations of a municipal entity that binds itself to a long-term contract based thereon is not to be trusted. Aqua asserts that there is no support for such a finding in the record. Aqua Exc. at 20.

Aqua insists that it demonstrated that Horsham has existing interconnections with the Company and another water provider, in addition to wells located throughout its own system. Aqua Exc. at 20-21 (citing Aqua M.B. at 48). Aqua argues that the Recommended Decision ignores these alternative supplies, and further

³⁴ Aqua claims that this is the sum of the benefits of the contracts associated with the applicable entities. Aqua Exc. at 20.

disregards the undisputed fact that Horsham could supply 100% of its water through sources other than the Company. Aqua Exc. at 20-21 (citing Aqua M.B. at 48).

With regard to New Wilmington, Aqua claims that the ALJ is in error by concluding that Aqua's contract with New Wilmington does not comply with Rider DRS. Aqua Exc. at 21. The Company claims that it demonstrated that the wheeling agreement³⁵ with New Wilmington provides important benefits, including enabling Aqua to provide service to a noncontiguous area of its service territory at low cost. According to Aqua, these factors make it reasonable for the Company to conclude that such a wheeling agreement does not require a competitive alternative. *Id.* (citing Aqua M.B. at 48-49).

Aqua next addresses the Sharpsville contract and asserts that the ALJ erred by retroactively concluding that the alternative identified by Sharpsville at the time it entered into the contract is not viable. Aqua Exc. at 21. Aqua asserts that the ALJ ignores other representations in the original contract by concluding that "the only competitive alternative identified in the documentation supporting the discounted sale rate was the potential construction of an expensive new water treatment plant. There is no evidence that this alternative is financially viable or that Sharpsville could purchase water from other sources." *Id.* at 21 (citing R.D. at 48-49). Aqua claims that Sharpsville also made representations at the time the contract was entered into regarding the then-existing source of supply. Aqua Exc. at 21 (citing Aqua M.B. at 44-45). Aqua asserts that this evidence conclusively demonstrates that Sharpsville was not only contemplating a new alternative to obtaining water service from Aqua, but also had an existing alternative at the time it entered into the contract. Aqua Exc. at 21 (citing Aqua

³⁵ Under a wheeling agreement, the Company "wheels" water to a proposed service area that is not contiguous with its distribution system. To transport the water to the proposed service area, Aqua provides water at a designated point of interconnection and then withdraws water elsewhere to serve the new service area. Aqua St. 2-R at 24.

M.B. at 44-45). Aqua adds that Sharpsville subsequently provided an affidavit that satisfies Rider DRS. Aqua Exc. at 21 (citing Aqua M.B. at 45-46). As a result, Aqua claims that the Commission should not cancel its long-term DRS contract with Sharpsville mid-term where the stated alternative at the time of contracting does not now exist precisely because of the Aqua DRS contract. *Id.* In sum, Aqua avers that Sharpsville has provided the documentation required by Aqua's tariff, and Aqua is obligated to adhere to its tariff. Aqua Exc. at 21.

Finally, Aqua asserts that the ALJ erred by concluding that the pendency of a Commission decision on the Masury contract dictates that the full tariff rate be applied to this customer unless and until the contract is approved. Aqua Exc. at 21-22. According to Aqua, the ALJ misunderstood the facts. Specifically, Aqua claims that the Recommended Decision disregards the fact that Aqua currently provides water to Masury under a special tariff rate.³⁶ In addition, Aqua points out that this specific agreement contains a competitive alternative analysis, as well as a sworn affidavit from Masury that it would select the alternative in the absence of the new contract. Aqua Exc. at 22 (citing Aqua M.B. at 49-50). Aqua contends that, if it is to be concluded that the Masury contract is not approved, then, rather than impute over \$1 million in additional revenues from Masury as proposed by the ALJ, the Commission should remove \$258,000 in revenues that will not be received from Masury. Aqua Exc. at 21 (citing Aqua M.B. at 50).

I&E replies to Aqua's assertions of error by stating that the ALJ correctly reasoned that customers who are able to satisfy the requirements of Rider DRS can enter into customer specific contracts at prices designed to maintain sales that would otherwise be lost to water service alternatives. I&E R. Exc. at 8 (citing R.D. at 47-50). I&E stresses that the key consideration under Aqua's tariff is the existence of a competitive

³⁶ See Tariff Water – Pa. P.U.C. No. 2, Third Revised Page 12.4.

alternative. According to I&E, the ALJ correctly analyzed the evidence presented regarding each of the Rider DRS contracts and reached well-reasoned conclusions. *Id.* I&E asserts that, while Aqua had the opportunity to provide substantial record evidence to support each of the Rider DRS contracts, it failed to meet its burden regarding those contracts identified by the ALJ. Therefore, I&E submits that the Commission should reject Aqua's Exception No. 3. I&E R. Exc. at 8.

In its Exception No. 1, I&E finds fault with the ALJ's conclusion that Aqua supplied sufficient evidence to support the DRS contract between Aqua and Schwenksville. I&E Exc. at 3-4 (citing R.D. at 49). I&E submits that the ALJ erroneously found that "the documentation provided by the Executive Director of Schwenksville Borough is sufficient to demonstrate that the competitive contract satisfies the language of Rider DRS regarding the availability of competitive alternatives." I&E Exc. at 3 (citing R.D. at 49). I&E specifically disagrees with the ALJ's conclusion that, "[a]lthough not in the form of an affidavit, the letter is sufficiently reliable for the purpose of determining Schwenksville's qualification for Rider DRS." I&E Exc. at 3-4 (citing R.D. at 49). I&E also disagrees that "it is reasonable for the Company to be satisfied by this description of a competitive alternative for the purpose of offering discounted service." I&E Exc. at 4 (citing R.D. at 49). I&E asserts that the letter provided by Schwenksville does not rise to the level of an affidavit and, therefore, is not sufficiently reliable for the purpose of determining Schwenksville's qualification for a Rider DRS. I&E Exc. at 4.

I&E argues that the document provided by Aqua is merely a cover letter with no oath or affirmation, and not an affidavit or the legal equivalent of one and thus, does not meet the standard required to be considered valid documentation supporting a competitive alternative under the plain language in Aqua's tariff. I&E Exc. at 4. Therefore, according to I&E, the Commission should overturn the ALJ's

recommendation, cancel the Schwenksville contract, and require Schwenksville to begin paying full tariff rates when they go into effect pursuant to this base rate proceeding. *Id.*

Aqua replies that I&E's argument disregards the plain language of Rider DRS, which permits Aqua to accept "documentation [that] may include, but is not limited to, an affidavit." Tariff Water No. 3, Original Page 20 (emphasis added). Aqua R. Exc. at 1-2. Aqua submits that it fully addressed I&E's claims and demonstrated that it satisfies the requirements of its tariff. Aqua R. Exc. at 1-2 (citing Aqua M.B. at 46-47, Aqua R.B. at 17-18). Aqua also argues that adopting I&E's assertion would violate the requirements of 66 Pa. C.S. § 1303, which requires Aqua's adherence to its effective tariff. For these reasons Aqua requests that I&E's exception be denied. Aqua R. Exc. at 2.

4. Disposition

At the outset, we note that adherence to tariff provisions is a statutory obligation of the utilities we regulate. 66 Pa. C.S. § 1303. We further note that when analyzing a tariff provision, like the law, we will not ignore its plain language under the pretext of pursuing its spirit. Finally, we study carefully the agreements reached by parties and commitments made in settlements brought to the Commission for its consideration and the evidence submitted in purported compliance with those settlement terms. With these governing principles in mind, we adopt, in part, and reject, in part, the recommendations of the ALJ on the DRS contract issues, as discussed more fully below.

It is useful first to repeat Aqua's obligations agreed to in the 2018 Settlement. The Company agreed to provide "documentation of the existence of a viable competitive alternative to water service provided by the Company for the following Rider DRS customers and any new Rider DRS customers added after the date

of this Joint Petition” for Chemung, New Wilmington, Warwick, Sharpsville, Hubbard, Horsham, and Schwenksville. 2018 Settlement at ¶ 24.

Aqua also agreed as follows:

25. Aqua agrees to date each competitive alternative analysis that is submitted regarding the above Rider DRS customers or new Rider DRS customers, and provide dates for when the competitive alternative analysis was last considered, if applicable.

26. Additionally, Aqua agrees to provide a competitive alternative for the rates charged to Masury area customers in its next water base rate filing.

27. Any party to this Joint Petition reserves the right to review and challenge any contract and/or rate in future Aqua base rate filings, or in subsequent litigation related to this proceeding.

2018 Settlement at ¶¶ 25-27.

These settlement commitments by Aqua were approved as a part of the Commission’s Opinion and Order in the *Aqua 2018 Rate Case*. We analyze each part of these settlement terms as context for the direct case that Aqua was to present in this, its next, base rate case.

Reviewing the 2018 Settlement language carefully, it is patently evident that under Paragraph 25, Aqua agreed to undertake a competitive alternative analysis for each existing and new Rider DRS contract, date those analyses, and indicate when the competitive alternative analysis “was last considered, if applicable.” This language seems to contemplate that consideration of the competitive alternative offered by a contracting party could be undertaken periodically during the course of the contract. This concept is contrary to Aqua’s claim now, in this present case, that the original validation of the availability of a competitive alternative is undertaken only at the time of contracting and it is not reviewed until the term of the contract expires.

With regard to the Masury contract, the 2018 Settlement contemplated that Aqua would “provide a competitive alternative for the rates charged to Masury area customers” in its next base rate case. This language is inartful, at best, and confusing when viewed in the context of our consideration of the Recommended Decision on the pending Masury contract and Aqua’s Exceptions regarding the same. Nevertheless, we examine the evidence of record and the ALJ’s recommendation on the Masury contract issue as we find it and rule on that basis.

Finally, we note that we do not have before us a recommendation or dispute regarding Aqua’s contracts with Hubbard, Warwick, Downingtown Municipal Water Authority, and Bucks County Water and Sewer Authority - Bristol. I&E withdrew its opposition to these contracts based upon information supplied by the Company. *See* I&E M.B. at 25-29. I&E indicated that it did not address Aqua’s contract with United Water because it was previously approved by the Commission. Our review of the record regarding these contracts indicates that even though they may provide some mutual benefit to the parties and are not detrimental to Aqua’s other customers, some of them potentially do not fit strictly within the applicability standards for Rider DRS. We strongly encourage Aqua to consider the development of an appropriate tariff provision governing the unique circumstances of these contracts.

With regard to the Chemung, Horsham and Sharpsville rate discounts, we agree with Aqua that it has presented sufficient record evidence to support the discounted rates based upon the availability of competitive alternatives. Aqua’s decisions to grant the discounted rates to these entities were validly based on official representations made by responsible municipal officials. For these reasons, we shall grant Aqua’s Exception No. 3 with respect to its arguments regarding the Chemung, Horsham, and Sharpsville discounts and reject the ALJ’s recommendations that these customers be charged full tariff rates. Based on our granting this portion of Aqua’s Exceptions, the ALJ’s upward adjustment of \$2,983,780 to the Company’s revenues, as set forth on Table II - Water in

the Attachment to the Recommended Decision, will be reduced by \$1,847,694.³⁷ Therefore, our total upward adjustment to the Company's Revenues as a result of water contract revenue is \$1,136,086 (*i.e.*, \$2,983,780 - \$1,847,694 = \$1,136,086).³⁸

As for New Wilmington, however, we agree with Aqua that it must adhere to its tariff language and the applicable DRS Rider does not contain any provision for the type of "wheeling" arrangement that Aqua entered into here. Aqua's claim of "important benefits" justifying its departure from the competitive alternative requirement in Rider DRS simply does not hold water.³⁹ For these reasons, we deny Aqua's Exception No. 3 with respect to its arguments regarding the New Wilmington contract and adopt the ALJ's recommendation that Aqua charge New Wilmington full tariff rates. Accordingly, we shall impute \$348,904 in revenues, representing the difference between \$677,550 in revenues at New Wilmington's full tariff rate and \$328,646 in revenues at contract rates. *See* I&E Exh. 4-SR, Sch. 1.

With regard to Masury, we acknowledge Aqua's observation that it provides service to Masury under a special tariff rate.⁴⁰ In addition, Aqua also has demonstrated that the agreement contains a competitive alternative analysis and a sworn

³⁷ As we are permitting the Company to grant discounted rates to Chemung, Horsham, and Sharpsville, the associated imputed revenues added back by the ALJ of \$30,944, \$123,779, and \$1,692,971, respectively, will be removed from the ALJ's total upward adjustment for water contract revenues. [$\$30,944 + \$123,779 + \$1,692,971$] = \$1,847,694. *See* I&E Exh. 4-SR, Sch 1.

³⁸ Accordingly, this \$1,136,086 is comprised of imputed general service revenues of \$348,904 for New Wilmington and \$787,182 for Masury, discussed, *infra*.

³⁹ We also note that consideration of the existence of competitive alternatives during the course of the contract is not explicitly prohibited by the language of Rider DRS. While it requires Aqua to consider evidence of competitive alternatives at the time of original contracting, it does not preclude Aqua from re-evaluating the contract in the event of changed circumstances.

⁴⁰ *See* Tariff Water – Pa. P.U.C. No. 2, Third Revised Page 12.4.

affidavit from Masury that it would select an alternative provider in the absence of the new contract. Aqua M.B. at 49-50. Nonetheless, we note that the new contract is pending approval by the Commission. Thus, because the new contract has not yet been ruled upon by the Commission, we deny this portion of Aqua's Exception No. 3 and include in Aqua's revenues those anticipated to be received from Masury under its special tariff rates that are currently in effect. Accordingly, we shall impute \$787,182 in revenues, representing the difference between \$1,045,216 in revenues at Masury's special tariff rate and \$258,034 in revenues at contract rates.⁴¹ See Aqua RS2 Attachment at 8; I&E Exh. 4-SR, Sch. 1.

We shall also deny I&E's Exception No. 1. The ALJ's conclusion that Aqua has met its burden to establish competitive alternatives available to Schwenksville is correct. Simply put, the language of Rider DRS does not command an affidavit from a contracting party. Aqua's acceptance of the documentation submitted by this duly formed municipal entity as sufficient and reliable is reasonable. We thus adopt the ALJ's recommendation to uphold the Schwenksville contract discount due to competitive alternatives being demonstrated as available to the customer.

C. Late Payment Charges

1. Positions of the Parties

I&E recommended an adjustment to the Company's forfeited discount revenues (*i.e.* revenues received from late payment charges). More specifically, I&E

⁴¹ We note that although the ALJ stated that the Company should bill Masury at full tariff rates, the ALJ properly used the revenues at Masury's special tariff rate in making her upward adjustment to Aqua's water contract revenues. Therefore, our only financial modification to the ALJ's recommended adjustment for water contract revenues is our adjustment to remove the imputed general service revenues associated with Rider DRS contracts for Chemung, Horsham and Sharpsville, discussed, *supra*.

recommended that the Company's water revenues under present rates be increased to reflect \$1,373,542 in late payment revenue. I&E St. 4 at 7. Additionally, I&E recommended that the Company's wastewater revenues for its New Garden system under present rates be increased to reflect \$17,832 in late payment revenues. I&E St. 5 at 60.

Aqua argued that I&E's proposed recommendation for water revenues at present rates should be rejected because, in its response to filing requirement "OR6 for Water," the Company recorded "other miscellaneous revenues" totaling \$1,301,938 on its books for the HTY ended March 31, 2021, which were, therefore, included in the FPFTY claim. Of this amount, the Company explained that \$735,710 was attributable to late payment revenues in the HTY. Thus, Aqua submitted that I&E's claim that the Company did not include late payment revenues for the FTY and the FPFTY was incorrect. However, in reviewing I&E's proposed recommendation, the Company agreed to make an upward adjustment to increase FPFTY miscellaneous revenues by \$150,172 to normalize the impact of COVID-19 on miscellaneous revenues. Aqua M.B. at 56; Aqua R.B. at 20.

I&E accepted the Company's adjustment and withdrew its recommended adjustment of \$1.3 million to water revenues at present rates. I&E St. 4-SR at 3-4. Additionally, the Company agreed with I&E's recommendation to increase wastewater revenues by \$17,382 for Aqua's New Garden system under present rates. Aqua M.B. at 56-57.

At the same time, I&E recommended that the Company's water revenues at proposed rates be increased by the same percent increase as the overall base rate increase granted by the Commission in this proceeding. I&E M.B. at 22-23.

Aqua countered that such an adjustment is not necessary because the Company has already reflected late payment revenues at proposed rates in its present rate

adjustment. Therefore, Aqua took the position that I&E's recommended adjustment would result in the improper double counting of late payment revenues. Aqua M.B. at 56; Aqua R.B. at 21.

I&E rejoined that the Company's late payment claim under revenues at present rates is designed to project the amount of revenue the Company would receive in the FPFTY if its rates were not increased. As such, I&E insisted that Aqua's claim that it already made an adjustment for the increase in late payment revenue that would be generated under proposed rates in its present rate claim is illogical and should be rejected.

Aqua and I&E also applied their above respective positions to the Company's wastewater revenues at proposed rates. Namely, the Company asserted that it will receive the same \$93,816 in late payment revenues under proposed rates for the FPFTY that it reflected under revenues at present rates, such that no adjustment to its revenues at proposed rates is necessary. Aqua St. 2-R at 30-31; I&E M.B. at 23-24.

However, I&E asserted that because late payment revenues are generally a percentage of a customer's bill, it is reasonable to expect that increasing revenue through a base rate increase will cause revenues from late payments to increase over time. Thus, I&E maintained that the Company's wastewater revenues at proposed rates should also be increased by the same percent increase as the overall base rate increase granted by the Commission in this proceeding. I&E M.B. at 24-25; I&E R.B. at 17-18.

2. Recommended Decision

The ALJ found I&E's position to be persuasive. Therefore, the ALJ recommended that the Company's late payment revenues at proposed rates, projected for the FPFTY, be adjusted for both water and wastewater accordingly. According to the ALJ, the total permitted operating revenue in this matter is inclusive of general service,

forfeited discount, and other miscellaneous revenues. Thus, the ALJ further concluded that Aqua should be directed to increase general service and forfeited discount revenues by the same percentage amounts such that these revenues, when combined with other miscellaneous revenues that are not increasing, equal the total permitted operating revenue. The ALJ also recommended that Aqua be instructed to demonstrate compliance with this directive through its proof of revenues, consistent with the Commission's Regulations at 52 Pa. Code §5.592(a) regarding compliance with orders prescribing rates. The ALJ attached, as Table RevSum, an illustration of the recommended increase in forfeited discount revenues that would result from the recommended increase in general service revenues. R.D. at 51; Appendix Table RevSum.

The ALJ also explained that the revenue adjustments included in Table II - Water, as discussed in the Recommended Decision and in the Appendix thereto, resulted in a concomitant adjustment to forfeited discount revenues. The ALJ stated that if it is reasonable to assume that additional revenues result in an incremental bad debt expense, as assumed by the increase in O&M Expense indicated in Table I, Column "ALJ Revenue Increase" of each rate case table, then it also must be reasonable to assume that the Company will receive corresponding forfeited discount revenues from those customers that are causing the incremental bad debt expense by not making timely payments on their bills. The ALJ continued that concomitant forfeited discount revenue is determined by applying Aqua's proposed uncollectible account rate to the sum of other revenue adjustments. The ALJ explained that this adjustment is reflected in each rate case table in the Attachment to the Recommended Decision under Table II, Row "Concomitant Forfeited Discounts."⁴² R.D. at 51-52, Appendix Table II.

⁴² However, as the ALJ did not recommend any additional adjustments to the Company's wastewater revenues, no adjustment for "Concomitant Forfeited Discounts" appears on Table II of any of the wastewater rate tables that were attached to the Appendix of the R.D.

3. Disposition

No Party filed Exceptions on this issue with regard to the ALJ's recommendation. Finding the ALJ's recommendation to be reasonable and based soundly on record evidence, we shall adopt it. Accordingly, we shall adopt the ALJ's recommendation that Aqua's claim for late payment revenues under proposed rates, for both water and wastewater, be increased by the same percentage as the overall base rate increase authorized under this Opinion and Order. In addition, we shall instruct Aqua to demonstrate compliance through its proof of revenues that will be included with the detailed calculations that accompany its tariff filing, described in Ordering Paragraph 16 of this Opinion and Order, *infra*. Similar to the ALJ in her Recommended Decision, Table RevSum, which is attached to the Appendix of this Opinion and Order, outlines the increase in forfeited discount revenues that would result from the final increase in general service revenues authorized under this Opinion and Order.

We further note that the final adjustments that we make to the Company's water revenues are included on Table II-Water-Summary of Adjustments in the Commission Tables Calculating Allowed Revenue Increase, attached to this Opinion and Order, along with the adjustments we have made to rate base, expenses, and taxes, as discussed elsewhere in those sections of this Opinion and Order. This table likewise includes an adjustment amount for "Concomitant Forfeited Discounts" based upon the uncollectible accounts factor outlined in Table IB-Water-Revenue Factor.

D. Escalation Provisions of Negotiated Water Contracts

1. Positions of the Parties

The OCA proposed that, to reflect revenue adjustments for the sale and resale contracts for the end-user negotiated rate contracts, the Company's water utility revenue for the FPFTY should be increased by \$236,777 for special contract revenue.⁴³ OCA M.B. at 26 (citing OCA St. 1SR at 16; OCA Exh. LA-6, Sch. C-2; OCA St. 4SR at 11). The OCA noted that the escalation provisions in Aqua's contracts are tied to changes in the Consumer Price Index (CPI). The OCA argued that Aqua forecasted considerably lower inflation rates without providing a basis for their use. The OCA submitted that its recommended escalation rates using the average of the United States Office of Management and Budget's (US OMB) and the Federal Reserve's forecasted inflation rates for 2021, 2022, and 2023 were the appropriate rates to be applied in this case. OCA M.B. at 26 (citing OCA St. 4SR at 9-10; Aqua St. 2-R at 28). Thus, the OCA submitted that its inflation calculation is a more accurate and realistic depiction of what inflation levels will be in the FPFTY. OCA M.B. at 26; OCA R.B. at 12-13.

Aqua disagreed with the OCA's proposed upward adjustment, arguing that the adjustment uses different inflation factors that are inconsistent with the inflation escalation clauses in the respective contracts. Aqua R.B. at 19 (citing Aqua St. 2-R at 28). Aqua further argued that, although this rate case is based upon a FPFTY ending March 31, 2023, the OCA included forecasted inflation rates for 2023 that will not affect most of the contract rates. Aqua M.B. at 52.

⁴³ Initially, the OCA submitted that Aqua's negotiated contract revenue adjustment be increased \$301,307. OCA St. 4SR at 11.

Aqua submitted that, contrary to the OCA's claim that the Company did not provide a basis for its adjustment factors, the escalation factors used are the same factors used to determine the General Price Level Adjustment for expense purposes. Aqua R.B. at 19 (citing Aqua M.B. at 53). Aqua explained that the Company's projection of inflation adjustments is based upon "the [Gross Domestic Product] GDP Chained Price Index" at the time the instant case was filed, which was used to calculate the General Price Level Adjustment for expense purposes. Aqua M.B. at 53. Thus, Aqua posited that for consistency, the inflation factor used to adjust certain revenues should be the same as the inflation factor used to adjust certain expenses. *Id.* Aqua added that using different escalation factors should not be permitted because it "would undermine the parties' good-faith bargain." Aqua R.B. at 19 (citing Aqua M.B. at 53).

2. Recommended Decision

The ALJ disagreed with the Company's argument that the escalation factor reasonably represents projected revenue resulting from negotiated contracts. Accordingly, the ALJ recommended that the Company's special contract revenue be increased in the FPFTY to reflect the escalation rate calculated by the OCA. R.D. at 53.

The ALJ found that the purpose of calculating the revenue requirement in a rate filing is to project revenues and expenses that can be expected in the FPFTY, which ultimately results in a reasonable and fair opportunity to earn a fair rate of return. The ALJ further found that, where such revenue is tied to a contractual escalation factor, revenue should be increased based upon a reasonable estimate of the amount of that escalation factor. The ALJ reasoned that the OCA's adjustment values are reliable and impartial because they are determined by government agencies (*i.e.*, the US OMB's and the Federal Reserve's forecasted inflation rates for 2021, 2022, and 2023). R.D. at 53 (citing OCA M.B. at 26). The ALJ observed that the OCA determined its projected CPI by averaging the forecasted CPIs for 2021, 2022, and 2023 for the Office of Management

& Budget (OMB) and the Federal Reserve. Additionally, the ALJ noted that the OCA supported higher inflation for 2021 through a November 2021 government publication containing information up to October 2021 from the Bureau of Labor Statistics. R.D. at 53.

Accordingly, the ALJ recommended that Aqua's special contract revenue be increased in the FPFTY based on the escalation rate calculated by the OCA, as reflected in Table II - Water in the Appendix of the Recommended Decision. Additionally, the ALJ noted that she did not include adjustments for the Rider DRS contracts because she recommended that Rider DRS contracts be charged the full tariff rates and "full tariff rates are not subject to an additional escalation rate." R.D. at 53. Thus, the actual upward adjustment to the Company's revenues as a result of the ALJ's recommendation was \$181,350. R.D. at Appendix, Table II - Water.

3. Aqua Exception No. 4 and Replies

In its Exception No. 4, Aqua disagrees with the ALJ's conclusion to increase the Company's special contract revenue associated with the OCA's calculated negotiated water rate contracts by \$236,777, to reflect the OCA's recommended escalation rates. Aqua Exc. at 22-23 (citing R.D. at 53-54; Aqua M.B. at 51-53; Aqua R.B. at 19).

Aqua argues that as a part of its contract terms, each of the contracts that would be subject to this adjustment contain an escalation provision that specifies how the rate of inflation is to be calculated for determining the annual escalation. Aqua Exc. at 23 (citing Aqua M.B. at 51). Therefore, Aqua argues that the OCA's recommendation is unreasonable and inappropriate because it effectively substitutes an escalation rate into each contract that is different from the agreed-upon escalation rate. Moreover, Aqua argues that it demonstrated that the OCA's calculated inflation rates are overstated. Aqua

Exc. at 23 (citing Aqua M.B. at 52-53). Aqua explains that the OCA includes inflation rates for 2023, which ignores that the instant rate case “is based upon a FPFTY ending March 31, 2023, and 2023 inflation rates will not affect most of the contract rates.” *Id.* (citing Aqua M.B. at 52). Thus, Aqua contends that the adjustment calculation recommended by the ALJ is based upon inflation rates that will not affect the Company’s revenues during the FPFTY. *Id.*

Aqua also submits that to the extent that the Commission determines that the OCA’s adjustment is appropriate due to the OCA’s use of more current inflation rates, the Commission should consider such inflation rates with respect to the Company’s proposed General Price Level Adjustment. Aqua cites to its Exception No. 7 in which it provides detailed arguments on why “existing macroeconomic conditions demonstrate that increases in inflation are subjecting the Company to increased expenses.” Aqua Exc. at 23 (citing Aqua Exc. at 26-29).⁴⁴ Moreover, Aqua argues that the ALJ’s approach to reflect inflation by increasing the revenues the Company obtains under its negotiated water rate contracts is inconsistent and arbitrary given the effects of inflation on other aspects of the Company’s revenue requirement that would entail a larger increase in revenue than what was recommended. *Id.*

In its Replies, the OCA disagrees with Aqua’s position. The OCA notes that in its calculation, the 2023 inflation factor was only applied to January 2023, February 2023, and March 2023, because those three months are within the FPFTY ending March 31, 2023. The OCA, therefore, asserts that it reflected the contract rates at the end of the FPFTY, just as the Company has calculated its estimated revenues, customers served, operating expenses, and rate base as of March 31, 2023. OCA R. Exc. at 11 (citing OCA R.B. at 67; OCA St. 4 SR at 9).

⁴⁴ We shall address Aqua Exception No. 7 separately, in Section VIII.J of this Opinion and Order, *infra*.

The OCA also disagrees with Aqua's argument that it would be inconsistent for the Commission to use higher inflation rates to calculate higher revenues if the impact of higher inflation rates on the Company's expenses is not recognized. OCA R. Exc. at 11 (citing Aqua Exc. at 23). According to the OCA, Aqua's general inflation adjustment was properly rejected because it was speculative and the Company did not provide specific evidence demonstrating that it would actually experience cost increases in those areas. Further, the OCA contends that the ALJ properly accepted the OCA's special contract revenue adjustment because the terms of the contract were specific about the adjustments that would occur in the FPFTY. *Id.* (citing R.D. at 52, 70-71).

Finally, the OCA acknowledged that the ALJ did not include adjustments for the Rider DRS contracts that she recommended should be charged full tariff rates. R.D. at 53. The OCA asserts that, to the extent the Commission does not adopt the ALJ's recommendation to move Chemung, Horsham, New Wilmington and Sharpsville from discounted contract rates to full tariff rates, special contract revenues for those contracts should be adjusted upward to reflect the escalation provisions (*i.e.*, the ALJ's recommended adjustment of \$181,350 should be increased accordingly). OCA R. Exc. at 11-12 (citing R.D. at 53).

4. Disposition

Upon our review, we disagree with the ALJ's reliance on the escalation rate calculation utilized by the OCA in its proposed adjustment to special contract revenue. In support of her recommendation, the ALJ asserted that the OCA's adjustment to special contract revenue, which is based on an escalation rate calculation that uses the average of the US OMB's and Federal Reserve's forecasted inflation rates for 2021, 2022, and 2023, has "an apparent reliability and degree of impartiality because they are determined by government agencies." R.D. at 53. Although we agree that the sources for the OCA's

adjustment values are reliable and fair, we are of the view that the Company provided a sufficient basis for justifying the reliability of the escalation provisions in the contracts.

As noted by Aqua, the escalation provisions in the relevant contracts specify how the inflation rate is to be calculated for annual escalation, and the OCA's recommendation would effectively substitute the agreed-upon escalation rate with a different rate. We find Aqua's argument here persuasive. Indeed, as noted by the Company, substituting the contractual escalation rate at this juncture would ultimately undermine the good-faith efforts of the related parties to negotiate an agreed-upon escalation rate. To the extent that the OCA argues that Aqua's inflation calculation does not sufficiently depict what inflation levels will be in the FPFTY, we are of the opinion that the inflation rates in the Company's negotiated rate contracts are substantiated, reliable, and do not require or necessitate an adjustment.

Therefore, we shall grant Aqua Exception No. 4 and modify the Recommended Decision by removing the ALJ's recommended upward adjustment of \$181,350 to the Company's revenues associated with negotiated water contracts.

E. Metered Residential Sale Adjustment

1. Positions of the Parties

The Company proposed an adjustment to water consumption related to the COVID-19 pandemic. In making this adjustment, Aqua asserted that it would not assume that consumption by class in the future will be similar to usage patterns during the pandemic (*i.e.*, the HTY). Rather, the Company contended that projected consumption by class will be similar to usage patterns in its prior base rate case, *i.e.*, the *Aqua 2018 Rate Case*. As such, it proposed an adjustment to residential, commercial, and public customer classes based on the average usage presented in the *pro forma* FPFTY used in

the *Aqua 2018 Rate Case*. The adjustment reduced residential water usage, and sales revenue by \$11.03 million, and increased Commercial and Public Authority water usage, and sales revenue by \$10.96 million. Aqua's proposed total overall change in revenue under present rates using this adjustment results in a decrease in total water revenues of \$64,639. Aqua M.B. at 53; Aqua St. 5 at 17.

The OCA accepted Aqua's adjustments for Commercial and Public Authority water sales revenues to reflect pre-pandemic water sales revenue. However, the OCA recommended an adjustment that reflected 75% of the Company's proposed reduction for residential customers. In support, the OCA emphasized that the Company's metered residential water sales in 2020 were 1,181,614,000 gallons higher than in 2019, a pre-pandemic period. With increased residential water usage in 2020, the OCA argued that it would be unreasonable for Aqua to reduce HTY metered residential water sales by such a significant quantity for the purpose of deriving sales levels for the FPFTY. The OCA submitted that many residential consumers will continue to work from home and spend more time in their houses. According to the OCA, its recommendation would increase residential water sales by \$2.757 million. OCA M.B. at 24-25.

In opposing the OCA's proposed adjustment to residential metered water sales, the Company cited substantial downward trends in residential usage for the months of September 2021 and October 2021 when compared with the pandemic months of September 2020 and October 2020. Aqua also argued that it was inconsistent for the OCA to accept the Company's revenue adjustments for commercial and public customers, but not residential customers. Aqua M.B. at 53-54; Aqua R.B. at 20.

In response, the OCA contended that Aqua's presumption that none of the 6.4% year-over-year increase in residential metered water sales is likely to continue beyond 2020 and into the FPFTY does not seem realistic. OCA St. 1 at 37. Rather, the OCA asserted that the record evidence supports a finding that the pandemic is ongoing

and residential water usage is not reasonably likely to return to pre-pandemic levels in the FPFTY. OCA R.B. at 10-11.

2. Recommended Decision

The ALJ accepted Aqua's reduction to revenues to reflect removing the impact of COVID-19 on metered customer water sales. Initially, the ALJ found that the OCA's proposed acceptance of this adjustment for commercial and public customers, but not for residential customers, was inconsistent. Citing the testimony of Aqua's witness, Ms. Constance E. Heppenstall, the ALJ reasoned that if individuals are staying home and using more water than pre-pandemic, it should follow that usage for commercial and public classes should also be lower than pre-pandemic levels. R.D. at 54 (citing Aqua St. 5-R at 18).

Next, the ALJ determined that Aqua's position that usage trends support its proposed adjustment to water consumption due to the COVID-19 pandemic is reasonable and that the projection of a return of consumption toward pre-pandemic levels is credible. Additionally, the ALJ stated that the Company's approach to treat trends on the residential class consistently with trends in the commercial and public classes for the purposes of projections for the FPFTY is reasonable and supported by the record. R.D. at 54-55 (citing Aqua St. 5-R at 19).

3. OCA Exception No. 1 and Replies

In its Exception No. 1, the OCA argues that the ALJ erred in adopting Aqua's residential metered water sales when the pandemic continues to keep people using more water at home. In support, the OCA reiterates that the Company's residential metered water sales in 2020 were over one billion gallons higher than the pre-pandemic level in 2019. Given this significant increase, the OCA contends that it is unlikely that

residential usage will decrease as quickly as Aqua predicts, such that usage would be back to “normal” for the purpose of deriving sales levels for the FPFTY. OCA Exc. at 1 (citing OCA St. 1 at 36).

Responding to the ALJ’s finding that the OCA’s adjustment to residential metered water sales is inconsistent with the acceptance of Aqua’s prediction for commercial and industrial sales, the OCA submits that its recommendation reflects the unpredictability surrounding how and when the pandemic will come to an end. According to the OCA, recent data about residential water usage indicates that it is still up from pre-pandemic levels by as much as 9.1%. OCA Exc. at 1 (citing OCA St. 1-SR at 27-28).

The OCA adds that although commercial and industrial institutions are slowly re-opening, many workers are still spending more time at home. The OCA proffers that its recommended increase to residential revenues of \$2.757 million addresses this slow return to pre-pandemic levels by reflecting 75% of Aqua’s proposed reduction to residential revenues, in order to account for the decrease to residential water usage, but recognizing that it is not likely to return to pre-pandemic levels in the FPFTY. OCA Exc. at 2 (citing OCA St. 1, Exh. LA-2, Sch. C-6).

The OCA argues that its projections are more consistent with the data which recognizes a gradual return to consumption more closely aligning to pre-pandemic levels, while Aqua’s assumptions assert, without basis, an immediate return. Based on its proposed revenue adjustment, the OCA recommends: (1) a related negative adjustment of \$66,787 to the Company’s claimed Chemicals Expense for water operations; (2) a negative adjustment to Purchased Power expense of \$96,312; and (3) an adjustment to CWC to reflect this recommended revenue adjustment and based on the OCA’s other expense adjustments. OCA Exc. at 2 (citing OCA M.B. at 22 and 30; OCA Table II (Water); and OCA Table II (Wastewater)).

In its reply, Aqua contends that the ALJ correctly accepted the Company's adjustments to water consumption for residential, commercial, and public customers associated with the pandemic and properly rejected the OCA's proposal that only 75% of the residential sales adjustment be applied. Aqua R. Exc. at 2.

In support, the Company emphasizes the ALJ's finding that the OCA's arguments are inconsistent because the OCA accepts the commercial and public customer adjustments but rejects the residential customer adjustments. Additionally, Aqua reiterates its contention that it presented credible evidence demonstrating the movement of usage for all classes toward pre-pandemic levels and requests denial of OCA Exception No. 1. Aqua R. Exc. at 2 (citing Aqua St. 5-R at 18-19).

4. Disposition

Upon review of the evidentiary record, pleadings, and arguments related thereto, we find that Aqua has demonstrated the reasonableness of its proposed adjustments to water consumption due to the COVID-19 pandemic.

The OCA emphasizes that Aqua reported metered residential water sales for 2020 of 19.552 billion gallons versus 18.370 billion gallons in 2019, a pre-pandemic period. The reported increase in residential water sales for this overall period between 2019 and 2020 was approximately 6.4%. OCA St. 1 at 37. Additionally, the OCA cites a specific percentage increase in residential water usage between October 2019 and October 2021 of 9.1%. OCA R.B. at 11; OCA St. 1-SR at 28.

In response, Aqua asserts that the specific increase in residential usage between October 2019 and October 2020 was accompanied by a decrease in residential usage between October 2020 and October 2021 – periods within the pandemic – of 5.6%. Additionally, the Company cites to a decrease in residential usage in the pandemic

periods of September 2020 and September 2021 of 4.1%. The Company also showed increases in both commercial and public usage during these periods. Aqua shows the trends of usage within the pandemic periods in the following, which is reproduced in Table 2, below:

	Oct-20	Oct-21	Change	Percentage Change
Residential	1,636,326	1,545,471	(90,855)	-5.6%
Commercial	805,189	877,755	72,566	9.0%
Public	43,714	58,915	15,201	34.8%
	2,485,230	2,482,141	(3,089)	-0.1%

	Sep-20	Sep-21	Change	Percentage Change
Residential	1,706,364	1,636,859	(69,505)	-4.1%
Commercial	870,301	935,491	65,190	7.5%
Public	54,027	59,981	5,954	11.0%
	2,630,691	2,632,331	1,639	0.1%

Table 2: Aqua trends of usage within the pandemic periods

Aqua M.B. at 54; Aqua St. 5-R at 19.

We note that it would have been helpful to have had additional data comparing pandemic periods incorporating a comparison of more recent time periods (*i.e.*, showing trends in usage following recent COVID-19 variant surges). However, the Parties were limited to the presentation of evidence as of the evidentiary hearing and prior to the close of the record and that data appears to represent the most recent available information at the time. Under the circumstances, we find that the Company has submitted sufficient evidence to show a trend of declining residential usage which, when extrapolated over the FPFTY period, supports its proposal that residential usage will likely decline to the pre-pandemic period. Additionally, Aqua provides sufficient support to show a concomitant increase in commercial and public water usage.

Although the OCA correctly indicates that there was a large increase in overall residential water usage when comparing a pre-pandemic and a pandemic period, we find that the more helpful barometer is the trend of usage data within the pandemic periods as asserted by the Company. Moreover, it is unclear what data supports the OCA's calculation of including only 75% of Aqua's proposed reduction to residential revenues thereby resulting in an increase to residential revenues of \$2.757 million. As to this proposed adjustment, the OCA states that it acknowledges a declining residential water usage but that it will not likely decline to the pre-pandemic level and that its proposal is more realistic than the Company's.

We recognize that the OCA does not bear the burden of proof in this proceeding.⁴⁵ However, there must be some evidence or analysis tending to show the reasonableness of the OCA's adjustment. In this regard, there is no apparent evidentiary support for a finding that residential usage will essentially remain high enough to result in a 25% increase in residential water sales when compared with a pre-pandemic period. Moreover, the OCA's proposed acceptance of the Company's adjustment for commercial and public customers, but not for residential customers, shows an inconsistency in the OCA's overall proposal. If individuals are staying home and using more water than prior to the pandemic, it would be reasonable to surmise that usage for commercial and public

⁴⁵ As the Commonwealth Court has explained: "While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged." *See Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citing *Central Maine Power Co. v. Public Utilities Commission*, 405 A.2d 153, 185 (Me. 1979)). Therefore, while the statutory burden of proof does not shift from the public utility in a general rate proceeding, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis, during the reception of evidence in the proceeding, tending to demonstrate the reasonableness of the adjustment. *See Id.*; *see, e.g., Pa. PUC v. PECO*, Docket No. R-891364 *et al.*, 1990 Pa. PUC Lexis 155 (Order entered May 16, 1990); *see also Pa. PUC v. Breezewood Telephone Company*, Docket No. 901666, 74 Pa. P.U.C. 431 (Order entered February 15, 1991).

classes should also be lower than pre-pandemic levels. However, the available overall data shows that the Company is experiencing between a 4 to 5% decrease in residential usage and increases in both commercial and public usage. *See* Aqua St. 5-R at 19.

Accordingly, we shall deny OCA Exception No. 1 and thereby decline to make the OCA's requested adjustments to both residential water revenue and the expense categories that would have been impacted by its proposal.

F. Third Party Sales

1. Positions of the Parties

Aqua has eight third-party sales customers, from which it derives revenue at present rates of \$1,095,381. The Company proposed to increase rates for all of its third-party customers except for its Southdown Homes and East Brandywine customers. Aqua R.B. at 18; I&E M.B. at 29. I&E recommended that the usage rate for Southdown Homes be increased from \$0.749 per hundred gallons to \$0.9535 per hundred gallons, which would result in an increase of \$0.2045 per hundred gallons, or approximately 27.3%. I&E M.B. at 29. In its rebuttal testimony, Aqua revised its proposed revenue for Southdown Homes and provided a proof of revenue that shows Southdown Homes paying a usage rate of \$1.35 per hundred gallons. I&E accepted this proposed usage rate. I&E M.B at 30; Aqua R.B. at 18; Aqua Exh. 5R-B, Sch. WW-5 at 17.

I&E also recommended an increase to the customer charge for the Company's East Brandywine customers from \$351.00 per month to \$446.75 per month. This equates to an increase of \$95.75 per month, or approximately 27.3%. I&E based this recommendation on the average percentage increase for the Company's third-party customers. According to I&E, this percentage increase is reasonable given the higher percentage increase being proposed by Aqua for other third-party customers and the

higher percentage increases proposed by Aqua for other wastewater customers. I&E further recommended that this flat rate should be increased and applied to the Company's revenues independent of any base rate increase granted by the Commission. I&E M.B. at 29, 30; I&E R.B. at 23.

Aqua found no reason to increase its East Brandywine rates. Therefore, Aqua opposed I&E's proposal to increase the customer charge for East Brandywine. Accordingly, Aqua submitted that its claimed revenues should not be modified to reflect I&E's recommendation. Aqua R.B. at 18-19.

2. Recommended Decision

The ALJ observed that Aqua did not offer any explanation as to why it was appropriate to retain the current rates for its East Brandywine customers when the Company: (1) originally proposed an increase to the rates for all of its third-party customers except for Southdown Homes and East Brandywine; and (2) subsequently accepted I&E's proposed increase for the Company's Southdown Homes customers. In contrast, the ALJ found that I&E's proposal would treat the Company's third-party customers consistently. As such, the ALJ found I&E's proposal to be more appropriate and recommended that it be adopted. The ALJ added that this is a rate design issue that does not require an adjustment to the Company's revenue requirement under present or proposed rates. R.D. at 56.

3. Disposition

No Party filed Exceptions on this issue with regard to the ALJ's recommendation. Finding the ALJ's recommendation to be based soundly on record evidence and reasonable, we shall adopt it. Accordingly, we shall adopt the ALJ's recommendation that approves I&E's proposal to increase the East Brandywine

customer charge by \$95.75 per month, or from \$351.00 per month to \$446.75 per month.

VIII. Expenses

A. Rate Case Expense

1. Positions of the Parties

Aqua provided that its rate case expense is \$2,200,000, of which 91.51% is allocated to water cost of service and 8.49% is allocated to the wastewater cost of service based on the ratio of customers served to total customers. Aqua M.B. at 77 (citing Aqua St. 3 at 3). Aqua proposed to normalize the cost of the rate case expense over a thirty-six month period, which is the anticipated interval between this rate case and the Company's next base rate case. Aqua St. 3 at 3.

I&E recommended the rate case expense be normalized over thirty-six months. I&E M.B. at 31, 32.

The OCA recommended a reduction of \$124,932 to the rate case expense by removing \$59,932 not incurred from the "Other Consultants" costs and removing the \$65,000 that Aqua has requested for "miscellaneous" costs. The OCA argued that the rate case expense should be normalized for thirty-nine months based on the actual historic frequency of Aqua's filings. OCA M.B. at 45.

2. Recommended Decision

The ALJ found Aqua's \$2.2 million rate case expense to be reasonable. The ALJ opined that Aqua provided sufficient justification for including forecasted

expenses for consultants. Additionally, the ALJ determined that Aqua's 36-month normalization period was reasonable. The ALJ stated that it was reasonable to exclude the "anomalous rate stay-out that was agreed to as part of a complex settlement negotiation" and rejected the OCA's longer normalization period of 3.3 years. R.D. at 57-58.

3. OCA Exception No. 6 and Replies

In its Exception No. 6, the OCA provides that the ALJ accepted Aqua's proposed thirty-six-month normalization period for rate case expense because the ALJ believed that to accept the OCA's proposed thirty-nine-month adjustment, which included the seven-year gap between Aqua's 2011 and 2018 rates, would discourage the negotiation of settlement stay-outs in the future. OCA Exc. at 7 (citing R.D. at 57-58). Additionally, the OCA notes the ALJ's statement that the reason Aqua did not file a rate case between 2011 and 2018 is that during that time Aqua was "constrained" by the stay-out it agreed to in the 2011 rate case. OCA Exc. at 7 (citing R.D. at 58). The OCA argues that Aqua was not "constrained" from filing a rate case between 2011 and 2018. Rather, the OCA continues, the stay-out negotiated in the 2011 settlement was for a term of only two years. OCA Exc. at 8 (citing *Pa. PUC v. Aqua Pa., Inc.*, Docket No. R-2011-2267958 (Order entered June 7, 2012) (*2011 Settlement*) at 18). According to the OCA, Aqua was free to file a rate case after the two-year time frame but chose not to do so for its own reasons. The OCA contends that including the time period between 2011 and 2018 in calculating the appropriate normalization period is reasonable. OCA Exc. at 8.

In its reply to the OCA Exception No. 6, Aqua avers that the OCA has misread the Recommended Decision. Aqua provides that it did not argue that it was "constrained" from making a base rate filing. Aqua explains that the "OCA's calculated average is distorted by the time period between Aqua's 2011 and 2018 rate case, based

upon a circumstance specific to the settlement of the 2011 rate case that will not occur in the future.” Aqua R. Exc. at 5 (citing Aqua M.B. at 79; Aqua St. 3-R at 9). Aqua provides that the circumstance was the initial adoption of the tax repairs election. Aqua R. Exc. at 5, n.2. Aqua avers that this distortion is why the Commission has noted that the normalization period for rate case filings may require consideration of future circumstances. Aqua R. Exc. at 5-6 (citing Aqua M.B. at 9). According to Aqua, this is consistent with prior precedent. Aqua R. Exc. at 6 (citing *Emporium Water Company*, Docket No. R-2014-2402324 (Order entered Jan. 18, 2015) at 48-49; *Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. R-2012-2290597 (Order entered December 28, 2012) (*2012 PPL Order*); R.D. at 57; Aqua M.B. at 77-80; Aqua R.B. at 31-32).

I&E did not offer a reply to the OCA Exception No. 6 beyond stating that it agreed with the Company’s recommendation of a thirty-six month normalization period. I&E R. Exc. at 14 (citing R.D. at 57-58).

4. Disposition

Aqua agreed to a two-year stay-out period in the *2011 Settlement* as follows:

9.a. The Company’s agreement to a two-year stay-out from the filing date of this rate increase request, subject to the limited exceptions set forth in Paragraph No. 7.c., assures that, if [Aqua’s] next general base rate water case were filed at the earliest permitted date and were fully litigated, the Settlement Rates would remain in effect for at least 26 months.

2011 Settlement at 18.

The OCA calculated the thirty-nine month normalization period by including the 2011 to 2018 gap in rate case filings. The ALJ rejected the OCA's thirty-nine month normalization period based on the *2011 Settlement* and the associated stay-out period in that Settlement. Aqua provides that the stay-out period was not the cause of the time lapse between Aqua's 2011 and 2018 base rate case filings, rather it was caused by the initial adoption of the tax repairs election. Aqua R. Exc. at 5, n.2.

While the OCA is correct that a two-year stay-out would not have "constrained" Aqua from filing a base rate case two years after the *2011 Settlement* and before the 2018 rate case filing, we do not recommend a thirty-nine month normalization period.

Aqua provided that the lapse between base rate case filings such as that between the 2011 and 2018 filings is not related to a stay-out or likely to recur as follows:

The Company was able to avoid filing a rate case for an extended period after the 2011 rate case due to a provision in that settlement regarding the use of the tax repair deduction for income tax purposes. That situation will not recur in the future.

Aqua St. 3-R at 9.

We find Aqua's thirty-six month normalization period reasonable, and we accept the ALJ's recommendation of the thirty-six month normalization period. However, we will modify the Recommended Decision to remove the potentially confusing language in the paragraph on pages 57 – 58 of the Recommended Decision:

In this case it is reasonable to exclude an anomalous rate stay-out that was agreed to as part of a complex settlement negotiation. The settlement stay-out does not generally reflect the Company's rate filing interval. This settlement

term constrained Aqua's ability to file a rate case when it otherwise might have chosen to do so. To include the negotiated stay-out term in setting the normalization period for rate case expense might chill negotiations in future utility rate proceedings.

R.D. at 57-58.

Accordingly, the OCA's Exception No. 6 is granted, in part, and denied, in part.

B. General Liability Insurance Expense

1. Positions of the Parties

Aqua proposed a claim for general liability insurance based on a five-year average year-over-year increase of 5.97%. Aqua revised its claim based on opposition from I&E and the OCA. I&E proposed a "year-over-year three-year average" of 4.38%. I&E argued that the three-year average considers "more recent experience" and was consistent with the Company's method for calculating other categories of expenses (*i.e.*, uncollectibles expense and legal expense). Aqua M.B. at 75 (citing I&E St. 1 at 15-16). Aqua noted that the OCA's witness, Mr. Ralph C. Smith, accepted the Company's claimed FTY insurance expense but applied a 4.38% increase to the FTY to calculate his recommended FPFTY amount. Aqua M.B. at 75 (citing OCA St. 1 at 53-54). Aqua updated its claim for general liability insurance based on actual information that became available after the case had been filed. Aqua applied the three-year average increase of 4.38% to updated actual amounts accrued for Fiscal Year (FY) 2022. Aqua M.B. at 75 (citing Aqua St. 4-R at 6-7).

I&E and the OCA continued to disagree with Aqua’s proposed claim. I&E “questioned the reliability of the amounts stated.” Aqua M.B. at 77 (citing I&E St. 1-SR at 15). I&E’s witness, Ms. Christine Wilson, explained that Aqua’s revised claims for all the wastewater revenue requirements decreased from direct testimony to rebuttal testimony with no explanation for that directional change. I&E stated that Aqua did not provide documentation for the recent 2022 accruals to support the proposed changes in general liability expense. R.D. at 59. The OCA argued that Aqua’s calculation “inconsistently mixes calculation elements.” Aqua M.B. at 77 (citing OCA St. 1-SR at 40).

2. Recommended Decision

The ALJ recommended that the Commission adopt I&E’s adjustments to the Company’s general liability insurance expense. The ALJ reasoned that Aqua failed to provide adequate documentation in support of its treatment of insurance expense, nor is the mixing of calculation elements justified for the purposes of projecting expense increases. The ALJ recommended that Aqua’s claim for insurance expense should be decreased by \$340,945 for water and increased by \$29,967 for wastewater. The ALJ explained that the wastewater adjustments are comprised of increases for Wastewater Base, Limerick, East Bradford, and Cheltenham of \$18,640, \$3,533, \$789, and \$6,299, respectively, and a decrease for New Garden of \$676.⁴⁶ R.D. at 59.

3. Aqua Exception No. 5 and Replies

In its Exception No. 5, Aqua contends that it fully explained how it calculated its projection of general liability insurance expense for the FPFTY. Aqua Exc.

⁴⁶ We note that in her explanation, the ALJ inadvertently omitted an increase of \$1,382 for East Norriton Wastewater. See I&E St. 1-SR at 16.

at 24 (citing Aqua M.B. at 74-75). Aqua explains that it updated its insurance claim to reflect actual general liability expense information for the Year 2022 that became available after the case had been filed. Aqua Exc. at 24 (citing Aqua M.B. at 75). Aqua further submits that it then used I&E's proposed three-year average percentage increase to this expense to adjust the final quarter of the FPFTY. Aqua Exc. at 24 (citing Aqua M.B. at 75-76; Aqua St. 4-R at 6-7).

Aqua provides that although the ALJ concluded that the Company improperly mixed calculation elements, there is nothing unusual or improper in updating the claim to reflect known, actual information for FY 2022, or in developing the FPFTY claim using three quarters of that actual data and one quarter of projected data using the same adjustment factor (4.38%) proposed by both the OCA and I&E. According to Aqua, there is no evidence of record to support I&E's concerns regarding the reliability of this information. Aqua Exc. at 24 (citing Aqua R.B. at 30).

Aqua avers that the Recommended Decision inconsistently accepts I&E's calculation as credible but rejects Aqua's calculation which uses the same method updated with the most recent data available. Aqua Exc. at 25.

In its reply to Aqua Exception No. 5, I&E notes that after reviewing the record evidence presented by all parties, the ALJ correctly concluded that Aqua failed to provide adequate documentation in support of its treatment of insurance expense and the mixing of calculation elements is not justified for the purposes of projecting expense increases. I&E R. Exc. at 8-9 (citing R.D. at 59).

4. Disposition

I&E notes that the Company has recorded its calendar year 2022 insurance expense for accounting purposes, similarly updating the claim for ratemaking purposes,

and on a consolidated basis the accrual produces a year-over-year increase of 8.49% between calendar year 2021 and 2022 based on premiums the Company will pay in 2022. I&E St. 1-SR at 14 (citing Aqua St. 4-R at 6). I&E explains that the Company has updated its entire FTY claim for insurance and the first nine months of the FPFTY (April 1, 2022 through December 31, 2022) based on the recently determined accruals. I&E explains further that the final three months of the FPFTY (January 1, 2023 through March 31, 2023) were inflated using a 4.38% increase to the FTY result. *Id.*

I&E provided the updated expense portion of the insurance claims, noting that the revised claims for all the wastewater revenue requirements have decreased from direct testimony to rebuttal testimony with no explanation for the directional change. I&E St. 1-SR at 15. We agree with I&E, that Aqua has not provided an explanation for these updated insurance claims and provided no documentation for the recent 2022 accruals to support the changes in rebuttal testimony.

Therefore, we shall deny Aqua's Exception No. 5, and adopt the ALJ's recommendation that Aqua's claim for insurance expense should be decreased by \$340,945, or from \$4,915,277 to \$4,574,332 for water and increased by \$29,967, or from \$39,853 to \$69,820 for wastewater. The wastewater adjustments are comprised of: (1) an increase for Wastewater Base of \$18,640, or from \$16,327 to \$34,967; (2) an increase for Limerick of \$3,533, or from \$5,613 to \$9,146; (3) an increase for East Bradford of \$789, or from \$1,232 to \$2,021; (4) an increase for Cheltenham of \$6,299, or from \$9,814 to \$16,113; (5) an increase for East Norriton of \$1,382, or from \$4,915 to \$6,297; and (6) a decrease for New Garden of \$676, or from \$1,952 to \$1,276. R.D. at 59; I&E St. 1-SR at 16. These adjustments are outlined in Table II-Adjustments in each of the groups of rate tables in the Commission Tables Calculating Allowed Revenue Increase, attached to this Opinion and Order.

C. Payroll

1. Positions of the Parties

Both I&E and the OCA proposed adjustments to Aqua's claim for payroll expense. I&E proposed a vacancy rate of 6.83%. The OCA proposed a vacancy rate of 2.88%, rather than the Company's 2.50%. Aqua opposed I&E's vacancy rate but accepted the OCA's 2.88% full time vacancy rate. Aqua M.B. at 66. Aqua's witness, Ms. Erin M. Feeney, explained that I&E's adjustment double counts the adjustment already built into the Company's claim as a part of the gross payroll amounts. Aqua M.B. at 66 (citing Aqua St. 2-R at 37; Aqua St. 2 at 11). Subsequently, I&E withdrew its adjustment for payroll expense. Aqua M.B. at 66 (citing I&E St. 1-SR at 25).

The OCA calculated its vacancy rate of 2.88% based on information provided in response to I&E-RE-22-D. According to the OCA, the 2.88% vacancy rate is based on the difference between actual regular hours and authorized regular hours during the HTY, and more accurately reflects Aqua's expense. OCA M.B. at 33-34 (citing OCA St. 1 at 41-42). The OCA proposed an adjustment decreasing payroll expense by \$119,358 for the Company's water operations and \$6,855 for wastewater operations. The OCA provided that in aggregate, this calculation decreases payroll expense by \$126,213. OCA M.B. at 34 (citing OCA St. 1 at 44-45; OCA Exh. LA-2, Sch. C-11 at 2).

The OCA proposed an additional adjustment to payroll expense by reducing the number of seasonal positions included in the Company's claim to reflect the level of seasonal employees as of June 30, 2021. Aqua M.B. at 67 (citing OCA St. 1 at 43-44).

2. Recommended Decision

The ALJ recommended that the Company's payroll expense as updated with the OCA's 2.88% vacancy rate should be accepted. R.D. at 60 (citing Aqua Exh. 1-A(a) and 1-B(b) through 1-G(g)). The ALJ reasoned that Aqua had supported its projection for seasonal positions with the testimony of Ms. Feeney. Specifically, the ALJ stated that the 2020 and 2021 number of seasonal positions filled were impacted by the COVID-19 pandemic and should be considered outliers. The ALJ noted that Aqua anticipates filling all thirty-three seasonal positions during the FPFTY. R.D. at 60 (citing Aqua St. 2-R at 39).

3. OCA Exception No. 5 and Replies

In its Exception No. 5, the OCA disagrees with the ALJ's finding that Aqua has adequately supported its claim for thirty-three seasonal employees. The OCA submits that while Aqua may believe that it will fill all thirty-three of its budgeted-for seasonal positions in the FPFTY, the Company has failed to provide evidence that this is likely. According to the OCA, the record indicates that Aqua has not consistently filled all of its seasonal positions even before the COVID-19 pandemic began. OCA Exc. at 6-7 (citing OCA M.B. at 34-35). The OCA provides that in 2019, Aqua filled only thirty-one of the budgeted thirty-three positions. During the pandemic, the OCA continues, Aqua filled only eleven out of thirty-three budgeted positions. OCA Exc. at 7 (citing OCA St. 1SR at 32-33). The OCA avers that it is not reasonable to assume that Aqua's hiring will be more robust than before the pandemic. The OCA recommends an adjustment of \$286,373 to remove payroll expense for twenty-two of the authorized seasonal positions. OCA Exc. at 7.

In its reply to OCA Exception No. 5, Aqua argues that the ALJ correctly reasons that the payroll expense claim, including the seasonal positions, is "based upon

anticipated normal operating conditions” during the FPFTY. Aqua R. Exc. at 5 (citing R.D. at 61). Aqua contends that the seasonal employee counts for 2020 and 2019 were impacted by the COVID-19 pandemic and are not reflective of normal operating conditions. Aqua R. Exc. at 5.

4. Disposition

The seasonal employment period runs from mid-May to mid-September. I&E Exh. 1, Sch. 5 at 2. The OCA contends that the seasonal employee count should reflect the level as of June 30, 2021 when eleven positions were filled. We disagree with the OCA’s recommendation. The record does not clearly indicate that the number of seasonal employee positions as of June 30, 2021 reflects the total number employed through the seasonal employment period for 2021, or going forward. The Company filled thirty-one seasonal positions in 2019. The Company has noted that it expects to return to more normal operations. We agree with the ALJ that the Company’s assertion that it will be able to fill thirty-three seasonal positions going forward in the FPFTY is reasonable. The OCA Exception No. 5 is denied.

D. Stock-based Incentive Compensation

1. Positions of the Parties

Aqua has included expenses related to its stock-based incentive compensation program. Aqua maintained that this is an important part of its overall compensation program. R.D. at 61. Aqua averred that it is entitled to recover, in rates, all expenses reasonably necessary to provide service to customers. According to Aqua, the OCA has not claimed that the total stock reward expenses were unreasonable, imprudent, or excessive. Aqua noted that the OCA objected to the expenses on the basis that shareholders benefit from increases in stock prices, without consideration for the

customer benefits derived from achievement of the customer performance metrics applied to stock rewards. Aqua M.B. at 69.

Aqua stated that the Commission has established a bright line test for incentive compensation expense. According to Aqua, if the incentive compensation programs of the utility are reasonable and provide a benefit to ratepayers, then they may be recovered in their entirety. Aqua M.B. at 69 (citing *2012 PPL Order* at 26). Aqua noted that the Commission recently applied this standard in approving the recovery of stock-based incentive compensation in *Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2017-2640058 (Order entered October 25, 2018) (*UGI Electric*).

Aqua averred that it demonstrated that its stock reward plans include both financial and operating metrics and goals. Aqua provided that it further demonstrated that its incentive compensation package is reasonable, prudently incurred and not excessive in amount. Aqua's witness, Mr. William C. Packer, explained:

[A] key component of the incentive compensation plan is employee objectives that provide benefits to customers. Many of the employee objectives focus on cost containment, quality service, productivity enhancements and compliance initiatives to ensure reasonable cost and high-quality service to our customers.

Aqua M.B. at 70 (citing Aqua St. 1-R at 17-18).

I&E did not object to the Company's proposed incentive compensation plan expense.

The OCA acknowledged that where an incentive compensation plan is reasonable, prudently incurred, not excessive, and there is a benefit to ratepayers, a company may recover the expense of that program. The OCA noted that the Commission

has approved recovery for incentive compensation programs when they are focused on improving operational effectiveness. OCA M.B. at 36 (citing *2012 PPL Order*).

The OCA averred that Aqua’s stock-based compensation program provides Aqua and Essential Utilities executives with compensation based on the performance of the Company’s or parent company’s stock price. According to the OCA, absent a clear tie to ratepayer benefit or operational effectiveness, it is unreasonable to burden ratepayers with the costs of the stock compensation program. OCA M.B. at 37.

2. Recommended Decision

The ALJ accepted Aqua’s position that the stock-based compensation program benefits ratepayers. The ALJ explained that the Company described how the purpose of the plan is to tie compensation to employees accomplishing the Company’s main objectives, which benefits consumers. R.D. at 62 (citing Aqua St. 1-R at 15-16). The ALJ further explained that Aqua stated that compensation from the program is both “competitive” and “appropriate.” The ALJ noted that the Company has been using the program since 1999,⁴⁷ and thus claims that the program is a key element of its overall payment package in attracting and keeping a skilled workforce. R.D. at 62 (citing Aqua St. 1-R at 17). The ALJ reasoned that the OCA’s argument that the program also benefits stockholders is not sufficient to demonstrate that the program is unreasonable or excessive. R.D. at 63.

⁴⁷ We note that the Company states that the Incentive Compensation Plan was started in 1990. Aqua St. 1-R at 16.

3. OCA Exception No. 4 and Replies

In its Exception No. 4, the OCA disagrees with the ALJ's findings regarding Aqua's stock-based incentive compensation program. The OCA recommends an adjustment of \$846,493 to remove these costs. OCA Exc. at 4-5 (citing OCA M.B. at 36-39; OCA Table II (Water); Table II (Wastewater)). According to the OCA, the ALJ noted that since the purpose of the plan is to tie compensation to employees accomplishing the Company's objectives, the program must ultimately benefit consumers. OCA Exc. at 5 (citing R.D. at 62). The OCA contends that Aqua has failed to demonstrate that the key component of the program is to establish employee eligibility based on performance duties and metrics that are "*directly related to the provision of service.*" OCA Exc. at 5 (citing *Pa. PUC v. Pennsylvania American Water Co.*, 2021 Pa. PUC LEXIS 55 (*PAWC 2021*) at *59-60).

The OCA provides that although, in theory, a payment program which benefits stockholders might also benefit consumers, in this case, the payment program has no clear relationship to ratepayer benefits or operational effectiveness. OCA Exc. at 5 (citing OCA St. 1 at 48). The OCA avers that the stock-based incentive compensation program appears to have the primary purpose of benefitting executives and high-level managers. However, the OCA argues that no evidence has been provided to show the benefits of the payment program to ratepayers. OCA Exc. at 5 (citing OCA St. 1SR at 36).

The OCA highlights the ALJ's statement that Aqua has established that compensation from the program is both "competitive" and "appropriate." OCA Exc. at 5 (citing R.D. at 62). While this may be true, the OCA argues, it is irrelevant to whether the program is benefitting ratepayers and whether it should be funded by ratepayers. OCA Exc. at 5.

The OCA avers that Aqua's incentive compensation program is not reasonable or prudently incurred. In addition, the OCA insists that there is no evidence that it provides any benefit to ratepayers and, accordingly, Aqua should not be able to recover the plan expenses from ratepayers. The OCA remains of the opinion that its \$846,493 adjustment to remove these costs for ratemaking should be adopted. OCA Exc. at 6 (citing OCA M.B. at 36-39; OCA Table II (Water) and (Wastewater)).

In its reply to the OCA Exception No. 5, Aqua avers that the incentive compensation has been paid each year since 1990, demonstrating that the plan is successful in encouraging the accomplishment of Aqua's key objectives and the ongoing control over operating costs. Aqua R. Exc. at 4 (citing Aqua St. 1-R at 16-17).

I&E did not offer a reply to OCA Exception No. 5.

4. Disposition

We find that Aqua has provided evidence linking the stock-based incentive compensation program with benefits to customers and improved operational efficiency. Aqua's witness Mr. Packer explained that with the implementation of the Incentive Compensation Plan in 1990, a portion of an employee's total cash compensation was placed "at risk" pending the achievement of key performance objectives. The employee's progress toward these performance objectives was used to determine the employee's resulting percentage of a target bonus. Aqua St. 1-R at 15.

Mr. Packer explained further the rationale of the Company's incentive compensation plan as follows:

The purpose of the Plan is to tie employee compensation to the accomplishment of the Company's key operating objectives, thereby ensuring that the entire workforce is

working toward the same end. Customers benefit from the participant's individual objectives being met, as improvements in performance are accomplished by controlling costs, improving efficiencies and enhancing customer service. As a result, the need for rate relief is mitigated.

Aqua St. 1-R at 15-16.

Mr. Packer stated that “[m]any of the employee objectives focus on cost containment, quality service, productivity enhancements and compliance initiatives to ensure reasonable cost and high-quality service to our customers.” Aqua St. 1-R at 17-18. Mr. Packer provided that “[s]tock compensation is an equally important form of compensation at risk, promotes retention, and emphasizes an investment interest in the business at the employee level that promotes efforts to provide safe, adequate, and reliable utility service.” Aqua St. 1-R at 19.

We agree with the ALJ that the stock-based compensation benefits ratepayers. We find that the stock-based compensation is linked to performance objectives that benefit consumers, including controlling costs and compliance initiatives. Accordingly, the OCA Exception No. 5 is denied.

E. Supplemental Executive Retirement Plan (SERP)

1. Positions of the Parties

Aqua explained that the SERP is a legacy retirement program for highly compensated individuals who did not qualify under the Company's former pension plan due to Internal Revenue Service (IRS) limitations. Aqua M.B. at 72 (citing Aqua St. 1-SR at 11-12). In April 2003, the Company closed both the pension plan and its SERP to employees hired after that date. Aqua averred that the SERP provides replacement

retirement benefits for a limited number of past and present employees and their spouses who are not eligible for the Company's former pension plan. Aqua M.B. at 72 (footnote omitted).

The OCA provided that the Company's claim unreasonably imposes an expense for SERP for Essential Utilities and Aqua top executives on consumers when that expense is not affiliated with the provision of public utility service. The OCA noted that the SERP provides retirement benefits for select highly compensated executives that goes beyond what employees with qualified pension plans receive and beyond IRS limitations for qualified plans. The OCA explained that without the expense of SERP, the Company's executives would still receive retirement benefits available to any other Aqua employee. According to the OCA, an expense that exists for the purpose of providing additional compensation to executives that are already the highest paid in the Company is both excessive and unnecessary to the provision of water service.

OCA M.B. at 49 (citing *Pa. PUC v. Pennsylvania American Water Co.*, 1993 Pa. PUC LEXIS 79 (*PAWC 1993*) at *121-123, 136-139 (holding that unnecessary expenditures that do not relate to the provision of utility service should not be borne by ratepayers)). The OCA argued that while the Company is free to provide these additional retirement benefits to its executives, it should do so at the expense of shareholders rather than ratepayers. The OCA recommended removing the requested FPFTY expenses of \$695,612 for the water utility and \$57,050 for the wastewater utility. OCA M.B. at 49 (citing OCA St. 1 at 62; OCA Exh. LA-2, Sch. C-18; Table II (Water); Table II (Wastewater Base)).

2. Recommended Decision

The ALJ noted that the SERP is not associated with retaining or recruiting executive talent. R.D. at 63. The ALJ provided that Aqua did not demonstrate that the SERP is connected to employee performance metrics that relate to the provision of utility

service. The ALJ recommended the SERP expenses be excluded and that \$695,612 for the water utility and \$57,050 for the wastewater utility be removed from the requested FPFTY expenses. For wastewater, the ALJ recommended that the \$57,050 adjustment be allocated to each rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Sch. C-1. The ALJ recommendations are as follows:

The wastewater adjustments are comprised of decreases for Wastewater Base, Limerick, East Bradford, Cheltenham, East Norriton, and New Garden of \$23,373; \$8,035; \$1,763; \$14,049; \$7,036; and \$2,794; respectively. These adjustments are reflected in each rate case under [Recommended Decision, Appendix] Table II, row “Supp. Exec. Retire Program.” As noted in [Recommended Decision, Appendix] Table VI for each rate zone, the cash working capital resulting from this SERP adjustment is recommended to be assigned to the management fee expense account for each rate zone.

R.D. at 63-64.

3. Aqua Exception No. 6 and Replies

In its Exception No. 6, Aqua avers that the Recommended Decision improperly applies incentive compensation recovery criteria to a post-employment retirement benefit to reach an incorrect recommendation. Aqua explains that the SERP is a legacy retirement program, similar to the Company’s pension plan but limited to certain senior level employees who did not qualify under the Company’s former pension plan due to Internal Revenue Code limitations. Aqua Exc. at 25 (citing R.D. at 63). Aqua notes that the SERP provides replacement retirement benefits for the limited number of present and retired employees and their spouses who are not eligible for the Company’s qualified pension plan. Aqua Exc. at 25.

Aqua maintains that eligibility for benefits each year under the SERP is not based upon performance criteria, but upon employment. When the program closed to new employees after April 2003, the pre-April 2003 employees continued to receive their promised benefits upon retirement. Aqua replaced the SERP and the pension plan with a defined contribution 401(k) program to control costs. Aqua Exc. at 26, n.15. Aqua notes that like the pension plan, the Company continues to incur costs under this legacy plan. Aqua expects the cost of the program to decline over time. Aqua Exc. at 25-26.

Aqua avers that as a post-employment benefit, recovery of the costs of the program in rates should not be measured by whether it serves as a current recruiting tool, or whether the recipient retirees have met an incentive target. Aqua Exc. at 26.

In its reply to Aqua Exc. No. 6, the OCA submits that the Company acknowledges that the SERP has no connection to the provision of utility service, to customer service, or to attracting and retaining new employees. OCA R. Exc. at 3 (citing OCA M.B. at 47-50; OCA R.B. at 23-24).

The OCA disagrees with Aqua's argument that the SERP should be included in rate recovery because excluding the program would "disincentivize utilities from changing or eliminating post-employment benefits, if the ongoing costs of a discontinued program may no longer be recoverable." OCA R. Exc. at 3 (citing Aqua Exc. at 26). The OCA contends that Aqua's argument has no basis in Commission precedent because it ignores that compensation programs wholly disconnected from utility service should never be funded, whether those programs are discontinued or current. OCA R. Exc. at 3 (citing OCA M.B. at 47-48; OCA R.B. at 23-24).

4. Disposition

We agree with the OCA, that not all costs incurred by Aqua are recoverable. While Aqua continues to incur costs from the SERP, Aqua's customers who receive no benefit from and have no ties to the SERP, should not be required to fund these costs. We agree with the ALJ's recommendation to remove the Company's FPFTY expenses of \$695,612 for water and \$57,050 for wastewater, in the manner outlined by the ALJ, *supra*. Accordingly, Aqua Exception No. 6 is denied.

F. Non-Rate Case Legal Expense

1. Positions of the Parties

Aqua proposed a three-year average of non-rate case legal expenses to reflect the costs incurred in a normal year, including the costs of union contract negotiations that occur on a two-year or more interval. Aqua M.B. at 80-81. Aqua's claim includes a request to recover \$644,4475 in non-rate case legal expense. Aqua M.B. at 80.

The OCA recommended a reduction of \$24,981 in Aqua's non-rate case legal expense to more accurately reflect the average amounts recorded by Aqua for the twelve month periods ending March 31, 2020 and March 31, 2021. OCA R.B. at 22 (citing OCA M.B. at 47). The OCA provided that its suggested two-year time frame excludes the 2019 year because the expense that year was unusual and is not representative of current or future levels of non-rate case legal expense. *Id.*

2. Recommended Decision

The ALJ reasoned that the use of a two-year average, as the OCA recommended, would fail to include expenses that occur on a two-year or more interval, such as union negotiations. The ALJ noted that according to Aqua, its proposal is consistent with its claim in prior rate cases and other expense categories that exhibit similar ebbs and flows as in this case. The ALJ found Aqua's claim based on a three-year average of non-rate case legal expenses to be reasonable. R.D. at 64-65 (citing Aqua St. 3-R at 10).

3. OCA Exception No. 3 and Replies

In its Exception No. 3, the OCA contends that the ALJ erred by accepting Aqua's claim for \$644,475 for non-rate case legal expense. OCA Exc. at 3 (citing R.D. at 65). The OCA avers that this amount of non-rate case legal expense was derived from a three-year average of non-rate case legal expense. The OCA notes that it proposed averaging two years of non-rate case legal expense instead of three, to exclude the year ending March 31, 2019, in which Aqua had unusually high legal expenses. OCA Exc. at 3 (citing OCA M.B. at 47). The OCA avers that Aqua's non-rate case legal expense in the year ending March 31, 2019 was unusually high and it does not provide an accurate representation of what that expense will be in the future. OCA Exc. at 4 (citing OCA M.B. at 47). According to the OCA, Aqua's non-rate case legal expense has decreased in each of the two years following 2019. OCA Exc. at 4 (citing OCA St. 1 at 58). Additionally, the OCA contends that Aqua has failed to establish that any expenses from the 2019 year are recurring. The OCA argues that Aqua's non-rate case legal expense should be reduced by \$24,981 to more closely reflect what the Company's expenses will be in the future. OCA Exc. at 4 (citing OCA M.B. at 47; OCA Exh. LA-2, Sch. C-17 at 2, Table II (Water)).

In its reply to the OCA Exception No. 3, Aqua provides that a three-year average for non-rate case legal expense accounts for the fluctuation of this expense that occurs in the normal course of business. In addition, the Company claims, that the two-year average proposed by the OCA may not capture regular cyclical legal expenses such as union contract negotiations. Aqua R. Exc. at 3 (citing Aqua M.B. at 81).

4. Disposition

We agree with the ALJ that a three-year average for non rate case legal expense is reasonable. In our view, a three-year average is more appropriate to include costs that a two-year average would not capture. Aqua's union contract negotiations are scheduled to occur during the FTY. Aqua St. 3-R at 10. As Aqua pointed out, the Company has used a three-year average for this expense in its prior rate case. Aqua M.B. at 81.⁴⁸ The OCA Exception No. 3 is denied.

G. Purchased Water Expense

1. Positions of the Parties

Aqua has included a claim for \$4,135,311 for Purchased Water Expense during the FPFTY. Aqua M.B. at 81 (citing Aqua Exh. 1-A, Sch. C-7.1). The amount includes \$297,839 of purchased water from Aqua Ohio. Aqua M.B. at 82 (citing Aqua Exh. 1-A, Sch. C-7.1.i, Line1).

⁴⁸ We note that Aqua used a three-year average to calculate its Legal Expense Claim in the *Aqua 2018 Rate Case*. *Aqua 2018 Rate Case*, Aqua Exh. 1-A(a), Sched. C-9.1. This claim was included within the Settlement approved by the Commission in the *Aqua 2018 Rate Case*.

I&E proposed a decrease of \$166,975, reflecting water purchases from Aqua Ohio at \$0.3449 per hundred gallons. I&E St. 1-SR at 19 (citing I&E St. 1 at 19). I&E argued that the cost of purchased water (Aqua Ohio Struthers Division) should be the same as the rate Aqua Pennsylvania receives when it sells water to that same affiliate (Aqua Ohio Masury Division) for ratemaking purposes so that Pennsylvania customers are not harmed. According to I&E, the Ohio rate is not guaranteed full recovery when that tariff rate is being claimed by a Pennsylvania affiliate in a Pennsylvania rate filing. I&E M.B. at 34-35 (citing St. 1-SR at 20).

Aqua's witness, Ms. Feeney, explained that I&E's recommendation ignores the fact that Aqua's sales to the Masury Division and Aqua's purchases from the Struthers Division of Aqua Ohio are not comparable. R.D. at 66 (citing Aqua St. 2-R at 33). Aqua explained further that these sales and purchases take place in different geographic locations. Additionally, Aqua highlighted that the Masury and Struthers Divisions of Aqua Ohio are separate – each division has a separately determined cost of service, separate tariffs, and different rates. *Id.*

2. Recommended Decision

The ALJ recommended that I&E's proposed adjustment be rejected. The ALJ reasoned that there is no evidence that the purchase of water from Aqua Ohio Struthers Division at tariffed rates is imprudent or excessive. The ALJ noted that in considering the Masury contract, the Commission will determine whether the sale of water to Masury at discounted rates is appropriate. The ALJ stated that as the purchase of water from Aqua Ohio Struthers division is made pursuant to tariff rates that have been approved by the applicable authorities with jurisdiction to regulate those utility rates, Aqua's claimed purchased water expense should not be adjusted. The ALJ further reasoned this rate is unaffected by the rate to be charged by Aqua to the Masury Division,

which Aqua based upon a contract rate established in relation to the cost of a competitive alternative available to the Masury Division. R.D. at 66.

3. Disposition

No Party filed Exceptions on this issue. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment.

H. Dredging Expense

1. Positions of the Parties

Aqua proposed to change its dredging process and to accrue a reserve exclusively for dredging costs at a rate of \$400,000 per year and charge actual costs against that reserve as they are incurred. Aqua M.B. at 85 (citing Aqua St. 3 at 5). Aqua proposed that the reserve be recorded as a regulatory liability. Aqua stated that this proposed adjustment would reduce dredging expense by approximately \$300,000 over three years. Aqua would change its past practice of mobilizing and demobilizing equipment (with fixed costs of approximately \$150,000 per occurrence) three times over a three-year span, to only one time over a three-year span. *Id.*

I&E recommended no adjustment to the claimed dollar amount, but recommended that Aqua's dredging expense be normalized and that the Company's proposed use of a reserve account and regulatory liability be rejected. I&E M.B. at 36 (citing I&E St. 1 at 21; I&E St. 1-SR at 21). I&E argued that dredging is a routine expense and should be normalized for ratemaking purposes. *Id.*

2. Recommended Decision

The ALJ recommended that the dredging expense be normalized and that the requested approval for deferred accounting treatment should be rejected. The ALJ reasoned that while the claimed expense may be substantial, it is not extraordinary, non-recurring, or within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery. R.D. at 67.

3. Disposition

No Party filed Exceptions on this issue. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment.

I. Advertising

1. Positions of the Parties

Included in Aqua's claim for advertising expense is \$75,000 for water operations and \$7,500 for wastewater operations related to the advertising for the Company's proposed Universal Service Program (USP). Aqua M.B. at 86 (citing Aqua St. 2-R at 34-35; OCA Exh. LA-3, 17-18).

The OCA recommended that the Company only be permitted to recover \$25,000 for water operations and \$2,500 for wastewater operations for this category of advertising. Aqua M.B. at 86 (citing OCA St. 1 at 40). The OCA considered this a new expense, since it was not incurred in the HTY and FTY. The OCA proposed to normalize the FPFTY amounts claimed by Aqua for this expense over three years. Aqua M.B. at 86 (citing OCA St. 1 at 41).

Aqua provided that the program was not in effect in the HTY and will not be in effect during the FTY. Aqua proposed the new program to be in effect in the FPFTY and averred that to normalize this expense with prior years when the program did not exist is unfair. Aqua M.B. at 87.

2. Recommended Decision

The ALJ recommended that Aqua's claimed expense to advertise the proposed new USP should be accepted. The ALJ reasoned that the program is proposed to be in effect during the FPFTY and, therefore, Aqua's advertising expense reasonably projects the new amounts associated with ensuring customers are informed about the new program. R.D. at 69 (citing 66 Pa. C.S. § 1316).⁴⁹

3. OCA Exception No. 2 and Replies

The OCA avers that normalizing this cost for customer outreach for the new USP over three years is consistent with an understanding that advertising priorities change over time. The OCA provides that normalization of a new expense being introduced for the first time in the FPFTY that may fluctuate in future rate cases is required under Commission precedent. OCA Exc. at 3 (citing *Pa. PUC v. Pennsylvania American Water Co.*, Docket Nos. R-00038304, *et al.*, 2003 Pa. PUC LEXIS 498 (Recommended Decision issued December 2, 2003) (*PAWC 2003*) at *101-102, *adopted as modified*, Order entered January 29, 2004).

⁴⁹ See 66 Pa. C.S. § 1316 (permitting utilities to recover advertising expenses that "(4) Provides important information to the public regarding safety, rate changes, means of reducing usage or bills, load management or energy conservation" or "(5) Provides a direct benefit to ratepayers.").

The OCA argues that normalization would reduce the impact for rate payers, and that Aqua has failed to explain why doing so prevents it from accomplishing its goal of customer outreach. OCA Exc. at 3 (citing OCA M.B. at 32).

In its reply to the OCA Exception No. 2, Aqua contends that the ALJ correctly concluded that Aqua is permitted to recover the expense under 66 Pa. C.S. § 1316 and that to require Aqua to normalize an expense to be incurred in the FPFTY for a program to be implemented in the FPFTY is unfair. Aqua R. Exc. at 2-3 (citing R.D. at 68-69; Aqua M.B. at 86-87). Aqua avers that, as the ALJ noted, the OCA proposed increased outreach efforts for the proposed USP. Aqua R. Exc. at 3 (citing R.D. at 69). Aqua argues that the OCA offered no evidence to indicate Aqua's existing level of advertising expense, exclusive of the new CAP spending, is excessive. Aqua contends that the OCA is relying on an inapposite case that dealt with the specific variability of uncollectibles expense and not a new expense associated with a new program. Aqua R. Exc. at 3 (citing Aqua R.B. at 35; *PAWC 2003* at *101-102).

4. Disposition

We find the advertising expense for the proposed USP to be reasonable. We agree with the ALJ that to normalize the expense over three years is not fair. We do not agree with the OCA's argument that Commission precedent requires the normalization. The *PAWC 2003* citation is related to an expense that varied over three years, not an expense for a new program occurring for the first time in the FPFTY. Accordingly, the OCA Exception No. 2 is denied.

J. General Price Level Adjustment

1. Positions of the Parties

Aqua provides that its “General Price Level Adjustment” reflects the anticipated effect of inflation on operating expenses that were not specifically adjusted. Aqua M.B. at 59 (citing Aqua St. 3 at 2, Aqua Exhs. 1-A; 1-B through 1-G; Sch. C-4.1). Aqua explains that it derived its inflation factors based on the quarterly Consumer Price Index (CPI) percentage change from the same quarter in the prior year set forth in the October 10, 2020, Blue Chip Economic Indicators. Aqua explains further that “[s]ince the forecast is not available for the quarters in the FPFTY, the Company uses the last available forecasted quarterly percentage change and uses that as the annual rate to multiply inflation eligible expenses.” Aqua M.B. at 59 (citing Aqua St. 3 at 3).

The OCA argued that the adjustment is a blanket inflation adjustment which does not utilize a targeted approach. Aqua M.B. at 60 (citing OCA St. 1 at 34-35). The OCA provided that Aqua’s adjustments for estimated blanket inflation are inconsistent with the law and should be removed, reducing FPFTY expenses by \$1.07 million. OCA M.B. at 28 (citing OCA St. 1 at 34-25; OCA Exh. LA-2, Sch. C-5; Table II (Water, Wastewater Base, Limerick, East Bradford, Cheltenham, East Norriton, New Garden)). The OCA stated that Aqua did not adequately justify the purpose behind its inflation adjustments. The OCA argued that Aqua is speculating regarding what increase, if any, is appropriate for those expenses. OCA M.B. at 28-29.

2. Recommended Decision

The ALJ agreed with the OCA that Aqua has not justified the use of a general price level adjustment to expenses. The ALJ noted that according to Aqua’s witness, Mr. Christopher E. Manning, the general inflation factor would be applied to

22% of Aqua's total operating expenses. R.D. at 70 (citing Aqua St. 3-R at 3). The ALJ reasoned that while it may be simpler for Aqua to use a general inflation factor for a block of expenses, its simplicity belies the fact that Commission precedent requires specificity if an inflation factor is utilized. The ALJ explained that to permit a large, sophisticated utility like Aqua to use a general inflation factor on a group of expenses as proposed here would incentivize less accurate tracking of expenses and would disincentivize Aqua from controlling its costs. In the ALJ's view, Aqua has not demonstrated that tracking the changes in these expenses individually is unduly burdensome. R.D. at 70.

The ALJ recommended that the Company's full inflation adjustment should be removed as it is not supported by record evidence and contradicts precedent to approve inflation adjustments only when the proposed adjustments are specific and not too general. The ALJ recommended an adjustment of \$864,335 for water operations and \$205,560 for wastewater operations. The wastewater adjustments are comprised of decreases for Wastewater Base, Limerick, East Bradford, Cheltenham, East Norriton, and New Garden of \$145,368, \$23,275, \$6,828, \$8,719, \$8,665, and \$12,705, respectively. These adjustments are reflected in each rate case table under Table II, Row "General Inflation" of the Recommended Decision Appendix. As noted in Table VI of the Recommended Decision Appendix for each rate zone, the cash working capital adjustment resulting from this general inflation adjustment is recommended to be assigned to a general expense account for each rate zone that uses a number of lag days that is equal to the weighted average O&M Expense lag days for each rate zone after all other adjustments are applied. R.D. at 70-71, R.D. Appendix, Table II, Table VI.

3. Aqua Exception No. 7 and Replies

In its Exception No. 7, Aqua provides that the Commission has repeatedly held that general price adjustment factors may be applied to expenses not separately

adjusted, where the utility has demonstrated the adjustments are adequately supported and relatively conservative. Aqua Exc. at 27 (citing Aqua M.B. at 61-62). Aqua states that the Commission “has consistently accepted inflation adjustments where supported by historic data demonstrating that the utility has experienced cost increases that exceed the claimed inflation increases.” Aqua Exc. at 27 (citing Aqua M.B. at 62 (quoting *Pa. PUC v. Philadelphia Suburban Water Company*, Docket Nos. R-00016750, 2002 Pa. PUC LEXIS 55 (Order entered July 8, 2002) (*Philadelphia Suburban Water 2002*) at *55)).

Aqua avers that the ALJ incorrectly stated that the adjustment lacked specificity. Aqua Exc. at 27 (citing R.D. at 70). Aqua notes that its Main Brief provided details on the proposed adjustment and demonstrated that it uses an inflation factor well below the historical cost increases the Company has faced. Aqua Exc. at 28 (citing Aqua M.B. at 63).

In its reply to Aqua Exc. No. 7, the OCA contends that the ALJ correctly disallowed the Company’s proposed general price level adjustment. The OCA avers that Aqua’s argument that the Commission has approved similar inflation adjustments by the Company ignores that the Commission has historically required utilities to provide greater specificity about these adjustments. OCA R. Exc. at 4 (citing OCA M.B. at 28-30; OCA R.B. at 14).

According to the OCA, Aqua’s claim that the ALJ “ignores” precedent by disallowing this general inflation adjustment is incorrect. OCA R. Exc. at 4 (citing Aqua Exc. at 27). The OCA provides that the Commission has historically disallowed speculative inflation factors. OCA R. Exc. at 4 (citing *Pa. PUC v. Philadelphia Elec. Co.*, 58 Pa. P.U.C. 7 (1983) (*PECO 1983*); *National Fuel Gas Dist. Corp. v. Pa. PUC*, 677 A.2d 861 (Pa. Cmwlt. 1986) (*NFG 1986*)). The OCA notes that Aqua provided only three examples of expenses that have grown at rates which exceed the Company’s proposed inflation factor. OCA R. Exc. at 4 (citing Aqua St. 3 R at 3-4). The OCA

argues that the proposed inflation adjustment should not be approved because Aqua has provided no evidence about the other operating expenses to which the inflation factor would be applied. OCA R. Exc. at 4 (citing R.D. at 70; OCA M.B. at 30; OCA R.B. at 15).

The OCA finds ALJ Long's concern about setting a precedent which would allow large utilities such as Aqua to apply a general inflation factor to unspecified expenses is well-founded. OCA R. Exc. at 4 (citing R.D. at 70). The OCA agrees with the ALJ that if the Commission were to approve Aqua's entire proposed inflation adjustment based solely on three expense examples provided by Aqua, it would open the door for other large utilities to propose unjustified blanket inflation expense adjustments in future rate cases. The OCA concludes that ALJ Long correctly disallowed Aqua's proposed inflation adjustment, reducing FPFTY expenses by \$1.07 million. OCA R. Exc. at 4 (citing R.D. at 70-71; OCA M.B. at 28-30; OCA R.B. at 15; OCA Table II (Water, Wastewater Base, Limerick, East Bradford, Cheltenham, East Norriton, New Garden)).

4. Disposition

Aqua's proposed General Price Adjustment applies to approximately 22% of Aqua's O&M expenses. The OCA acknowledged that in our recent decision in *Pa. PUC v. PECO Energy Co. – Gas Division*, Docket No. R-2020-3018929, Order entered June 22, 2021 (*PECO Gas 2021*), we approved an inflation adjustment. However, as the OCA correctly notes, the company in that proceeding used a more targeted approach to an inflation adjustment than Aqua proposed. OCA St. 1 at 35. More specifically, the Commission approved an inflation adjustment for regulatory Commission expenses but denied an inflation adjustment in that same case that the Commission found less specific. *See PECO Gas 2021* at 88, 95-96.

The Commission recently denied a blanket increase by Wellsboro Electric Company⁵⁰ of 3% inflation applied to FTY expenses to estimate FPFTY expenses.

In *Wellsboro 2020* the Commission stated:

[T]he Company did not demonstrate that making this blanket adjustment to each expense claim directly relates to the actual costs expected to be incurred in each expense account in the FPFTY.

Wellsboro 2020 at 40.

In both its briefs and its Exceptions, Aqua also cited to *Philadelphia Suburban Water 2002*, to justify the use of an inflation factor for 22% of expenses. See Aqua M.B. at 62; Aqua Exc. at 27. However, we note in that case, the inflation adjustment was more closely targeted to the inflation adjustment and “was applied only to those miscellaneous employee expenses not otherwise specifically adjusted.” *Philadelphia Suburban 2002* at *51 (citing R.D. at 37-38). We agree with the ALJ that Aqua has not justified the use of a general price level adjustment to expenses “not specifically adjusted in this case or not subject to inflation.” R.D. at 70. We also agree that allowing Aqua to apply a general inflation adjustment to a block of expenses could incentivize less accurate tracking of expenses and a less rigorous approach to controlling costs for those expenses. The application of a General Price Adjustment to 22% of expenses is neither targeted nor specific. We find the ALJ’s recommendation to deny Aqua’s use of a General Price Adjustment to be reasonable. Therefore, we shall adopt the ALJ’s recommendation to remove the Company’s entire claimed amount of \$864,335 for water operations and \$205,560 for wastewater operations. As noted by the ALJ, the wastewater adjustments are comprised of decreases for Wastewater Base, Limerick, East

⁵⁰ *Pa. PUC, OCA, OSBA v. Wellsboro Electric Company*, Docket No. R-2019-3008208 (Order entered April 29, 2020) (*Wellsboro 2020*).

Bradford, Cheltenham, East Norriton, and New Garden of \$145,368, \$23,275, \$6,828, \$8,719, \$8,665, and \$12,705, respectively. These are outlined in Table II-Adjustments in each of the rate tables that are attached to Commission Tables Calculating Allowed Revenue Increase at the end of this Opinion and Order.

Based on the above discussion, Aqua Exception No. 7 is denied.

K. Chemicals and Purchased Power (Water) Expenses

1. Positions of the Parties

The OCA proposed to increase the Company's claimed Chemicals Expense for water operations by \$66,787. R.D. at 71 (citing OCA St. 1 at 38). This adjustment is based on the OCA's proposed adjustment to Metered Residential Water sales, which estimates the Company's progress towards the return to pre-pandemic residential usage levels as slower than the Company predicts.

The OCA recommended a related negative adjustment of \$96,312 to the Purchased Power expense. OCA M.B. at 30 (citing OCA St. 1 at 38; OCA Exh. LA-2, Sch. C-7; Table II (Water)).

I&E did not recommend adjustments to gas and electric O&M expenses. I&E M.B. at 39.

2. Recommended Decision

The ALJ did not recommend any adjustments to Aqua's claim for chemicals expense consistent with the ALJ's recommendations related to Metered Residential Water Sales revenue. R.D. at 71.

3. OCA Exception No. 1

In its Exception No. 1, the OCA recommends an increase to residential revenues of \$2.757 million based on a slower return of residential revenues than Aqua predicted. Associated with that more gradual revenue increase, the OCA recommends a negative adjustment of \$66,787 to the Chemicals Expense for water operations and a negative adjustment to Purchased Power expense of \$96,312. OCA Exc. at 1-2 (citing OCA M.B. at 30; OCA Table II (Water)). The OCA also recommends that the Company's CWC be adjusted to reflect this revenue adjustment and based on the expense adjustments it recommended. OCA Exc. at 2 (citing OCA M.B. at 22; OCA Table II (Water), OCA Table II (Wastewater)).

4. Disposition

As provided in our disposition of the OCA's Exception No. 1 in Section VII. D. of this Opinion and Order, *supra*, we denied the OCA Exception No. 1. Therefore, we shall also decline to make the OCA's requested adjustments to the Chemicals Expense and the Purchased Power Expense for water operations.

L. Depreciation - Amortization Expense Adjustment – Water – Phoenixville Acquisition

1. Positions of the Parties

Aqua has requested a positive acquisition adjustment of \$2,315,440 to its rate base for the Phoenixville water system as of the end of the FPFTY. Aqua M.B. at 19 (citing Aqua Exh. 1-A, Sch. G-3). Aqua has provided a claim of \$121,865 for amortization expense associated with the positive acquisition adjustment to rate base. Aqua M.B. at 58.

Both I&E and the OCA contended that the amortization expense associated with the Phoenixville acquisition should be disallowed. Aqua M.B. at 58 (citing I&E St. 3 at 11, OCA St. 1 at 30). I&E recommended that the Phoenixville acquisition adjustment be denied, which reduces rate base by \$2,315,440 and also reduces the annual amortization expense by \$121,865, which is expressed as a depreciation expense. I&E M.B. At 20 (citing I&E St. 3 at 10-11; I&E St. 3-SR at 7). I&E recommended that the Company's total annual amortization expense be reduced by \$121,865. I&E M.B. at 21 (citing I&S St. 3-SR at 3-7).

2. Recommended Decision

The ALJ recommended that \$2,437,305 be removed from Aqua's rate base, and the concomitant adjustments should be made to the accrued depreciation reserve and annual amortization expense which is expressed as a depreciation expense. R.D. at 44 (citing Aqua M.B. at 18). *See also* R.D. at 44, n. 27.

3. Aqua Exception No. 2

In its Exception No. 2, Aqua avers that the ALJ erred by disallowing Aqua's water rate base claim related to the acquisition of the Phoenixville Water system. Aqua Exc. at 15-18.

4. Disposition

As provided in our disposition of Aqua's Exception No. 2 in Section VI.B., *supra*, we denied the Company's Exception No. 2 and found the ALJ's recommended negative adjustment to rate base of \$2,437,305 to be reasonable. Accordingly, we find that the concomitant adjustments as recommended by the ALJ should be made to the accrued depreciation reserve and the annual amortization expense, which is expressed as

a depreciation expense in this filing. The adjustments are reflected in our Commission Tables Calculating Allowed Revenue Increase, attached to this Opinion and Order at Table II-Water, Rows “Acquis. Adj. – Phoenixville” and “Amort. Phoenixville Acquis. Adj.”

M. Cash Working Capital

1. Positions of the Parties

Aqua explained that CWC is the capital requirement arising from the difference between: (1) the lag in the receipt of revenue for rendering service; and (2) the lag in the payment of cash expenses incurred to provide that service. Aqua explained further that its CWC claims for water and wastewater operations include the necessary working capital associated with O&M expense, taxes, and interest. Aqua M.B. at 32 (citing Aqua Exh. 1-A(a), Sch. G-5; Aqua Exh. 1-B(b), Sch. G-5). For water operations, its CWC amount claimed is \$1,736,000. Aqua M.B. at 32 (citing Aqua Exh. 1-A(a), Sch. G-5). For wastewater base operations, its CWC amount claimed is \$550,000. Aqua M.B. at 31 (citing Aqua Exh. 1-B(b), Sch. G-5).

Aqua stated that no parties challenged the Company’s lead/lag study or its calculation of: (a) the average lag days in payment of expenses, taxes or interest, (b) the average lag day in receipt of revenues, or (c) the average lag days between payment of expenses and receipt of revenue. Aqua M.B. at 31 (citing Aqua St. 1 at 27 (describing the results of the lead/lag study)).

I&E provided that it agrees with the Company’s use of a lead/lag study to measure how many days exist on average between the midpoint of the service period and the date the payment is received. I&E M.B. at 38 (citing I&E St. 1 at 30). Based on I&E’s recommended expense adjustments, I&E recommended a cash working capital

allowance for Water of \$1,679,000 or a reduction of \$57,000 from the Company's claimed \$1,736,000. I&E did not recommend an adjustment for cash working capital for Wastewater Base or the other wastewater acquisitions. I&E M.B. at 38 (citing I&E St. 1-SR at 31).

The OCA averred that there should be a negative adjustment of \$9.433 million for Interest for Water Operations, and the proposed rate base amount for CWC should be reduced by \$0.718 million. OCA M.B. at 22 (citing OCA St. 1 at 24). The OCA explained that this adjustment is based on negative adjustments to Long Term Debt-Interest and Pennvest Interest. OCA M.B. at 22 (citing OCA St. 1 at 24; OCA Exh. LA-2, Sch. B-3). The OCA stated that, excluding the Section 1329 acquisitions by the Company, there should be an approximate negative \$440,000 adjustment for Interest for Aqua's wastewater rate base and recommended a CWC requirement that is \$28,000 lower than Aqua's proposed CWC allowance for Wastewater base operations. The OCA stated that this adjustment is made based on a negative adjustment to Long Term Debt-Interest, and both adjustments are made at the recommendation of the OCA's witness, Mr. Smith. OCA M.B. a 22 (citing OCA St. 1 at 25; OCA Exh. LA-2, Sch. B-3).

The OCA also recommended an adjustment to CWC based on its recommended adjustment to residential water sales revenue. OCA Exc. at 2.

2. Recommended Decision

The ALJ recommended adjustments to CWC related to the General Price Level Adjustment made as detailed in that discussion *supra*. R.D. at 71.

Overall, the ALJ noted that Aqua's claims for CWC have been adjusted based on the recommended adjustments to rate base, O&M expenses and taxes in the tables attached as appendices to the Recommended Decision. R.D. at 45.

3. OCA Exception No. 1 and Replies

In its Exception No. 1, the OCA insists that CWC should be adjusted to reflect the OCA's recommended residential revenue adjustment and its expense adjustments. OCA Exc. at 2 (citing OCA M.B. at 22; OCA Table II (Water); OCA Table II (Wastewater)).

In its reply to the OCA Exception No. 1, Aqua contends that OCA's recommended residential revenue adjustment was correctly rejected by the ALJ. Aqua R. Exc. at 1-2.

4. Disposition

As provided in our disposition for OCA Exception No. 1 in Section VII.E., *supra*, we denied OCA Exception No. 1. We decline to make the OCA's related requested adjustments to CWC. Accordingly, we shall also decline to make the OCA's requested changes to CWC related to Long Term Debt-Interest and Pennvest Interest.

Based on the above discussion of the adjustments to Aqua's individual expense claims, we have approved a total downward adjustment to the Company's water

O&M expenses of \$1,900,892.⁵¹ The cash working capital components related to interest and dividends, taxes, and O&M expense result in a net overall increase of \$199,948 to the Company's water CWC.⁵²

Additionally, we have approved a total downward adjustment to the Company's wastewater O&M expenses of \$232,643. The cash working capital components related to interest and dividends, taxes, and O&M expense result in a net overall increase of \$362,667 to the Company's wastewater CWC. As stated in Section VI.C, *supra*, this is broken down as follows: (1) a net increase to the CWC component for Wastewater-Base of \$216,340,⁵³ which reflects, in part our downward adjustment to O&M expenses of \$150,101; (2) a net increase to the CWC component for Wastewater-Limerick of \$76,673,⁵⁴ which reflects, in part our downward adjustment to

⁵¹ As set forth in Table II-Water in the Commission Tables Calculating Allowed Revenue Increase, attached to this Opinion and Order, our net total reduction to the Company's water expenses claim is \$1,894,043. This figure includes a total reduction of \$1,900,892 related to our downward adjustments to the Company's water expense claims for general liability insurance expense, general price level adjustment, and SERP expense, as discussed in this Expenses section. This is netted against a total increase to expenses of \$5,849 related to water contract revenues and concomitant forfeited discounts, as discussed in Section VII of this Opinion and Order, *supra*. $[(-\$1,900,892 + \$5,849) = -\$1,895,043]$. It is our \$1,900,892 reduction to the Company's expenses that flows to our downward adjustment to Cash Working Capital – O&M Expense that is described in the next footnote.

⁵² As set forth in Table II-Water, the \$275,473 addition is the net of: (1) an increase of \$4,950 to Cash Working Capital – Interest and Dividends; (2) an increase of \$431,945 to Cash Working Capital – Taxes; and (3) a decrease of \$161,422 to Cash Working Capital – O&M Expense. $[(\$4,950 + \$431,945 - \$161,422) = \$275,473]$.

⁵³ As set forth in Table II-Wastewater-Base, the \$216,340 addition is the net of: (1) a decrease of \$945 to Cash Working Capital – Interest and Dividends; (2) an increase of \$226,646 to Cash Working Capital – Taxes; and (3) a decrease of \$9,361 to Cash Working Capital – O&M Expense. $[(-\$945 + \$226,646 - \$9,361) = \$216,340]$.

⁵⁴ As set forth in Table II-Wastewater-Limerick, the \$76,673 addition is the net of: (1) a decrease of \$389 to Cash Working Capital – Interest and Dividends; (2) an increase of \$78,550 to Cash Working Capital – Taxes; and (3) a decrease of \$1,488 to Cash Working Capital – O&M Expense. $[(-\$389 + \$78,550 - \$1,488) = \$76,673]$.

O&M expenses of \$27,778; (3) a net increase to the CWC component for Wastewater-East Bradford of \$9,669,⁵⁵ which reflects, in part our downward adjustment to O&M expenses of \$7,802; (4) a net increase to the CWC component for Wastewater-Cheltenham of \$54,249,⁵⁶ which reflects, in part, our downward adjustment to O&M expenses of \$16,469; (5) a net increase to the CWC component for Wastewater-East Norriton of \$24,706,⁵⁷ which reflects, in part our downward adjustment to O&M expenses of \$14,318; and (6) a reduction to the CWC component for Wastewater-New Garden of \$18,970,⁵⁸ which reflects, in part our downward adjustment to O&M expenses of \$16,175.

⁵⁵ As set forth in Table II-Wastewater-East Bradford, the \$9,669 addition is the net of: (1) an increase of \$250 to Cash Working Capital – Interest and Dividends; (2) an increase of \$9,729 to Cash Working Capital – Taxes; and (3) a decrease of \$310 to Cash Working Capital – O&M Expense. $[(\$250 + \$9,729 - \$310) = \$9,536]$.

⁵⁶ As set forth in Table II-Wastewater-Cheltenham, the \$54,249 addition is the net of: (1) a decrease of \$431 to Cash Working Capital – Interest and Dividends; (2) an increase of \$56,325 to Cash Working Capital – Taxes; and (3) a decrease of \$1,645 to Cash Working Capital – O&M Expense. $[(-\$431 + \$56,325 - \$1,645) = \$54,249]$.

⁵⁷ As set forth in Table II-Wastewater-East Norriton, the \$24,706 addition is the net of: (1) a decrease of \$369 to Cash Working Capital – Interest and Dividends; (2) an increase of \$25,827 to Cash Working Capital – Taxes; and (3) a decrease of \$752 to Cash Working Capital – O&M Expense. $[(-\$369 + \$25,827 - \$752) = \$24,706]$.

⁵⁸ As set forth in Table II-Wastewater-New Garden, the \$18,970 reduction consists of: (1) a decrease of \$378 to Cash Working Capital – Interest and Dividends; (2) a decrease of \$18,230 to Cash Working Capital – Taxes; and (3) a decrease of \$362 to Cash Working Capital – O&M Expense. $[(-\$378 - \$18,230 - \$362) = -\$18,535]$.

IX. Taxes

A. Payroll Tax Expense

1. Positions of the Parties

Aqua's initial payroll tax claim included a payroll tax expense of \$3,163,655, based on its vacancy rate of 2.50%. Aqua Exh. 1-A, Sch. D-2.5. The OCA submitted that a more accurate vacancy rate would be 2.88%. OCA M.B. at 33. Aqua and I&E accepted the OCA recommended 2.88% vacancy rate. Aqua M.B. at 88, I&E M.B. at 37. Accordingly, the Company updated its claim for payroll tax expense to \$3,151,838. Aqua Exh. 1-A(a), Sch. D-2.5.

2. Recommended Decision

The ALJ remarked that Aqua's payroll tax claim was updated in rebuttal testimony to reflect the Company's acceptance of a revised vacancy rate of 2.88%. As a result, it was not necessary for the ALJ to make further adjustments to the payroll taxes. R.D. at 71-72.

3. Disposition

No Exceptions were filed objecting to the ALJ's recommendation on this issue. We find that the ALJ's recommendation is supported by ample record evidence and is just and reasonable. Therefore, we shall adopt Aqua's payroll tax claim based on a 2.88% vacancy rate.

B. Income Taxes

1. Positions of the Parties

Aqua stated its interest expense deduction claimed for ratemaking purposes was calculated using the interest synchronization method, which multiplies the weighted cost of debt in the Company's capital structure by the Company's rate base. Aqua Exh. 1-A, Sch. E-1 at 1. The OCA calculated Aqua's interest synchronization using the OCA's recommended hypothetical capital structure, *infra*. OCA R.B. at 39. As Aqua disagrees with the OCA's proposed hypothetical capital structure, it also opposes the OCA's proposed adjustment to the interest expense deduction. Aqua R.B. at 36.

2. Recommended Decision

As will be discussed more fully in Section X.B, *infra*, the ALJ rejected the OCA's use of a hypothetical capital structure for Aqua. Thus, the ALJ denied the OCA's claim regarding interest synchronization as it relates to income taxes. R.D. at 71-72.

3. Disposition

No Exceptions were filed objecting to the ALJ's recommendation on this issue. We find that the ALJ's recommendation is supported by ample record evidence and is just and reasonable. Therefore, we shall adopt the ALJ's recommendation that Aqua's interest synchronization method be employed, using the Company's capital structure, to calculate its interest expense deduction.

C. Tax Repair Deduction

1. Positions of the Parties

Aqua has proposed to carve-out \$4 million per year for its repair deductions, in the calculation of income tax expense, on the basis that it has identified a portion of its annual repair deductions as being uncertain of passing an IRS audit. To account for the “uncertain” repair deductions, Aqua has established a reserve to reduce rate base. Aqua M.B. at 90-92. Any IRS disallowance would be offset against the reserve. Aqua explained that FIN 48 is related to the Company’s practice of claiming the greatest tax-repair deductions it believes are reasonable, it recognizes that the IRS may ultimately disallow certain claims. Aqua M.B. at 91; Aqua St. 8-R at 6. Aqua’s witness, Ms. Christine L. Saball, noted the IRS has yet to issue guidance regarding what capital additions will qualify as repairs, and thus there is uncertainty regarding the actual tax repair deductions that will be allowed. *Id.*

The OCA contended that Aqua’s “flow through” treatment for its tax repair deductions is “unusual” and can result in large amounts of excess earnings between rate cases. OCA M.B. at 77; OCA R.B. at 37. The OCA also proposed to eliminate the Company’s \$4 million adjustment for FIN 48 uncertain tax positions. According to the OCA, Aqua’s FIN 48 adjustment for uncertain tax positions should reflect the amount expected to be deducted for repairs without any offset for uncertain tax positions, relying on guidance provided by the Federal Energy Regulatory Commission (FERC) for energy utilities. OCA M.B. at 81; OCA St. 1 at 34-35.

2. Recommended Decision

The ALJ was not convinced that removal of the FIN 48 adjustment from the tax repair deduction is required. R.D. at 73. The ALJ noted that the OCA contended

that this treatment of the tax repair deduction “may” result in excess earnings. However, the ALJ was persuaded by Aqua’s explanation that “including the FIN 48 adjustment protects customers because they will not be required to return to the Company disallowed deductions, because those deductions will not have been reflected in rates.” R.D. at 74 (citing Aqua St. 8-R at 7). The ALJ was also persuaded by how the Company handles the FIN 48 exclusion with regard to its rate base. In this regard, the ALJ noted the Company’s statement that “[t]o compensate customers for the time value of money benefits of the FIN 48 exclusion, the Company deducts from rate base the reserve balance established for all years in which the challenged deductions are claimed.” *Id.*

The ALJ was further persuaded to recommend that the Company’s tax repair deduction be approved, based on the following Company arguments that: (1) shareholders will not receive income for the tax effect of the FIN 48 adjustment, and the rate base deduction ensures that customers receive the time value of money benefit related to the deferral of the uncertain tax position; (2) if, in the future, the IRS allows the full tax repair deduction, then the reserve balance will be returned to customers in rates; (3) if the full deduction is disallowed, as the Company assesses is likely, the reserve will be debited for the disallowed amount; and (4) customers will receive the benefit of the reserve balance amortized as a deduction to tax expense in future rate cases. R.D. at 74 (citing Aqua St. 8-R at 6-7).

Thus, the ALJ recommended that the Commission permit Aqua to continue utilizing the flow-through treatment of tax repair deductions which were approved in the settlement of Aqua’s 2018 base rate case. Similarly, the ALJ recommended the Commission reject the OCA’s objection to Aqua’s “collar mechanism.”⁵⁹ The ALJ

⁵⁹ The ALJ noted that the OCA did not address its witness’ argument in surrebuttal testimony opposing the collar mechanism in its Main Brief. R.D. at 74, n.120.

concluded that there is no convincing evidence that this tax treatment has resulted in excess earnings or has otherwise harmed ratepayers. R.D. at 74.

3. OCA Exception No. 10 and Replies

In its Exception No. 10, the OCA excepts to the ALJ's recommendation and states that the tax repair deduction should only include those repairs that Aqua expects to claim for tax purposes and that the proposed carve-out is inappropriate for ratemaking purposes. The OCA also states that it does not take issue with the "collar mechanism" recommended by the ALJ. However, the OCA opines that if any "collar" amount around the repairs deduction amount that is used to compute income tax expense were to be used going-forward, the "collar" should be no wider than \$4 million per year. OCA Exc. at 14-15.

In its Replies, the Company asserts that the ALJ correctly concluded the FIN 48 adjustment appropriately accounts for a portion of Aqua's claimed repairs expense deduction that will likely be disallowed by the IRS. Aqua notes the "collar" was established to address concerns that the claimed deduction could substantially vary from the actual deduction. Aqua R. Exc. at 8-9.

4. Disposition

We find that the ALJ's recommendation allowing Aqua to implement the FIN 48 adjustment as well as the "collar" up to \$4 million, is supported by ample record evidence and is just and reasonable. Accordingly, we shall adopt the ALJ's recommendation on this issue and deny the OCA's Exception No. 10.

X. Rate of Return

Rate of Return is one of the components of the utility's Revenue Requirement formula, outlined, *supra*. Specifically, a utility's rate of return is the amount of revenue an investment generates in the form of net income and is usually expressed as a percentage of the amount of capital invested over a given period of time. A fair and reasonable overall rate of return is one that will allow the utility an opportunity to recover those costs prudently incurred by all classes of capital used to finance the rate base during the prospective period in which its rates will be in effect. I&E M.B. at 42.

A. Proxy Groups

To estimate a utility's cost of equity,⁶⁰ or return on equity, a proxy group of similar companies is used. This group of companies acts as a benchmark to satisfy the long-established guideline of utility regulation that seeks to provide the subject utility the opportunity to earn a return similar to that of enterprises with corresponding risks and uncertainties. A proxy group is generally preferred over the use of data exclusively from any one company, because it has the effect of smoothing out potential anomalies associated with a similar company and, therefore, is a more reliable measure. I&E St. 2 at 7.

1. Description of the Parties' Proxy Groups

Aqua used a proxy group of eight companies, which it referred to as the "Water Group." In arriving at its Water Group, the Company applied the following criteria:

⁶⁰ The Parties' positions regarding the cost of common equity will be discussed in more detail in Section X.D of this Opinion and Order, *infra*.

1. Each company was listed in the “Water Utility Industry” section (basic and expanded) of The Value Line Investment Survey (*Value Line*); and
2. The company’s stock was publicly traded.

Aqua submitted that its size and financial risk are similar to the companies in its Water Group and, therefore, the Water Group provides a reasonable basis for measuring the Company’s cost of equity. Aqua St. 7 at 13, 18.

I&E’s proxy group consisted of seven companies. In selecting a proxy group of companies that are similar to Aqua, I&E applied the following criteria to *Value Line*’s “Water Utility” Company group:

1. Fifty percent or more of the company’s revenue were generated from the water utility industry;
2. The company’s stock was publicly traded;
3. Investment information for the company was available from more than one source, including *Value Line*;
4. The company must not be currently involved in an announced merger or the target of an announced acquisition; and
5. The company must have four consecutive years of historic earnings data.

I&E St. 2 at 8-9.

I&E explained that Aqua’s Water Group contains all seven companies in its own proxy group. However, I&E excluded Artesian Resources Corporation from its own proxy group because it violates I&E’s third proxy group criterion, *supra*. In this regard, I&E explained that Artesian Resources Corporation does not have a *Value Line* report,

and therefore, does not have projected dividends per share or projected earnings growth rate information. I&E St. 2 at 10-11; I&E St. 2-SR at 2-3.

The OCA chose to use the same proxy group as selected by the Company. According to the OCA, while different arguments could be raised for the inclusion or exclusion of a particular utility within the proxy group, by using the same proxy group as the Company, the OCA has removed the selection of the proxy group as a variable in analyzing the appropriate rate of return. In the OCA's view, utilizing the Company's proxy group is valuable in focusing on the primary factors driving the cost of equity estimate and in demonstrating why Aqua's conclusions regarding its proposed rate of return are unreasonable. OCA M.B. at 60-61.

Aqua claimed that I&E's decision to exclude Artesian Resources Corporation from its proxy group was erroneous. Aqua submitted that the composition of a proxy group should not be dependent upon whether relevant data is available from a specific source. Rather, Aqua argued, there is other source data available for Artesian Resources Corporation, as set forth in Aqua Exhibit 4-A, such that it should be included in the proxy group used in this proceeding. Aqua M.B. at 110.

Table 3, below, provides a summary of the companies each party proposed to be used in their respective water proxy groups:

Aqua	OCA	I&E
American States Water	American States Water	American States Water
American Water Works Company	American Water Works Company	American Water Works Company
Artesian Resources Corporation	Artesian Resources Corporation	California Water Serv. Group
California Water Serv. Group	California Water Serv. Group	Essential Utilities, Inc.
Essential Utilities, Inc.	Essential Utilities, Inc.	Middlesex Water Company
Middlesex Water Company	Middlesex Water Company	SJW Corporation
SJW Corporation	SJW Corporation	York Water Company
York Water Company	York Water Company	

Table 3: Summary of the Proposed Water Proxy Groups in this Proceeding

Aqua St. 1 at 13; I&E St. 2 at 9; OCA St. 3 at 17.

As discussed below, the ALJ recommended that the Commission adopt the proposals set forth by I&E in setting a cost of equity for Aqua in this proceeding, including the use of I&E's proxy group. R.D. at 77-81. No Party specifically challenged the use of I&E's proxy group in the Exceptions phase of this proceeding. Finding I&E's proxy group criteria to be reasonable, and finding the companies contained therein to be representative of Aqua, we shall adopt I&E's proposed proxy group.

B. Capital Structure Ratios

A utility's capital structure represents how the utility has financed its rate base with different sources of funds. Determining the appropriate capital structure is crucial in developing the weighted cost of capital, which, in turn, determines the overall rate of return in the revenue requirement equation, *supra*. The primary funding sources for the utility are long-term debt and common equity. Additionally, a capital structure may include preferred stock and/or short-term debt. However, the Company is financed only with long-term debt and common equity. I&E St. 2 at 11.

1. Positions of the Parties

Aqua proposed a capital structure of 53.95% common equity and 46.05% long-term debt, which represents its projected capital structure as of the end of the FPFTY ending March 31, 2023. Aqua explained that it based its FPFTY capital structure upon its actual capital structure at the HTY ended March 31, 2021 and made adjustments to reflect events that will occur during the FTY and FPFTY. Aqua continued that these changes are to finance the Company's net rate base additions of approximately \$557 million in the FTY and FPFTY. Specifically, Aqua included additional debt of \$190 million to be issued in the FPFTY. In addition, Aqua projected the retention of approximately \$269.7 million in earnings over the period, and the infusion of an additional \$100 million in equity. Aqua M.B. at 102.

Aqua argued that the Commission has determined in previous proceedings that a utility's actual capital structure should be utilized unless there is a finding that it is atypical or too heavily weighted to either the debt or equity side. Aqua M.B. at 103-04 (citing *2012 PPL Order*). According to Aqua, this policy was recently affirmed in *Columbia Gas*. Aqua insisted that its common equity ratio falls within the ranges of the common equity ratios in its Water Group and in the proxy groups employed by both the OCA and I&E, and cannot be deemed "atypical." Accordingly, Aqua submitted that it is appropriate to use the Company's actual capital structure for ratemaking purposes. Aqua M.B. at 102, 103-07; Aqua R.B. at 42-45.

I&E recommended that the Commission adopt Aqua's proposed capital structure. According to I&E, the Company's claimed capital structure falls within the range of the 2020 capital structures for the companies in I&E's proxy group. I&E explained that the 2020 capital structures represented the most recent information available at the time of I&E's analysis. I&E further noted that the most recent five-year average range contains individual company capital structure ratios ranging from 39.93%

to 56.33% debt and 43.67% to 59.54% common equity, with an overall five-year average of 46.88% debt and 53.05% common equity. According to I&E, this five-year average capital structure is almost identical to the Company's claimed capital structure. I&E M.B. at 44; I&E St. 2 at 12.

In contrast, the OCA submitted that the Commission has the discretion to employ a hypothetical capital structure if the utility's actual capital structure is unreasonable or uneconomical. OCA M.B. at 57 (citing *Big Run Tel. Co. v. Pa. PUC*, 449 A.2d 86, 89 (Pa. Cmwlth. 1982) (*Big Run*)). Applying this to the instant proceeding, the OCA explained that it opposed the Company's proposed capital structure because the common equity ratio of nearly 54% that Aqua seeks to employ is significantly higher than the average of the eight regulated water utilities in its Water Group. According to the OCA, because this results in an unreasonably high cost of capital estimate, the Commission must impose a capital structure upon the Company that will not unfairly penalize its ratepayers and that is more reflective of one that might exist in a competitive environment. In the OCA's view, the use of a hypothetical capital structure will reduce costs to ratepayers, as opposed to increasing costs. OCA M.B. at 56, 58-59.

Specifically, the OCA sought to use a hypothetical capital structure of 50% common equity and 50% long-term debt to set rates for Aqua. The OCA explained that such a capital structure is reflective of the average capital structures of the companies in the Water Group used by Aqua. In addition, the OCA pointed out that the average debt ratio of the Company's Water Group is 50%, based on 2020 data. OCA R.B. at 28-29; OCA St. 3-SR at 3-4.

2. Recommended Decision

The ALJ recommended that Aqua's proposed capital structure of 53.95% common equity and 46.05% long-term debt be adopted. The ALJ acknowledged the

OCA's observation that the Commission has the discretion to employ a hypothetical capital structure where a company's actual capital structure is unreasonable or uneconomical. However, the ALJ concurred with Aqua that the legal standard in Pennsylvania for deciding whether to use a hypothetical capital structure is not whether the utility's capital structure deviates from the "average" capital structure of the proxy group, but whether the capital structure is outside the range of the capital structures of the companies in the proxy group. The ALJ echoed I&E that Aqua's claimed capital structure is within the range of the capital structures in I&E's proxy group and is, therefore, reasonable. R.D. at 77.

3. OCA Exception No. 8 and Replies

In its Exception No. 8, the OCA remains of the opinion that a hypothetical capital structure consisting of 50% common equity and 50% long-term debt should be utilized in setting just and reasonable rates for Aqua. The OCA reasons that Aqua's proposed capital structure is inappropriate because the equity component is 400 basis points (*i.e.*, 4.00%) higher than the average of the companies in Aqua's Water Group. Thus, the OCA submits that if the Commission were to adopt the ALJ's recommendation, then this would result in a return on equity and a revenue requirement that are too favorable to Aqua's investors because they would impose an unfair cost burden to the Company's ratepayers. The OCA reiterates its argument that the Commission has exercised its discretion to direct a utility to use a hypothetical capital structure where the utility's management adopts an actual capital structure that imposes an unfair cost burden on ratepayers. As such, the OCA claims that the Commission should reverse the recommendation of the ALJ and exercise its discretion in this current proceeding. The OCA insists that its proposed hypothetical capital structure will adequately balance the interests of both the Company's ratepayers and investors and will reflect a capital structure that might exist in a competitive environment. OCA Exc. at 10-11.

In its Replies to Exceptions, Aqua rebuts that the ALJ correctly recommended that the OCA's proposed hypothetical capital structure should be rejected. Aqua submits that the OCA's position disregards long-established Commission precedent for deciding whether to use a hypothetical capital structure in setting rates. Namely, Aqua restates its position that the Commission has consistently held that if a utility's actual capital structure is within the range of a similarly situated proxy group of companies, then rates are set based on the utility's actual capital structure. Aqua maintains that its capital structure falls within the range of the companies in its Water Group and should be adopted. Aqua R. Exc. at 7.

In its Replies to Exceptions, I&E declines to offer a specific reply to the OCA's Exception No. 8. Rather, I&E simply reinforces its position that the Company's claimed capital structure should be adopted. I&E R. Exc. at 15.

4. Disposition

We shall deny the OCA's Exception No. 8 and adopt the ALJ's recommendation to use Aqua's actual capital structure, consistent with the following discussion.

Like the ALJ, we note the veracity of the OCA's statement that the Commission has the discretion to employ a hypothetical capital structure where a company's actual capital structure is unreasonable or uneconomical. However, because we find no merit in the OCA's arguments that the Company's actual capital structure is either unreasonable or uneconomical, we shall decline to exercise this discretion in the instant proceeding.

The use of an actual capital structure represents the Company's decision, in which it has full discretion, on how to capitalize its rate base. This actual capitalization

forms the basis upon which Aqua attracts capital. *See 2012 PPL Order* at 68; *Columbia Gas* at 116; *PECO Gas* at 144. For example, Aqua's long-term debt cost rate of 4.00%, discussed, *infra*, which all Parties have accepted for ratemaking purposes, fully reflects the capitalization determined by the Company to be appropriate.

In both *Columbia Gas* and *PECO Gas*, we reaffirmed the legal standard in Pennsylvania for deciding whether to use a party's proposed hypothetical capital structure in setting rates, *i.e.*, we stated that if a utility's actual capital structure is within the range of a similarly situated proxy group of companies, rates are set based on the utility's actual capital structure. *Columbia Gas* at 116; *PECO Gas* at 144. More specifically, we reaffirmed this standard, which we articulated in the *2012 PPL Order*, as follows:

Absent a finding by the Commission that a utility's actual capital structure is atypical or too heavily weighted on either the debt or equity side, we would not normally exercise our discretion with regard to implementing a hypothetical capital structure.

Columbia Gas at 116-17; *PECO Gas* at 144-45 (citing *2012 PPL Order* at 68).

We find that the record developed in this proceeding lends support to the same conclusion that we reached in the *2012 PPL Order*, *Columbia Gas*, and *PECO Gas*. First, we note the testimony of I&E that Aqua's claimed capital structure falls within the range of the 2020 capital structures for the companies in I&E's proxy group, which we have determined to be the companies that are most representative of Aqua. The 2020 range consists of long-term debt ratios ranging from 39.93% to 56.33% and equity ratios ranging from 43.67% to 59.54%, with a five-year average of 46.88% for long-term debt and 53.05% for common equity. As I&E observed, the five-year average capital structure of the proxy group is nearly identical to the Company's claimed capital structure. *See* I&E St. 2 at 12.

Next, we note that using I&E’s proposed proxy group, Aqua’s witness, Mr. Paul R. Moul, provided the below chart in his rebuttal testimony, which we have set forth in Table 4. Namely, this chart details the forecasted common equity ratios for 2024 through 2026 for each of the companies in I&E’s proposed proxy group, as outlined in *Value Line* as of October 8, 2021.

Company	Projected Common Equity Ratio for 2024-2026
American States Water	46.50%
American Water Works	39.00%
California Water Serv. Group	59.00%
Essential Utilities, Inc.	45.00%
Middlesex Water Company	60.00%
SJW Corporation	62.00%
York Water Company	62.50%
Average	53.43%

Table 4: Forecasted Common Equity Ratios for 2024 through 2026 for I&E’s Water Proxy Group Companies

Aqua St. 7-R at 9-10. In comparing the Company’s proposed common equity ratio to the forecasted common equity ratios of I&E’s proxy group, we find that the above table lends support to Aqua’s argument that its proposed actual common equity ratio falls well within the range of the forecasted common equity ratios of similarly situated water companies. In this regard, the data in this table demonstrates that Aqua’s proposed common equity ratio of 53.95% is very close to the forecasted average common equity ratio for the entire proxy group of 53.43%. Furthermore, Aqua’s proposed common equity ratio is below four of the companies in the I&E proxy group (*i.e.*, California Water Serv. Group, Middlesex Water Company, SJW Corporation, and York Water Company), whose forecasted common equity ratios range from 59.00% to 62.50%.

Based on the forgoing, we find that the record underscores that Aqua’s proposed actual capital structure is not atypical and is within the range of reasonableness.

Therefore, we find no basis upon which to impose the OCA's hypothetical capital structure on the Company. Therefore, we shall deny the OCA's Exception No. 8 and adopt the ALJ's recommendation to use Aqua's proposed actual capital structure of 53.95% common equity and 46.05% long-term debt in this proceeding.

C. Cost of Debt

1. Positions of the Parties

Aqua proposed a cost of long-term debt of 4.00%. Aqua submitted that because no Party has challenged this debt cost rate, it should be adopted in the context of Aqua's actual capital structure ratios for debt, *infra*. Aqua M.B. at 107.

I&E noted that given Aqua's proposed capital structure ratios, *supra*, Aqua's proposal results in a weighted cost of debt of 1.84%. I&E submitted that Aqua's claimed cost rate of long-term debt is reasonable because it is representative of the industry, and it falls within I&E's proxy group's implied long-term debt cost range of 2.69% to 5.67% with an average implied long-term debt cost of 4.04%. I&E M.B. at 44-45.

2. Recommended Decision

The ALJ observed that no Party disagreed with Aqua's proposal to use its actual cost of long-term debt of 4.00%. Therefore, the ALJ recommended that the Company's proposal be adopted. R.D. at 77.

3. Disposition

No Party filed Exceptions on this issue with regard to the ALJ's recommendation. Finding the ALJ's recommendation to be reasonable, we shall adopt it without further comment. Accordingly, we shall approve a long-term debt cost rate of 4.00% for Aqua in this proceeding.

D. Cost of Common Equity

In the instant proceeding, Aqua, I&E, and the OCA presented a position on a reasonable ROE. The Parties' positions were generally developed through comparison groups' market data, costing models, reflection or rejection of risk and leverage adjustments, and a management performance adjustment, as will be further addressed, *infra*. Table 5, below, summarizes the cost of common equity claims made and the methodologies⁶¹ used by the Parties in this proceeding:

Party	DCF	CAPM	RP	CE	ROE
Aqua	11.78%	13.40%	10.50%	12.80%	10.75%
I&E	8.90%	9.89%			8.90%
OCA	8.00%	6.40%			8.00%

Table 5: Summary of Each Party's proposed ROE

⁶¹ As will be discussed below, in the following chart, DCF refers to the Discounted Cash Flow Method, CAPM refers to the Capital Asset Pricing Model, RP refers to the Risk Premium Method, and CE refers to the Comparable Earnings Method.

1. Methods for Determining the Cost of Common Equity

a. Discounted Cash Flow Method (DCF)

The DCF method applied to a proxy group of similar utilities, has historically been the primary determinant utilized by the Commission in determining the cost of common equity. *Pa. PUC v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011) at 56; *Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. R-00049255 (Order entered December 22, 2004) (*2004 PPL Order*) at 59. The DCF model assumes that the market price of a stock is the present value of the future benefits of holding that stock. These benefits are the future cash flows of holding the stock, *i.e.*, the dividends paid and the proceeds from the ultimate sale of the stock. Because dollars received in the future are worth less than dollars received today, the cash flow must be “discounted” back to the present value at the investor’s rate of return.

(1) Positions of the Parties

Aqua’s DCF model consists of a dividend yield plus a growth rate plus a leverage adjustment. The Company’s DCF cost of common equity is 11.78%, which is calculated as follows:

	Dividend +	Growth +	Leverage =	DCF Cost Rate
Aqua DCF	1.94%	7.50%	2.34%	11.78%

Aqua’s dividend yield calculation used six-month average dividend yields for the Water Group resulting in a dividend yield of 1.87%. The Company then adjusted this dividend yield for expected growth in dividends to produce a final dividend yield of 1.94%. Aqua St. 7 at 24.

Aqua principally relied upon five-year forecasts of earnings per share growth, as earnings growth appropriately measures the growth in price over time. The Company used three separate sources of projected earnings growth: IBES/First Call, Zacks, and *Value Line*. From this data, and applying judgment, the Company recommended a growth rate of 7.50%. Aqua St. 7 at 30.

As will be discussed in more detail below, in Section X.D.2, Aqua also argued that a leverage adjustment should be added to its DCF cost rate. The Company explained that a leverage adjustment is designed to adjust the DCF cost rate for the different percentage of debt in the capital structure calculated at market values of equity and long-term debt (the values used by investors) as compared to the percentage of debt in the capital structure at book value (the values used in the ratemaking process) to account for the greater financial risk created by a higher debt ratio when that cost rate is applied to a book value capitalization in utility proceedings. The Company argued that an unadjusted DCF greatly understates the cost of common equity because the proportion of market value common equity in the Water Group's capitalization was significantly higher than its proportion measure at book value. Aqua calculated an 11.78% return on equity using market value weighting. The Company calculated its leverage adjustment by subtracting the DCF return of 9.44% from the market value cost of equity of 11.78%. Accordingly, Aqua proposed to add a leverage adjustment of 234 basis points (*i.e.*, 2.34%) to its DCF cost of common equity calculation. Aqua St. 7 at 30-34, Sch. 10.

At the outset, I&E claimed the DCF method is in accordance with the Commission's historical use of the DCF as the primary methodology to determine a utility's cost of equity. I&E noted its recommendation is consistent with the methodology historically used by the Commission in base rate proceedings, most recently acknowledged in *Columbia Gas*. In I&E's view, it is now well settled that the Commission prefers the use of the DCF as the primary methodology in setting a utility's ROE in a rate case. Through the methodologies outlined in its testimony, I&E calculated

that the DCF methodology produces a cost of common equity of 8.90%. I&E M.B. at 45-46.

I&E employed the standard DCF model, $k = D_1/P_0 + g$, where k is the cost of common equity, D_1 is the dividend expected during the year, P_0 is the current price of the stock, and g is the expected growth rate of dividends. I&E argued that a representative dividend yield must be calculated over a time frame that avoids problems of both short-term anomalies and stale data. I&E's dividend yield calculation placed equal emphasis on the most recent spot and the 52-week average dividend yields, resulting in an average dividend yield of 1.75%. I&E St. 2 at 21-22.

I&E used earnings growth forecasts to calculate its expected growth rate. I&E's earnings forecasts are developed from projected growth rates using five-year estimates from established forecasting entities for its proxy group of companies, yielding an average five-year growth forecast of 7.15%. I&E St. 2 at 23.

I&E submitted that Aqua's proposed leverage adjustment should be rejected because investors base their decisions on book value debt and equity ratios for regulated utilities, and not on market values, rendering any adjustment unnecessary. I&E also submitted that recent Commission precedent supports rejecting a utility's request for a leverage adjustment. I&E St. 2 at 42-44.

The OCA proposed an 8.00% DCF cost of equity. The OCA utilized a Quarterly Approximation DCF model that accounts for quarterly growth of dividends, instead of annual growth. OCA St. 3 at 25; OCA Exh. DJG-6. To obtain the stock price (P_0), the OCA selected a 30-day average for each company in the proxy group. OCA St. 3 at 27. The dividend term used by the OCA in the Quarterly Approximation DCF Model is the current quarterly dividend per share (d_0). The OCA states the model

assumes that each quarterly dividend is greater than the previous one by $(1 + g)^{0.25}$.
OCA St. 3 at 28.

Like I&E, the OCA submitted that Aqua's proposed leverage adjustment should be rejected. The OCA reasoned that Aqua based the leverage adjustment on its inaccurate and incorrect use of the Hamada formula. OCA St. 3 at 35-37.

b. Capital Asset Pricing Model (CAPM)

The CAPM uses the yield on a risk-free interest-bearing obligation (such as those issued by the U.S. Treasury) plus a rate of return premium that is proportional to the systematic risk of an investment. To compute the cost of equity with the CAPM, three components are necessary: a risk-free rate of return (R_f), the beta measure of systematic risk (β), and the market risk premium ($R_m - R_f$) derived from the total return on the market of equities reduced by the risk-free rate of return. The CAPM specifically accounts for differences in systematic risk (*i.e.*, market risk as measured by the beta) between an individual firm or group of firms and the entire market of equities.

Aqua, I&E, and the OCA each used the following standard CAPM formula:

$$k = R_f + \beta(R_m - R_f)$$

Where: k = the cost of equity and the remaining terms are as defined above.

(1) Positions of the Parties

Aqua determined the CAPM cost of equity as follows:

	$R_f +$	$\beta \times$	$(R_m - R_f) +$	Size =	CAPM Cost Rate
Aqua CAPM	2.75%	1.07	9.00%	1.02%	13.40%

Aqua determined the risk-free rate to be 2.75% based on current and forecasted long-term Treasury Bond yields. Aqua also calculated a 9.00% premium for the risk/market premium component of the CAPM analysis, based upon the average historical data and forecasted returns. The Company used a leverage adjusted beta of 1.07, to reflect the financial risk associated with the rate setting capital structure that is measured at book value. Additionally, Aqua included a 1.02% size adjustment to its CAPM analysis. Therefore, Aqua calculated a CAPM cost of common equity of 13.40% for its Water Group. Aqua St. 7 at 41-43.

In calculating the CAPM cost of common equity, I&E chose the risk-free rate of return (R_f) of 1.98% from the projected yield on ten-year Treasury bonds as the most stable risk-free measure. I&E explained that its decision to use ten-year Treasury bonds balanced out issues related to the use of thirty-year long-term bonds and short-term T-Bills. I&E used the average of its proxy group betas from *Value Line* of 0.78. To arrive at a representative expected return on the overall stock market, I&E stated that it reviewed *Value Line*'s 1700 stocks and the S&P 500. I&E explained that the result of the overall stock market returns based on its CAPM analysis is 12.14%, which yields a cost of equity result of 9.89%. I&E St. 2 at 24-27. According to I&E, the 9.89% cost of equity from its CAPM should only be used as a point of comparison to its 8.90% DCF cost of capital. I&E St. 2 at 28.

In response to Aqua's CAPM analysis, I&E submitted that the Company used the same leverage adjustment for inflating its CAPM betas from 0.78 to 1.07 that was used for its DCF calculation. I&E asserted that such enhancements are unwarranted for beta in a CAPM analysis for the same reasons that enhancements are unwarranted for DCF results. In addition, I&E disagreed with Aqua's 102-basis point size adjustment applied to its CAPM analysis. I&E St. 2 at 47-49.

In its CAPM analyses, the OCA used a thirty-day average of thirty-year Treasury Bond yields to calculate a risk-free rate of 2.02%. OCA St. 3 at 40. The OCA found an average beta of 0.79 for its proxy group. OCA Exh. DJG-8. To find the equity risk premium, the OCA relied on expert surveys and an implied equity risk premium. The OCA calculated the implied equity risk premium by subtracting the risk-free rate from an implied expected market return. Using this data, the OCA concluded the proper CAPM return on equity is 6.4%. OCA St. 3 at 44-48.

c. Risk Premium (RP) Model and Comparable Earnings (CE) Model

Under the Risk Premium approach, the cost of equity capital is determined by corporate bond yields plus a premium to account for the fact that common equity is exposed to greater investment risk than debt capital. The RP method determines the cost of equity by summing the expected public utility bond yield and the return of equities over bond returns (*i.e.*, the "equity premium") over a historical period, as adjusted to reflect lower risk of utilities compared to the common equity of all corporations. Aqua M.B. at 117-118; Aqua St. 7 at 35-36.

The CE method estimates a fair return on equity by comparing returns realized by non-regulated companies to the returns that a public utility with similar risk characteristics would need to realize in order to compete for capital. According to Aqua,

because regulation is a substitute for competitively determined prices, the returns realized by non-regulated firms with comparable risks to a public utility provide useful insight into investor expectations for public utility returns. The firms selected for the CE method should be companies whose prices are not subject to cost-based price ceilings (*i.e.*, non-regulated firms) so that circularity is avoided. The CE method utilizes the concept of opportunity cost, wherein investors will likely dedicate their capital to the investment offering the highest return with similar risk to alternative investments. Aqua M.B. at 121; Aqua St. 7 at 43-44.

(1) Positions of the Parties

The Company determined the RP cost of common equity to be 10.50% as follows:

	Interest Rate +	Risk Premium =	RP Cost Rate
Aqua RP	3.75%	6.75%	10.50%

Aqua explained that the interest rate in its calculation is an estimated interest rate for A-rated public utility bonds, while the risk premium in its calculation is the average of historical risk premiums of long-term corporate bonds.

Aqua also performed a comparable earnings analysis based on the principle set forth by the United States Supreme Court that a utility should be afforded an opportunity to earn a return on its property equal to that being earned on investments in other businesses with corresponding risks and uncertainties. *See Bluefield, supra*. The Company's analysis identified non-regulated companies with comparable risk and produced a cost rate of 12.80%. Aqua M.B. at 121; Aqua St. 7 at 46.

I&E submitted that neither the RP method nor the CE method should be used in determining an appropriate cost of equity in a base rate proceeding. I&E pointed out that the RP method is a simplified version of the CAPM model. However, I&E noted that while the CAPM directly measures the systematic risk of the company through the use of beta, the RP method does not measure the specific risk of the company. As to the CE method, I&E charged that it is not market-based and relies upon historic accounting data. Further, I&E contended that under the CE method, the most problematic issue is determining what constitutes comparable companies. I&E St. 2 at 15, 19-20.

The OCA claimed that the Commission should disregard Aqua's RP and CE analyses. The OCA argued that Aqua's RP and CE analyses are flawed by the Company's choice of inputs and inclusion of adjustments. OCA M.B. at 73-75.

Therefore, I&E and the OCA recommended using the DCF method as the primary method to determine the cost of common equity and using the CAPM method as a comparison to the DCF results. Both I&E and the OCA pointed out that the DCF method has historically been the Commission's preferred method of setting common equity cost rates. I&E M.B. at 45; OCA M.B. at 59-60.

d. Recommended Decision

The ALJ agreed with I&E's proposal to calculate the recommended return on equity pursuant to the DCF methodology, using the CAPM as an alternate means to verify the reasonableness of the return on equity. The ALJ recommended the Commission approve the use of the DCF method as the primary method to determine the cost of common equity, consistent with the methodology commonly endorsed by the Commission in base rate proceedings. R.D. at 77-78.

e. Aqua Exception Nos. 1.1 and 1.4; OCA Exception No. 9 and Replies

In its Exception No. 1.1, Aqua contends that the ALJ erred by not analyzing the dividend yield and growth rate components of I&E's DCF methodology. Aqua claims I&E's use of spot prices, which were near the 52-week high of the proxy group, lowered its dividend yield. Aqua states that using only I&E's 52-week average dividend yield of 1.87% is very close to its own six-month average dividend yield of 1.94%. According to Aqua, I&E's growth rate is unreasonable because it improperly includes an extremely low growth rate of 3.6% for Middlesex Water. Citing *Columbia Gas*, Aqua notes that I&E excluded a high data point from its growth rate calculation on the basis that it was outside the norm and distorted the DCF results. If high growth rates can be excluded, as I&E has done in the past, then Aqua argues that low growth rates must also be excluded from I&E's DCF calculation. Aqua determines that removing the 3.6% growth rate for Middlesex Water from I&E's growth rate calculation results in a 7.74% growth rate. By adopting Aqua's dividend yield and calculating I&E's growth rate without Middlesex Water, the Company claims a DCF result of 9.68%. Aqua Exc. at 5-7.

In its Exception No. 1.4, Aqua maintains the ALJ inaccurately asserts that I&E used the DCF method and the CAPM method to arrive at its recommended ROE of 8.9%. Although I&E did prepare a CAPM analysis, Aqua states I&E ignored its 9.89% CAPM return on equity result. Aqua insists the Commission also recognizes the importance of informed judgment and information provided by other models. For example, Aqua submits that in the *2012 PPL Order*, the Commission considered the CAPM and RP methods instead of DCF-only results. Aqua claims one of the flaws of the DCF in a rising interest rate environment is that it lags in responding to interest rate changes. Therefore, Aqua proposes the CAPM and RP methods are necessary to consider in a time of rising interest rates because both methods directly reflect forecasts of interest rates and bond yields. In conclusion, Aqua argues that the ALJ's reliance

upon I&E's DCF result should be rejected and the Commission should consider and reflect in its ROE determination the results of other methods more attuned to rising interest rates. Aqua Exc. at 10-12.

In its Replies to Aqua's Exceptions, I&E asserts that the ALJ correctly recognized that Commission precedent favors the use of the DCF methodology, as applied by I&E, and that Aqua's DCF calculation included the use of an inflated growth rate and an unnecessary leverage adjustment. According to I&E, Aqua has erroneously argued that I&E ignored its CAPM result in deriving the I&E ROE recommendation. I&E expresses that it uses the DCF method as the primary methodology to calculate its recommended return on equity while also using the CAPM as a check on the reasonableness of its DCF results. I&E R. Exc. at 2-4.

In its Replies to Aqua's Exceptions, the OCA submits that contrary to Aqua's assertion, the DCF growth rate recommended by the ALJ is not understated. The OCA avers Aqua's argument for increasing the Growth Rate to 7.5% based on excluding the Middlesex Water IBES/First Call growth rate should be denied. OCA R. Exc. at 5-10.

In its Exception No. 9, the OCA claims the ALJ erred by adopting I&E's DCF model. The OCA maintains its Quarterly Approximation DCF model is more reasonable than Aqua's and I&E's DCF calculations because it accounts for quarterly growth of dividends rather than annual growth. Additionally, the OCA argues its Quarterly Approximation DCF model produces higher cost of equity estimates compared with the other DCF Model variations because dividends are compounded quarterly. In estimating the growth rate, the OCA insists it is prudent for U.S. GDP to be a limiting factor for the long-term growth rate input of the DCF model. OCA Exc. at 12-14.

In its reply to the OCA's Exception No. 9, Aqua maintains the ALJ correctly rejected the OCA's DCF method. Aqua insists the OCA uses an arbitrary growth rate and its DCF method should be rejected. Aqua R. Exc. at 8.

In its reply to the OCA's Exception No. 9, I&E supports the ALJ's adoption of its methodology, resulting in an 8.90% ROE. I&E R. Exc. at 15.

f. Disposition

Upon our consideration of the record evidence, we agree with the ALJ's determination that Commission precedent prefers the DCF methodology as applied by I&E. We also are persuaded by the arguments of Aqua that the Commission recognizes the importance of informed judgment and information provided by other ROE models. Therefore, we shall deny Aqua's Exception No. 1.1 and the OCA's Exception No. 9, and grant Aqua's Exception No. 1.4, consistent with the following discussion.

Aqua suggests I&E's use of spot stock prices skewed its dividend yield lower, thus reducing the DCF ROE. However, the record does not include any testimony specifying how I&E may have erred by including spot stock prices when calculating the proxy group dividend yield. The Commission affirmed I&E's DCF methodology in *Columbia Gas* and *PECO Gas*, thereby verifying I&E's use of spot stock prices. We find that I&E's DCF proxy group dividend yield calculation appropriately includes spot stock prices.

Next, Aqua claims I&E's growth rate is low because it includes an unreasonable growth rate for Middlesex Water. Aqua submits that I&E excluded an unreasonable growth rate from a proxy group it used in *Columbia Gas* and should do the same in the instant case. As the OCA points out, the growth rate excluded in *Columbia Gas* was 26.5%, 3.5 times greater than I&E's *Columbia Gas* proxy group average growth

rate. OCA R. Exc. 5-6. In the instant case, Middlesex Water's growth rate is 3.6% compared to I&E's proxy group average of 7.15%, less than half of the proxy group average. We do not find Middlesex Water's growth rate to be unreasonably low and, as such, it was appropriately included in I&E's DCF growth rate calculation.

The OCA claims the ALJ erred by not adopting its Quarterly Approximation DCF model. Like Aqua, we find the OCA's Quarterly Approximation DCF methodology to be unconventional and that it includes flaws with both its dividend yield and growth rate calculations. Aqua M.B. 126-128. Additionally, we find the OCA's Quarterly Approximation DCF methodology to be inconsistent with the DCF methodology affirmed in both *Columbia Gas* and *PECO Gas*. Therefore, we find the ALJ did not err by rejecting the OCA's Quarterly Approximation DCF methodology.

We are persuaded by the arguments of Aqua that the ALJ erred by concluding I&E used its DCF *and* CAPM results to determine Aqua's ROE. In this regard, we note that although I&E did use its CAPM as a comparison to its DCF result, it made no CAPM based adjustment to its final ROE recommendation. I&E M.B. at 47. As Aqua points out, *infra*, the U.S. economy is currently in a period of high inflation. To help control rising inflation, the Federal Open Market Committee has signaled that it is ending its policies designed to maintain low interest rates. Aqua Exc. at 9. Because the DCF model does not directly account for interest rates, consequently, it is slow to respond to interest rate changes. However, I&E's CAPM model uses forecasted yields on ten-year Treasury bonds, and accordingly, its methodology captures forward looking changes in interest rates.

Therefore, our methodology for determining Aqua's ROE shall utilize both I&E's DCF and CAPM methodologies. As noted above, the Commission recognizes the importance of informed judgment and information provided by other ROE models. In the *2012 PPL Order*, the Commission considered PPL's CAPM and RP methods, tempered

by informed judgment, instead of DCF-only results. We conclude that methodologies other than the DCF can be used as a check upon the reasonableness of the DCF derived ROE calculation. Historically, we have relied primarily upon the DCF methodology in arriving at ROE determinations and have utilized the results of the CAPM as a check upon the reasonableness of the DCF derived equity return. As such, where evidence based on other methods suggests that the DCF-only results may understate the utility's ROE, we will consider those other methods, to some degree, in determining the appropriate range of reasonableness for our equity return determination. In light of the above, we shall determine an appropriate ROE for Aqua using informed judgement based on I&E's DCF and CAPM methodologies.

Accordingly, we shall deny Aqua's Exception No. 1.1 and the OCA's Exception No. 9, and shall grant Aqua's Exception No. 1.4

2. Leverage Adjustment and Management Performance

a. Positions of the Parties

As previously noted, Aqua argued that a leverage adjustment should be added to its DCF cost rate. In addition, Aqua proposed to add a management effectiveness adjustment to its ROE claim. Both I&E and the OCA opposed the addition of a leverage adjustment or any allowance for management effectiveness.

As noted above, Aqua claimed that a utility that has a stock price above its book value and has an embedded cost of debt that is different from its marginal cost of debt has a market value or capitalization of its equity that is greater than the book value of its equity. Thus, Aqua explained, when an investor purchases equity at the market price (*i.e.*, the price used in the DCF model), the percentage of equity in the market capitalization is greater than the percentage of equity at book value. According to the

Company, under such circumstances, the DCF cost rate based on market prices must be adjusted upward to reflect the greater financial risk created by a higher debt ratio when that cost rate is applied to a book value capitalization in utility rate proceedings. Aqua M.B. at 113.

Aqua noted that the Commission has applied a leverage adjustment in cases in which it believes market conditions have resulted in an understated DCF cost rate. In support of this argument, Aqua cited to several previous rate cases before the Commission, including the *2004 PPL Order*, in which the Commission applied a leverage adjustment of forty-five basis points. Aqua M.B. at 112-13. Aqua further claimed that the Commonwealth Court has held that the decision of whether to adopt a leverage adjustment is within the Commission's discretion. *Id.* (citing *Popowsky v. Pa. PUC*, 868 A.2d 606, 612-13 (Pa. Cmwlth. 2004) (*2004 PA American*)).

According to Aqua, the market conditions that were present in the above rate cases also exist in this current proceeding. Aqua pointed to, *inter alia*, the high inflation rate that is currently present in the economy. Aqua reasoned that higher inflation expectations point to higher interest rates, which will contribute to higher capital costs prospectively, given that higher inflation results in greater risk of recovery of operating costs and greater volatility of earnings. In turn, Aqua insisted that the resulting increased capital costs warrant its requested leverage adjustment of 234 basis points. Aqua M.B. at 111, 117; Aqua St. 7 at 35.

As noted above, the Company also proffered that it demonstrated strong performance in the area of management effectiveness, such that it should be recognized by the Commission. Thus, Aqua sought an upward adjustment to its cost of equity for management effectiveness. Although the Company did not quantify what it believes to

be an appropriate level of additional basis points for management performance,⁶² it nonetheless claimed that in accordance with Section 523 of the Code, 66 Pa. C.S. § 523, the Commission is required to consider management effectiveness in setting a utility's rates. According to Aqua, nothing in Section 523 of the Code requires a finding that a utility must outperform all other utilities in the Commonwealth or that a utility's programs not be funded by customers before it is eligible for an increment to the rate of return for management performance. Aqua M.B. at 121, 128-29.

Aqua argued that it is committed to providing safe and reasonable service for the benefit of its communities and the environment. Aqua stated that it continues to assist the Commonwealth in dealing with the problems created by small, troubled, or non-viable water and wastewater systems. Aqua submitted that it provides high quality service and has implemented numerous programs designed to enhance the service it provides to customers. In support of these claims, Aqua highlighted that: (1) it maintains a strong, constant focus on water quality by providing filtration for all surface water sources and disinfection for all ground water sources, and by maintaining a central water quality laboratory in which it regularly takes water samples from its systems and responds promptly to water quality issues; (2) has acquired various water and wastewater systems that are in need of substantial improvement, has made larger scale plant upgrades that were beyond the capability of prior owners and/or operators, and has agreed to be a receiver for other troubled water systems under the provisions of Section 529 of the Code, 66 Pa. C.S. § 529; (3) has taken proactive measures to achieve its goal of providing twenty-four hour per day uninterrupted service to customers including undertaking extraordinary remediation and reconstruction efforts of the systems it has undertaken as a

⁶² While Aqua did not quantify what it believes to be an appropriate amount of additional basis points for management effectiveness, it did highlight that the Commission awarded the Company an upward adjustment of twenty-two basis points for management effectiveness in *Pa. PUC v. Aqua Pa., Inc.*, Docket No. R-00072711 (Order entered July 31, 2008) (*2008 Aqua Order*). Aqua M.B. at 115.

receiver; (4) seeks to contain operating costs by reviewing staffing needs and operating procedures to reduce operating expenses and by proactively taking advantage of refinancing opportunities and lowered interest rates on long-term debt; (5) has leveraged its size and operational abilities to develop rates that are just and reasonable, while also prudently investing in needed capital in the utility infrastructure serving its customers; (6) has successfully provided its water and wastewater services during the COVID-19 pandemic without any interruption, while furnishing a safe workplace for its essential employees; (7) has proactively implemented changes to its low-income program, and policies to help customers who have been impacted by the pandemic, including providing credits to its low-income customers; (8) has assisted other water and wastewater systems during the pandemic; (9) has provided its customers with a high level of customer service, including rolling out technology designed to improve customers' ability to be advised of, and track service disruptions; (10) has maintained its "A Helping Hand" low-income customer assistance program to help facilitate the payment of water bills by its low-income residential customers; (11) continues to embark on substantial capital programs intended to ensure long-term viability by rehabilitating its underground piping infrastructure; (12) has taken advantage of key tax programs to ensure the lowest possible cost of service for its customers; and (13) has taken environmental initiatives, including seeking to minimize its purchased power costs and to improve its carbon footprint to ensure that it is being a good steward of the environment. Aqua M.B. at 129-37.

In contrast, I&E recommended that the Commission reject both the Company's request for a leverage adjustment and its request for a management performance adjustment. With regard to the Company's proposed leverage adjustment, I&E took the position that the Company's proposal was inappropriate for several reasons. First, I&E claimed that the Company's proposal is not supported by academic journals, textbooks, or other literature, and that rating agencies assess financial risk based upon a company's financial statements, and not its market capital structure. Second, I&E cited to several recent rate cases to illustrate that Commission precedent favors rejecting a

utility's request for a leverage adjustment. Third, I&E posited that a leverage adjustment would unduly burden the Company's ratepayers. In this regard, I&E claimed that awarding the Company a leverage adjustment of 234 basis points would cause Aqua's ratepayers to fund an additional amount of \$68,578,855 annually to cover the increase of an inflated rate of return along with the associated impact resulting from increases to income taxes, gross receipts tax, uncollectibles, and assessments. I&E M.B. at 51-54.

As to the Company's request for an upward adjustment in recognition of management effectiveness, I&E likewise contended that no such adjustment is warranted. In this regard, I&E provided that the true measure of whether a utility has exhibited strong management performance is whether the utility earns a higher return through the efficient use of resources and cost cutting measures. I&E continued that the increased income resulting from cost savings and true efficiency in management and operations is to be passed on to shareholders. I&E opined that the initiatives the Company cited to in support of its request for a management effectiveness adjustment demonstrate nothing more than the Company meeting the requirements outlined in Section 1501 of the Code, 66 Pa. C.S. § 1501, that it must provide adequate, efficient, safe, and reasonable service. In I&E's view, neither Aqua, nor any other utility should be awarded additional basis points to their ROE for simply meeting the requirements set forth in Section 1501. I&E M.B. at 47-48.

I&E also submitted that if the Company is as effective at controlling operating and maintenance costs as it argues, those savings should flow through to its ratepayers and/or investors. At the same time, I&E contended that Aqua's claimed savings to its ratepayers would likely be offset by the addition of basis points for management performance, as ratepayers would have to fund the additional costs. I&E reasoned that this would defeat the purpose of cutting expenses to benefit ratepayers. I&E M.B. at 49-50. Further, I&E cited to *Columbia Gas* wherein the Commission upheld the finding of ALJ Katrina L. Dunderdale that Columbia's management performance

adjustment should be denied in light of the ongoing COVID-19 pandemic, noting that Columbia's proposal would defeat the purpose of cutting expenses to benefit ratepayers, particularly during a period in which many ratepayers have experienced reduced income from job loss or reduction in hours. *Id.* at 50 (citing *Columbia Gas* at 134). I&E posits that the Commission should reach a similar conclusion in this current proceeding. I&E M.B. at 50.

The OCA echoed the position of I&E that neither the Company's proposed leverage adjustment nor its proposed management effectiveness adjustment should be granted. The OCA acknowledged Aqua's statement that, as set forth in the Commonwealth Court's decision in *2004 PA American*, the decision of whether to adopt a leverage adjustment is within the Commission's discretion and is made on a case-by-case basis. OCA M.B. at 66. However, the OCA averred, *inter alia*, that the Commission typically only applies a leverage adjustment in cases in which market conditions have resulted in a DCF cost rate that is understated. *Id.* (citing *2012 PPL Order* at 120). The OCA opined that the opposite conditions exist in this current proceeding such that any leverage adjustment would be unnecessary and would be contrary to the public interest. OCA M.B. at 66-67.

According to the OCA, the primary reason for Aqua's inclusion of a leverage adjustment is that it seeks a higher return on equity than what the record supports. The OCA submits that although the Company cited the prospect of risks to investors, the Company failed to note that as a public utility operating in a monopoly environment, it faces less risk than the average company, which operates in a competitive marketplace. In addition, the OCA argued that in citing the potential risks to its investors, Aqua failed to acknowledge the additional risks that would be imposed on its ratepayers if it were awarded a leverage adjustment. Thus, the OCA claimed that the Company's request should be disregarded by the Commission. OCA M.B. at 67-68; OCA R.B. at 31-33.

Likewise, the OCA argued that the Company's request for an upward adjustment to its ROE for management performance is wholly unsupported. According to the OCA, Aqua has not conducted any comparative analyses to determine if the Company's management performance is superior to that of other regulated utilities, including those in its proxy group. To the contrary, the OCA claimed that the record thoroughly demonstrates that Aqua's management has not performed effectively in a variety of metrics, including but not limited to water quality, wastewater treatment compliance, system reliability, cost containment, rates, COVID-19 response, customer service, low-income customer assistance programs, infrastructure rehabilitation, tax programs, and environmental initiatives. As such, the OCA claimed that there is no basis for awarding a rate of return higher than Aqua's estimated cost of equity. OCA M.B. at 75-76; OCA R.B. at 34-35.

b. Recommended Decision

The ALJ concluded that Aqua has failed to justify that the addition of a leverage adjustment to its DCF cost calculation would be appropriate. Thus, the ALJ recommended that the Company's proposed leverage adjustment of 234 basis points be denied. R.D. at 78-79.

The ALJ also concurred with the positions of I&E and the OCA that Aqua should not be awarded any upward adjustment for strong management performance. First, the ALJ found that although it is true that the Company has been a strong partner with the Commission in acquiring troubled water systems, it has also acquired water and wastewater systems that were not troubled and has asked its existing customer base to help finance the costs to serve its newly acquired customers through base rates, reconcilable surcharge mechanisms, and/or its Distribution System Improvement Charge (DSIC). Thus, the ALJ concluded that the Company's claimed savings to ratepayers would likely be offset by the addition of basis points for management performance, as

ratepayers would need to fund the additional costs. In the ALJ's view, this would defeat the purpose of cutting expenses to benefit ratepayers. R.D. at 79-80.

Next, the ALJ concluded that although the Commission has rejected the notion that no rate increases are appropriate during the COVID-19 pandemic, it is also not appropriate to demand more from ratepayers than necessary to meet the utility's basic needs. The ALJ pointed out that at the public input hearings many of Aqua's customers described the additional economic burdens caused by job loss, elevated family care responsibilities and other hardships resulting from the ongoing effects of the pandemic. According to the ALJ, to permit the Company to seek an additional premium from ratepayers during a pandemic would be inequitable and "tone deaf" given the high level of unemployment experienced by residential customers and the detrimental effect the pandemic has had on small businesses. Thus, the ALJ concurred with I&E that the Commission should apply the same reasoning set forth in *Columbia Gas, supra*, and should deny the Company's request to add basis points to its ROE for strong management performance. R.D. at 80-81.

c. Aqua Exception Nos. 1.2 and 1.6 and Replies

In its Exception No. 1.2, Aqua finds fault with the ALJ's recommendation that the Company's proposed leverage adjustment should be rejected. The Company contends that the ALJ has failed to consider that the Commission has included an adjustment for leverage in instances where the DCF understates the cost of common equity. Aqua insists that such conditions are present in this instant proceeding. Aqua restates its arguments, *supra*, that a leverage adjustment is designed to adjust the DCF cost rate for the different percentage of debt in the capital structure calculated at market values of equity and long-term debt, as compared to the percentage of debt in the capital structure at book value, and to align those risks. Aqua Exc. at 7.

Next, Aqua acknowledges that the Commission has been selective in awarding a leverage adjustment to the DCF cost calculation in rate cases. However, Aqua submits that what is most apparent from the decisions in which the Commission has not adopted a leverage adjustment is that the Commission has concluded that the unadjusted DCF results in such cases do not underestimate the cost of common equity. According to the Company, there is substantial evidence in this instant proceeding to demonstrate that the unadjusted DCF results understate the cost of common equity in the current environment. Thus, Aqua submits that the Commission should reverse the ALJ's recommendation and should award the company a leverage adjustment of 234 basis points, or 2.34%. Aqua Exc. at 7-8.

In its Exception No. 1.6, Aqua claims that in recommending that the Commission reject the Company's request for an upward adjustment to its ROE for strong management performance, the ALJ has disregarded the requirements of Section 523 of the Code, 66 Pa. C.S. § 523. Aqua notes that Section 523 directs the Commission to consider the efficiency, effectiveness, and adequacy of service of each utility when determining just and reasonable rates. Aqua argues that while the ALJ concluded that providing additional basis points for effective management may offset cost savings such that it would defeat the purpose of cutting expenses to benefit ratepayers, the Commission has rejected contentions that utilities should not be provided additional basis points for quality utility service in light of Section 523. Aqua insists that the Commission should similarly reject such contentions in this proceeding. Aqua Exc. at 13-14.

Aqua also objects to the ALJ's finding that while the Company has been a strong partner with the Commission in acquiring troubled water systems, it has also acquired systems that were not troubled and has asked existing customers to pay for those acquisitions. Aqua claims that such acquisitions are mutually exclusive. The Company avers that it includes in rate base only those amounts permitted by law. In addition, Aqua

insists that cost savings for its ratepayers have been realized through economies of scale associated with its acquisitions. Thus, Aqua submits that incentives to encourage acquisitions and regionalization to reduce the number of troubled water systems in the Commonwealth should not be denied simply because the Company also undertakes acquisitions of some entities that may not be classified as “troubled.” Aqua Exc. at 14.

In its Replies to the Exceptions, I&E counters that the ALJ correctly rejected Aqua’s proposed leverage adjustment. I&E maintains that Aqua has erroneously argued that there is substantial evidence to demonstrate that the unadjusted DCF results understate the cost of common equity in the current economic environment and that the ALJ appropriately rejected these arguments. I&E R. Exc. at 2.

In a similar fashion, I&E submits that the ALJ properly denied the Company’s request for an upward adjustment to its ROE for strong management performance. I&E refutes Aqua’s contention that the ALJ disregarded the requirements of Section 523 of the Code. To the contrary, I&E asserts that the ALJ properly considered the record evidence and the arguments presented by all of the Parties and then concluded that awarding the Company a management effectiveness adjustment is not warranted in this proceeding. I&E remains of the opinion that the Commission should reject the Company’s request, consistent with its reasoning for rejecting a management performance adjustment in *Columbia Gas*. I&E R. Exc. at 5-6.

The OCA’s arguments in its Replies to Exceptions mirror those of I&E with regard to both the leverage adjustment and the management performance adjustment. As to the leverage adjustment, the OCA also adds that the unadjusted DCF results of Aqua, I&E, and the OCA all fall between 8% and 9.07%, indicating a relatively small range resulting from the application of DCF models employed by the Parties’ respective expert witnesses. Thus, the OCA submits that the Company’s 234 basis point adjustment is unreasonable and creates substantial burdens for consumer ratepayers as

subsidizers of investors. In addition, the OCA claims that the Company incorrectly posited that the market-derived cost of equity needs to be adjusted to compensate for the difference in financial risk. The OCA restates its argument that because Aqua is a regulated public utility, it does not have greater financial risk when compared to the average company in the competitive marketplace. OCA R. Exc. at 6-8.

Furthermore, the OCA highlights that the Commission has routinely denied proposed leverage adjustments in rate case proceedings. In the OCA's view, the record evidence in this current proceeding does not support Aqua's request for a leverage adjustment and the ALJ appropriately rejected the Company's request. OCA R. Exc. at 7-8.

As to the Company's Exception No. 1.6, the OCA restates its position that Aqua has been *deficient* in many areas of management performance.⁶³ The OCA submits that even absent these deficiencies, the provision of safe, adequate, and reliable water and wastewater service is required under Section 1501 of the Code, 66 Pa. C.S. § 1501. As a result, the OCA asseverates that simply meeting these required standards does not constitute exemplary management performance. Otherwise, the OCA reasons, the Commission would be awarding unwarranted additional basis points for management effectiveness to nearly every utility under its jurisdiction. OCA R. Exc. at 8-9.

The OCA also refutes the Company's claim that its acquisition of small, troubled, or non-viable wastewater systems warrants consideration for additional basis points for strong management performance. The OCA points to the ALJ's finding that

⁶³ As discussed in Section XII.A, *infra*, the OCA, in its Exception No. 23, argues that Aqua's customer satisfaction survey, which indicates that only seventy-three percent of its customers rated their satisfaction as "excellent" or "very good" lends further support for rejecting the Company's request for a management effectiveness adjustment. *See* OCA Exc. at 34-35.

the costs of rehabilitating these systems is passed along to the Company's other ratepayers. According to the OCA, even if the Company's reference to economies of scale proves true, this is not an indicator of effective management performance. Instead, the OCA maintains that such economies are a function of the Company's system. Thus, the OCA asserts that the ALJ properly rejected the Company's request for an upward adjustment to its ROE for management performance. OCA R. Exc. at 9-10.

d. Disposition

As Aqua correctly notes in its Exception No 1.2, the Commission has been selective in adding a leverage adjustment to the DCF cost calculation in rate cases. We reinforced this in *UGI Electric*, stating that "the fact that we have granted leverage adjustments in a few select cases in the past does not mean that such adjustments are warranted in all cases. Rather, the award of such an adjustment is not precedential but discretionary with the Commission." *UGI Electric* at 93; *see also 2012 PPL Order* at 91.

In examining the record in this proceeding, we are not persuaded by Aqua's arguments that we should reach a different conclusion from that reached in *UGI Electric* and other recent base rate proceedings and award the Company an artificial leverage adjustment to its ROE. In its briefs, Aqua cited to the high inflation rate that is currently present in the economy in support of its argument for a leverage adjustment. Aqua M.B. at 117. However, the crux of the Company's request for a leverage adjustment to its ROE centers on its belief that the difference between its book value capital structure and its market value capital structure poses a financial risk. Thus, the Company seeks a leverage adjustment to account for applying the market value cost rate of equity to the book value of its equity.

We find I&E's arguments in opposition to the Company's position to be persuasive. For example, as I&E observed, credit rating agencies assess financial risk

based upon a company's booked debt obligations and the ability of its cash flow to cover the interest payments on those obligations. The agencies use a company's financial statements, and not the company's market capital structure, in conducting their analysis. It is a company's financial statements that affect the market value of the stock, and, therefore, the financial statements and the book value capital structure are relied upon in an analysis such as that done by rating agencies. I&E St. 2 at 40; I&E St. 2-SR at 10. Accordingly, we find that the record in this proceeding supports rejecting the Company's requested leverage adjustment.

Additionally, we note that PPL, in its 2012 rate case, sought a leverage adjustment in the range of 70 to 118 basis points based upon similar arguments regarding a perceived risk related to its market to book ratio. Likewise, UGI Electric, in its 2018 rate case, sought a leverage adjustment on this same basis. We found no merit in these arguments. *2012 PPL Order* at 91; *UGI Electric* at 93. We likewise find no merit in Aqua's arguments in which it seeks to support a leverage adjustment that is more than 100 basis points higher than that requested by either PPL or UGI Electric. Rather, we find, as we did in those base rate proceedings, that awarding the Company a leverage adjustment would run contrary to the public interest. Therefore, we shall deny the Company's Exception No. 1.2.

As to the Company's requested management performance adjustment, we note that pursuant to the Code, the Commission may reward utilities through rates for their performance. In pertinent part, Section 523 of the Code, 66 Pa. C.S. § 523, provides:

§ 523. Performance factor consideration.

(a) **Considerations.** – The Commission shall consider, in addition to all other relevant evidence of record, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this

title. On the basis of the commission's consideration of such evidence, it shall give effect to this section by making such adjustments to specific components of the utility's claimed cost of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.

(b) **Fixed utilities.** – As part of its duties pursuant to subsection (a), the commission shall set forth criteria by which it will evaluate future fixed utility performance and in assessing the performance of a fixed utility pursuant to subsection (a), the commission shall consider specifically the following:

(1) Management effectiveness and operating efficiency as measured by an audit pursuant to Section 516 (relating to audits of certain utilities) to the extent that the audit or portions of the audit have been properly introduced by a party into the record of the proceeding in accordance with applicable rules of evidence and procedure.

* * *

(4) Action or failure to act to encourage development of cost-effective energy supply alternatives such as conservation or load management, cogeneration or small power production for electric and gas utilities.

* * *

(7) Any other relevant and material evidence of efficiency, effectiveness and adequacy of service.

On consideration of the record evidence in this proceeding, we shall award Aqua an upward adjustment of twenty-five basis points to its ROE for management effectiveness, consistent with the following discussion.

We specifically recognize Aqua's efforts and willingness to quickly provide emergency aid to various water and wastewater systems that needed substantial improvement. Aqua has often provided this emergency aid on short notice and at the request of the Commission or other parties to protect the public from egregious health and safety threats and to protect the Commonwealth's drinking water resources from catastrophic damage. The competence and reliability of Aqua's management effectiveness in this regard is unparalleled. Aqua's management has earned this reputation by consistently and successfully working to protect the public and the environment under emergency situations presenting highly difficult operational, financial, and legal issues over many years. For example, we note the aid rendered by Aqua in Emlenton, Pennsylvania where the Commission fielded approximately ninety-three simultaneously filed formal complaints against the Emlenton Water Company alleging unsafe and inadequate water service and water-born illness. *See Bradley Louise, et al. v. Emlenton Water Company*, Docket No. C-2008-2058411 (Complaint filed July 24, 2008); *Joint Application of Aqua Pennsylvania, Inc. and Emlenton Water Company*, Docket No. A-2008-2074746 (Order entered December 29, 2008).

Aqua's management performance in recent emergency situations reinforces that the Company has been, and continues to be, a trusted and reliable corporate citizen on which the public can rely. Specifically, Aqua is currently operating three troubled utility systems under emergency receiverships throughout the Commonwealth, including one wastewater and two water systems. These respectively include North Heidelberg Sewer Company (NHSC), Twin Lakes Utilities, Inc. (Twin Lakes), and James Black Water Service Company (James Black). *See Aqua St. 1 at 40; Aqua M.B. at 133-34.*

Regarding NHSC, on March 21, 2017, I&E requested that the Commission issue an *Ex Parte* Emergency Order to avoid "a tidal wave of adverse consequences, including the potential discharge of untreated wastewater into the Commonwealth's

waterways, which could result in irreparable harm to the environment, the health of NHSC's customers, and the safety of the public at large." *See Pa. PUC v. Metropolitan Edison Company and North Heidelberg Sewer Company*, Docket No. P-2017-2594688, (Petition for *Ex Parte* Emergency Order filed March 21, 2017) at 11.⁶⁴ At that time, NHSC served approximately 273 residential and one commercial wastewater customer. *May 2017 Order* at 5. I&E added that should NHSC fail to immediately take corrective action, the Commission should appoint a receiver pursuant to 66 Pa. C.S. § 529 because it appeared that NHSC was "consciously and intentionally placing in jeopardy its ability to provide safe, reliable and reasonable wastewater service to its customers." Petition for *Ex Parte* Emergency Order at 12. In the *Ex Parte* Order, Chairman Dutrieuille directed Aqua to assume this receiver role, which Aqua immediately and willingly did.

This past autumn, Hurricane Ida substantially destroyed NHSC's wastewater treatment plant and Aqua immediately responded to avert what could have been yet another disaster to the environment and to downstream drinking water supplies. Aqua M.B. at 131. Aqua's reconstruction efforts have gone beyond the normal expectations of a receiver. *Id.* On May 2, 2022, Aqua filed its 17th quarterly status report regarding its successful and ongoing five-year effort to rehabilitate the NHSC system, both operationally and financially, for the safety and benefit of the families served by that system and all Commonwealth residents downstream of its wastewater discharge. In our view, Aqua's reconstruction efforts have gone beyond the normal expectations of a receiver.

⁶⁴ On March 22, 2017, Chairman Gladys Brown Dutrieuille signed an *Ex Parte* Emergency Order (*Ex Parte* Order) granting the Petition for *Ex Parte* Emergency Order as modified to ensure continued wastewater service from NHSC to its customers, subject to ratification by the full Commission. On April 6, 2017, the Commission issued a Ratification Order of the *Ex Parte* Order. Subsequently, the Commission modified the *Ex Parte* Emergency Order. *Pa. PUC v. Metropolitan Edison Company and North Heidelberg Sewer Company*, Docket No. P-2017-2594688 (Order entered May 4, 2017) (*May 2017 Order*).

Regarding Twin Lakes, on October 23, 2018, Twin Lakes petitioned the Commission to approve an abandonment of water service to its approximately 114 residential customers no later than March 31, 2019. *Twin Lakes Utilities, Inc. Application to Abandon Service to its customers in Sagamore Estates in Shohola Township, Pike County Pennsylvania*, Docket No. A-2018-3005590 (filed October 23, 2018). Twin Lakes claimed it could no longer provide service to its customers because of significant quality of service and financial issues. *Id.*; *see also*, *Office of Consumer Advocate's Answer in Support of the Petition of Twin Lakes Utilities*, Docket No. P-2020-3020914 (filed August 5, 2020) (also containing a reiteration of the history and issues behind the Twin Lakes Section 529 forced acquisition petition supported by the OCA).

On June 10, 2020, Twin Lakes provided notice to the Commission that on September 1, 2020, it would cease providing water service to its customers. *Twin Lakes Utilities, Inc. – Notice of Termination of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc.*, Docket No. M-2020-3020390 (served June 10, 2020). The practical effect of such abandonment would be the loss of potable water service and, for many customers, the loss of water for in-home sanitation as well. On July 13, 2020, the Commission directed that Twin Lakes “shall not abandon or surrender water service to its customers, in whole or in part, without Commission authorization.” *Twin Lakes Utilities, Inc. – Notice of Termination of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc.*, Docket No. M-2020-3020390 (*Secretarial Letter* issued July 13, 2020.)

Nevertheless, on August 3, 2020, Twin Lakes provided public notice to its customers that “to protect the public health, Twin Lakes will cease water service at 12:01 am on September 1, 2020.” *Twin Lakes Utilities, Inc. Section 529 Petition*, Docket No. P-2020-3020914 (filed August 3, 2020.) Shortly thereafter, the OCA petitioned the

Commission stating that the “OCA respectfully requests the Commission direct Aqua Pennsylvania to act as a receiver to operate Twin Lakes until the resolution of the Section 529 proceeding.” *Office of Consumer Advocate Petition for Issuance of an Interim Emergency Order on an Expedited Basis*, Docket No. P-2020-3020914 (filed August 18, 2020) at ¶ 18. The OCA opined that “Aqua Pennsylvania appears to be financially, managerially, and technically capable to serve Twin Lakes’ customers. It is a capable PUC jurisdictional water utility and a proximate public utility as required under Section 529.” *Id.* at ¶ 17 (*citations omitted*). We note that Aqua willingly took on this request and the Company continues to make significant investments into the Twin Lakes system to ensure its customers receive safe water service.

Simultaneous with its work with NHSC and Twin Lakes, Aqua is also serving as a receiver to James Black, a typical small, troubled water system with approximately nineteen customers. *See In re James Black Water Service Company*, Docket No. M-2019-3012563 (*Ex Parte* Emergency Order issued September 3, 2019; Order ratified September 19, 2019). We include a description of this typical small troubled water system only to provide perspective on the difference in scale required to rehabilitate NHSC and Twin Lakes, and to comment on the depth of resources, expertise, and employee commitment required to simultaneously manage all these emergency efforts, as the Company has done.

In view of the above, it is clear that Aqua has answered the call to provide emergency assistance at the request of the public, public advocates, and government agencies. Given the nature and frequency of these emergencies, we are of the opinion that the Company should be recognized for its efforts to serve as a ready and willing ally in water and wastewater emergencies. In our view, affording Aqua a modest upward adjustment to its ROE to recognize its exemplary emergency service is a just, reasonable, and affordable approach to addressing its ongoing emergency aid efforts. It would be inequitable to proceed otherwise, as there is no provision of the Code that demands

utilities exhaust employees or financial resources because of emergencies occasioned by others.

Section 523 of Code, *supra*, permits the Commission to award a management performance adjustment based on “[a]ny other relevant and material evidence of efficiency, effectiveness and adequacy of service.” 66 Pa. C.S. § 523(b)(7). Aqua’s consistent willingness to answer calls for aid to other water and wastewater providers shows it is doing more than required under Section 1501 of the Code. The examples discussed above indicate that Aqua carries a roster of large and complex emergency aid matters unlike any other Pennsylvania utility. As stated in its direct testimony, operating troubled systems requires significant time, commitment, and involvement from many departments within Aqua. Aqua St. 1 at 20. As such, Aqua management is exceeding the expectations placed upon it not only by its existing customers, but also the Commonwealth. For this reason, we find that Aqua should receive a management efficiency award commensurate with the emergency service described herein. Therefore, to reflect the extraordinary effort exhibited by Aqua to aid and protect Pennsylvania water and wastewater customers and the environment, we shall award Aqua an additional twenty-five basis points to its ROE for management performance. As discussed in Section X.D.3, *infra*, this will result in a total ROE for the Company of 10.00%.⁶⁵ Accordingly, we shall grant Aqua’s Exception No. 1.6.

⁶⁵ As previously noted, in the *2008 Aqua Order*, the Commission awarded Aqua a management performance adjustment of twenty-two basis points for a total ROE of 11.00%.

3. Rate of Return on Common Equity

a. Positions of the Parties

As noted above, four methods of determining the cost of equity were presented for inclusion in the record in this proceeding: (1) DCF; (2) CAPM; (3) RP; and (4) CE. Aqua relied on each of these methodologies in presenting its recommended rate of return on common equity of 10.75%. Aqua St. 7 at 7.

As previously discussed, both I&E and the OCA took issue with the Company's analysis in arriving at the proposed cost of equity and argued that equal weight should not be given to the four different methodologies as Aqua did in its evaluation. Additionally, both I&E and the OCA submitted that the Commission has indicated a preference for using the DCF method to establish reasonable common equity costs.

As a result of its DCF analysis, I&E recommended a cost of common equity of 8.90%. St. 2 at 21.

The OCA recommended a cost of common equity of 8.00% based on its DCF model. OCA St. 3 at 3.

b. Recommended Decision

The ALJ rejected Aqua's proposed rate of return on common equity of 10.75%. Namely, the ALJ agreed with I&E's proposal to calculate the recommended cost of equity pursuant to the DCF methodology and using the CAPM to verify the reasonableness of the DCF ROE. According to the ALJ, I&E's analysis is consistent with the methodology commonly endorsed by the Commission and most recently

accepted in *Columbia Gas*. Therefore, the ALJ recommended that the Commission adopt the 8.90% cost of equity as determined by I&E. R.D. at 78.

c. Exceptions and Replies

(1) Aqua Exc. Nos. 1.3, 1.5, and 1.7 and Replies

In its Exception Nos. 1.3 and 1.7, Aqua disagrees with the ALJ's cost of equity recommendation of 8.90%, based on I&E's methodology recently approved in *Columbia Gas*. Aqua takes the position that

“[i]f adopted, this ROE will represent a watershed moment for the end of the Commission's longstanding commitment to supporting infrastructure investment, made doubly worse in a period of rising capital costs. The RD ROE would signal to the utilities and the credit rating agencies that Pennsylvania regulation has ceased to support investment in the state at a time of critical capital investment needs.”

Aqua claims the ALJ erred by using a formulaic application of I&E's DCF method. In selecting I&E's recommended ROE, Aqua asserts the ALJ is implicitly endorsing an approach that rejects the application of informed judgment. In further support of its position, Aqua argues that the ALJ completely failed to address the substantial increases to the rate of inflation that have been experienced subsequent to the preparation of rate of return recommendations by the Parties. Aqua highlights that the inflation rate reported in December of 2021 was a thirty-nine year high of 6.8%. Aqua adds this current period of significant inflation “shows no signs of abating.” Aqua Exc. at 2-4, 9-10, 13.

In its Exception No. 1.5, Aqua stresses that the ALJ's recommendation of an 8.90% ROE is below recent Commission determinations of a 9.86% ROE for

Columbia Gas, and a 10.24% ROE for *PECO*. In addition, Aqua argues that the allowed DSIC ROE of 9.80% is further evidence that the ALJ's recommended 8.90% ROE is deficient and will not provide Aqua with the opportunity to earn its investor-required cost of capital for the FPFTY. Aqua reinforces its position that the Commission should not be reducing a utility's ROE when there is a continuing, compelling need for capital investment to rehabilitate aging infrastructure. Aqua Exc. at 12-13.

In its reply to Aqua's Exceptions, I&E disputes Aqua's argument that the ALJ's rate of return recommendation in this proceeding should have been based on the allowable DSIC rate of return and the rate of return awarded to other dissimilar public utilities in other base rate proceedings. Rather, I&E avers that the ALJ correctly considered the substantial record evidence presented by all Parties in this base rate proceeding and properly recommended the Commission adopt the I&E recommended 8.90% ROE. Aqua R. Exc. at 11-12.

In its reply to Aqua's Exceptions, the OCA submits that the ALJ correctly rejected Aqua's cost of equity recommendation of 10.75%. The OCA avers Aqua's proposed 10.75% ROE relies on flawed empirical analyses and unsupported upward adjustments. OCA R. Exc. at 5.

(2) OCA Exception No. 9 and Replies

In its Exception No. 9., the OCA claims the ALJ erred by adopting I&E's proposed ROE of 8.90%. The OCA believes that adoption of I&E's cost of equity recommendation, albeit more reasonable than Aqua's ROE calculation, still overstates the cost of common equity. The OCA remains of the opinion that a ROE of 8.0% should be awarded to the Company, based on its Quarterly Approximation DCF model. OCA Exc. at 12.

In its reply to the OCA's Exception No. 9, Aqua submits the OCA's proposed ROE should be rejected because it would signal to Pennsylvania utilities and the investment community that Pennsylvania regulation no longer is supportive of capital investment, made doubly bad given the clear rise in inflation and capital costs that are occurring. Aqua R. Exc. at 7-8.

In its reply to the OCA's Exception No. 9, I&E supports the ALJ's recommendation to adopt the methodology employed by I&E, which resulted in an 8.90% ROE, as the most reasonable. I&E R. Exc. at 15.

d. Disposition

As determined in our disposition of Sections X.D.1 and X.D.2, *supra*, we will rely upon I&E's DCF and CAPM methodology and informed judgment, in addition to awarding an upward adjustment of twenty-five basis points for management effectiveness, in arriving at our determination of the proper ROE to award to Aqua in this proceeding. In particular, we note that the evidence presented in this case based on I&E's CAPM methodology produced a ROE higher than the results produced by its DCF. This suggests that, while properly computed in the abstract, I&E's DCF results understate the current cost of equity for Aqua and that consideration should be given to the CAPM in determining the appropriate range of reasonableness.

We agree with Aqua that the setting of the proper return on equity is necessary in this environment of increasing inflation, leading to an increase in interest rates and capital costs. Aqua Exc. at 2-4, 9-10, 13. However, we disagree with Aqua benchmarking recent Commission ROE determinations for *Columbia Gas* and *PECO Gas*, in addition to the most recent DSIC ROE, as further evidence that the ALJ's recommended 8.90% ROE is deficient. We agree with I&E that *Columbia Gas* and *PECO Gas* are dissimilar public utilities to Aqua, and each had a company specific ROE

determined by evidence presented at the time of its individual base rate case. Further, we note the DSIC ROE is unlike a ROE set in a base rate proceeding. The DSIC ROE is determined by the Commission on a quarterly basis and is set per industry. As such, it is not company specific. Therefore, we shall grant Aqua Exception Nos. 1.3 and 1.7 and deny Aqua Exception No. 1.5.

As also explained in our disposition of Section X.D.1, we found the ALJ did not err by rejecting the OCA's Quarterly Approximation DCF methodology. Consequently, we do not agree with the OCA's resultant 8.0% ROE for Aqua. Consistent with these determinations, we shall deny OCA Exception No. 9.

We have previously determined, above, that we shall utilize I&E's DCF and CAPM methodologies. I&E's DCF and CAPM produce a range of reasonableness for the ROE in this proceeding from 8.90% to 9.89%. Based upon our informed judgment, which includes consideration of a variety of factors, including increasing inflation leading to increases in interest rates and capital costs since the rate filing, we determine that a base ROE of 9.75% is reasonable and appropriate for Aqua. When combined with our upward adjustment of 25 basis points to the Company's ROE for management effectiveness, this will produce a final authorized ROE for Aqua of 10.00% (*i.e.*, $9.75\% + 0.25\% = 10.00\%$). Accordingly, we shall modify the ALJ's ruling as to the ROE to award Aqua in this proceeding.

E. Overall Rate of Return

1. Positions of the Parties

In this proceeding, Aqua claimed that it should be permitted to earn an overall rate of return of 7.64%. Aqua's proposed overall rate of return is comprised of a weighted average of a 4.00% rate of return on long-term debt, and a 10.75% rate of return

on common equity, inclusive of an upward adjustment for management effectiveness. This is, in turn, based on a capital structure of 53.95% common equity and 46.05% long-term debt. Aqua Exh. 4-A at 1, Sch. 1.

I&E recommended that Aqua should be afforded the opportunity to earn an overall rate of return of 6.64%. This recommended overall rate of return is comprised of a weighted average of a 4.00% rate of return on long-term debt and an 8.90% rate of return on common equity and is based off of the Company's proposed capital structure. I&E M.B. at 42.

The OCA proffered that the Commission should allow Aqua the opportunity to earn a 6.00% overall rate of return on its rate base. The OCA's recommendation is comprised of a weighted average of a 4.00% rate of return on long-term debt and an 8.00% rate of return on equity and is based on a hypothetical capital structure of 50% common equity and 50% long-term debt. OCA M.B. at 53.

Although CAUSE-PA did not propose a specific rate of return for the Company in this proceeding, it stated that it supported and adopted the position of the OCA. CAUSE-PA M.B. at 12.

2. Recommended Decision

The ALJ recommended that the Commission adopt I&E's proposed overall rate of return of 6.64%. This is based upon the ALJ's recommendations, *supra*,:

- (1) approving the Company's proposed capital structure of 53.95% common equity and 46.05% long-term debt;
- (2) approving the Company's claimed cost rate of 4.00% for long-term debt;
- (3) utilizing I&E's methodology for determining a rate of return on common equity; and
- (4) denying the Company's claimed 234-basis point leverage

adjustment and its upward adjustment for superior management performance. The ALJ's recommended rate of return is outlined in Table 6, as follows:

Type of Capital	Ratio	Cost Rate	Weighted Cost
Long-Term Debt	46.05%	4.00%	1.84%
Common Equity	53.95%	8.90%	4.80%
Total	100.00%		6.64%

Table 6: The ALJ's Recommended Capital Structure and Overall Rate of Return for Aqua

The ALJ applied this rate of return to Table IA of each of the rate tables set forth in the Appendix to the Recommended Decision. According to the ALJ, an overall rate of return of approximately 6.64% fairly balances the requirement that a utility be permitted an opportunity to recover those costs prudently incurred by all classes of capital used to finance the rate base during the prospective period in which its rates will be in effect, while also mitigating the revenue increases that will impact ratepayers who continue to struggle in the aftermath of the COVID-19 pandemic. R.D. at 81, Appendix Tables IA.

3. Exceptions and Replies

Only Aqua and the OCA filed exceptions to the ALJ's recommendations on a fair rate of return for the Company. Aqua and the OCA's Exceptions and Replies to Exceptions on the overall rate of return are based on their respective Exceptions and Replies to Exceptions regarding the ALJ's recommended capital structure, proxy group, and the cost of common equity, *supra*.

4. Disposition

For the reasons discussed above, we have adopted the ALJ's recommendation as to the appropriate capital structure and cost of debt for Aqua.

Additionally, based on the use of informed judgment and the addition of an upward adjustment for management effectiveness, we have modified the ALJ's recommendation as to the appropriate cost of common equity for the Company. This will, in turn, modify the ALJ's recommended overall rate of return. The table below summarizes our final determinations regarding Aqua's capital structure, cost of debt, and cost of common equity, as well as the resulting weighted costs. As Table 7 indicates, we shall set an authorized overall rate of return for Aqua at 7.24%.⁶⁶ We shall apply this rate of return, as set forth in Table IA to each of the rate tables that are attached to the Commission Tables Calculating Allowed Revenue Increase at the end of this Opinion and Order.

Type of Capital	Ratio	Cost Rate	Weighted Cost
Long-Term Debt	46.05%	4.00%	1.84%
Common Equity	53.95%	10.00%	5.40%
Total	100.00%		7.24%

Table 7: Aqua Capital Structure – Authorized Overall Rate of Return

XI. Rate Structure

A. Cost of Service

1. Positions of the Parties

Cost allocation studies are used to allocate the total water and wastewater cost of service to the various customer classifications based on established principles of cost-causation with the fundamental purpose of aiding in the accurate and reasonable design of rates. *See* R.D. at 82.

⁶⁶ We note that there are additional rate issues pertaining to the elements in the proposed base rate increase addressed later in this Opinion and Order and not included here simply because the Order follows the structure of the Recommended Decision for ease of reference by the reader.

In this proceeding, none of the Parties disputed the method used by Aqua to calculate the cost of service for its water operations and its wastewater operations. In each of the studies prepared, the total costs of service are allocated to the various customer classifications in accordance with generally accepted cost of service principles and procedures. Aqua St. 5 at 3, 19.

Aqua's cost allocation study for its water operations is included in Aqua Exh. 5-A, Part I. The method used for the allocation water cost of service was based on the Base-Extra Capacity Method for allocating costs to customer classifications. This method is described in the 2017 and prior editions of the *Water Rates Manual*, published by the American Water Works Association (AWWA). Aqua Exh. 5-A, Part I at 3. The four basic categories of cost responsibility that are considered using this method are base, extra capacity, customer, and fire protection costs. *Id.*

Aqua's cost allocation study for its wastewater operations is included in Aqua Exh. 5-B, Part I. The method used for the allocation of wastewater cost of service incorporates the functional cost allocation methodology described in the text "Financing and Charges for Wastewater Systems," Manual of Practice No. 27, published by the Water Environment Federation. Aqua Exh. 5-B, Part I at 2-3. This method is recognized for allocating the cost of providing wastewater service to customer classifications in proportion to the classifications' use of the commodity, facilities, and services. *Id.* Aqua prepared separate cost allocation studies for its wastewater Base Operations and the separate operating divisions for Limerick, East Bradford, Cheltenham, East Norriton and New Garden. *See* Aqua St. 5 at 18-19. The separate operating cost allocation studies from the Base Operations are wastewater systems acquired since the *Aqua 2018 Rate Case*. Aqua St. 1 at 7.

2. Recommended Decision

The ALJ recommended that the cost of service study methods used by Aqua for its water and wastewater operation be approved because they are reasonable and consistent with past practice. R.D. at 83.

3. Disposition

No Party filed Exceptions on this issue. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment.

B. Cost of Service – Wastewater

1. Positions of the Parties

Both I&E and the OCA recommended that Aqua be required to prepare ongoing cost allocation studies for the wastewater systems acquired by the Company under Section 1329 of the Code, 66 Pa. C.S. § 1329, in future base rate cases. Additionally, I&E and the OCA argued that the Company should be required to file two separate revenue requirements going forward. These recommendations would require Aqua to prepare a cost of service study (COSS) and revenue requirement for (a) combined Wastewater Zones 1 through 6 (consisting of the Company's legacy systems), (b) combined Wastewater Zones 7-11 (representing the systems acquired under Section 1329 of the Code prior to this base rate proceeding),⁶⁷ and (c) each additional

⁶⁷ Specifically, these Wastewater Zones are as follows: Zone 7-Limerick, Zone 8-East Bradford, Zone 9-Cheltenham, Zone 10-East Norriton, and Zone 11-New Garden. *See* Aqua Volume 5, Exh. 5-B, Part II, Schs. LMK, EB, CH, EN and NG.

system acquired after this proceeding under Section 1329. I&E M.B. at 65-66; OCA M.B. at 84-86.

I&E argued that combining Wastewater Zones 7 through 11 into one COSS in Aqua's next base rate case is important because these zones include systems acquired under Section 1329 and represent a unique group of zones and cost recovery requirements. Therefore, I&E recommended that these zones should continue to be grouped into one COSS in future cases. I&E also reasoned that it is important to distinguish the difference between these systems and systems not acquired under Section 1329 because of the generally higher cost of providing service to customers in these systems acquired under Section 1329. I&E M.B. at 65-66 (citing I&E St. 5 at 66).

The Company opposed the recommendations of I&E and the OCA stating that the decision to require separate cost allocation studies for future wastewater acquisitions should not be pre-determined but should be evaluated in such future proceedings. Aqua further noted that it has never been required to carve out water and wastewater acquisitions in this manner, after the initial rate case post-acquisition. Additionally, the Company asserted that because the acquired systems are similarly operated as the legacy systems, no advantage could be gained on a cost of service basis by separating these systems. Aqua also contended that the Commission should not dictate how the Company will file its next base rate proceeding absent its agreement, citing the general principle that the Commission should refrain from acting as a super board of directors. Moreover, Aqua argued, the recommendations frustrate the goal of single tariff pricing and consolidation of rate zones. Aqua M.B. at 219-20; Aqua R.B. at 93.

2. Recommended Decision

The ALJ recommended that the Commission adopt the positions advanced by I&E and the OCA that Aqua be required to prepare separate COSS and revenue requirements in its next base rate proceeding. R.D. at 82-83.

The ALJ reasoned that this base rate filing emphasizes the importance of tracking the implications of the acquisition of water and wastewater systems and the effect of those acquisitions on rates and cost of service. In acknowledging that consolidating rate zones is important, the ALJ emphasized the importance of appropriately tracking the cost to serve the acquired systems – and the steps taken to move rates in these systems closer to the cost of service – while ensuring that other ratepayers are not subsidizing service to these customers indefinitely. The ALJ considered the proposals to be reasonable and sensible and well within the Commission’s mandate to ensure that a utility’s rates are just and reasonable and meet the public interest. *Id.* at 83.

3. Exceptions and Replies

In its Exception No. 8, Aqua argues that the ALJ erred by ordering the Company to prepare a separate COSS for each system acquired under Section 1329 of the Code that is included in the next base rate proceeding following such acquisition. Aqua Exc. at 29-31.

Initially, Aqua contends that the Recommended Decision ignores applicable appellate precedent, citing *City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243 (Pa. Cmwlth. 1987), *appeal denied*, 517 Pa. 628, 538 A.2d 880 (1988) (*City of Pittsburgh*). The Company asserts that in *City of Pittsburgh* the Commonwealth Court specifically affirmed a prior Commission order that declined to condition a water utility’s

proposed consolidation of rate districts upon the maintenance of separate records for each district. Aqua argues that, consistent with this case, it should not be required to maintain and prepare separate studies and revenue requirements in its next base rate proceeding. Aqua Exc. at 30.

The Company further contends that the Recommended Decision disregards the impacts of imposing this requirement on Aqua relative to other water and wastewater utilities in Pennsylvania. According to Aqua, this requirement will result in significant accounting, tracking, operational and rate impacts that would also frustrate the Commission's policy supporting single tariff pricing and consolidation. Likewise, Aqua continues, the increased costs and complications associated with preparing separate cost allocation studies would likely put the Company at a competitive disadvantage from other bidders in future acquisition opportunities. *Id.* (citing Aqua M.B. at 219).

Furthermore, Aqua submits that, for new acquisitions, the recommended requirements should be analyzed in the context of future Section 1329 acquisition proceedings, and not in this base rate case. The Company submits that the Commission should not require Aqua to indefinitely prepare separate costs of service and revenue requirements for future acquired systems, where it is not known whether and when further systems will be acquired. Aqua Exc. at 30-31.

In its reply, I&E argues that the ALJ properly recommended that the Commission adopt its recommendations regarding recently acquired Section 1329 systems and those acquired subsequent to this base rate proceeding. I&E asserts that the ALJ correctly emphasized the importance of tracking the implications of the acquisitions under Section 1329 and the effect of those acquisitions on rates and cost of service. I&E adds that the ALJ noted the importance of consolidating rate zones. However, I&E asserts, the ALJ correctly determined the need to appropriately track the cost to serve Section 1329 acquired systems and the steps to move rates in these systems closer to the

cost of service while ensuring that other ratepayers are not subsidizing service indefinitely. I&E R. Exc. at 9-10.

In its reply, the OCA asserts that the ALJ's recommendation is reasonable given the significant impact that Section 1329 acquisitions had on rates for wastewater and water customers in this proceeding. OCA R. Exc. at 12-14.

The OCA argues that Aqua's objections to the recommendations on the basis that it would place an extra burden on Aqua relative to other water and wastewater utilities are misplaced. If other utilities are acquiring systems under Section 1329, the OCA submits, then they will be in the same situation that Aqua was in the current base rate case where it provided one COSS for legacy systems and individual COSSs for the systems acquired prior to the base rate case. According to the OCA, an individual COSS has been adopted by the Commission for every Section 1329 acquisition approved to date and it is reasonable to assume the Commission will continue to apply it uniformly to Aqua's competitors. OCA R. Exc. at 12.

The OCA contends that the main distinction in this proceeding is that Aqua would be preparing only one additional COSS for the combined Section 1329 systems included in this case. Regarding Aqua's concerns of increased costs and complications of preparing one additional COSS for those systems, the OCA asserts that the Company does not quantify such costs. Instead, the OCA cites to the rate case expense claim in the current proceeding – \$400,000 on “Engineering, Cost Allocation and Depreciation” – and compares it with the purchase price of the five systems Aqua already acquired under Section 1329, which ranged from \$5 million to \$75 million, or an average of \$34.4 million. OCA R. Exc. at 12-13 (citing Aqua Exh. 1-C, Sch. C-4.4). The OCA argues that even if COSSs and cost allocation represented the entire \$400,000 in this case, ignoring that 91.51% of rate case expense is allocated to water operations, the cost would represent only 1% of the average purchase price of the Section 1329 systems in

this case. The OCA submits that this cost to Aqua cannot reasonably be considered a meaningful competitive disadvantage. OCA R. Exc. at 13.

The OCA also criticizes Aqua's concerns about imposing future requirements indefinitely in this base rate case because it is not known whether and when further systems will be acquired. Citing to Aqua's three pending Section 1329 applications, the OCA submits that establishing a requirement for a separate COSS for Section 1329 acquisitions in this case would avoid the need for the Parties and the Commission to address it in every Section 1329 proceeding.⁶⁸ The OCA proffers that the continuing need for this requirement could be evaluated in the next base rate proceeding. *Id.*

The OCA further objects to Aqua's contention that preparing a separate COSS would frustrate the policy of single tariff pricing. Regarding the citation to *City of Pittsburgh*, which upheld the Commission's decision to not require a water utility to maintain separate records for rate districts after they were consolidated, the OCA contends the Commonwealth Court's decision is distinguishable. Here, the OCA asserts, Aqua has not reached the point of consolidating Section 1329 systems with its legacy systems. Rather, the OCA emphasizes that Aqua has proposed to reduce its legacy rate zones from six to five and for each Section 1329 system to stay in its own, separate rate zone. OCA R. Exc. at 13-14 (citing Aqua St. 5-R at 21; Tariff Sewer No. 3).

⁶⁸ The OCA notes there are three pending Section 1329 proceedings: *Application of Aqua Pa. Wastewater, Inc.*, Docket No. A-2019-3015173 (Delaware County Regional Water Quality Control Authority Wastewater System Assets); *Application of Aqua Pa. Wastewater, Inc.*, Docket No. A-2021-3026132 (East Whiteland Township Wastewater System Assets); and *Application of Aqua Pa. Wastewater, Inc.*, Docket No. A-2021-3027268 (Williston Township Wastewater System Assets). The OCA also references the recent acquisition approval in the *Application of Aqua Pa. Wastewater, Inc.*, Docket No. A-2021-3024267 (Order entered January 13, 2022) (Lower Makefield Township Wastewater System Assets). OCA R. Exc. at 13, n.8.

Additionally, the OCA argues that in this case Aqua proposes a one-third recovery of its wastewater revenue requirement from water customers, which moves all customers further from paying rates that reflect their indicated cost of service. OCA R. Exc. at 14 (citing OCA St. 4 at 4 (Table I); Aqua Exhs. 5-A, Part I, 5-B, Part I). The OCA submits that the ALJ correctly addressed the concerns about subsidies between water and wastewater and between the legacy and acquired wastewater systems in the Recommended Decision and appropriately adopted the proposal of I&E and the OCA. OCA R. Exc. at 14 (citing R.D. at 83).

4. Disposition

We begin by addressing the contention that an individual COSS has been adopted by the Commission for every Section 1329 acquisition approved to date. *See* OCA R. Exc. at 12. In the recent Section 1329 application by Pennsylvania-American Water Company (PAWC) to acquire the water and wastewater system assets of Valley Township, the parties to that proceeding filed a Joint Petition for Approval of Unanimous Settlement of All Issues (PAWC Settlement) which the Commission approved without modification. *Application of Pennsylvania-American Water Company*, Docket Nos. A-2020-3019859 and A-2020-3020178 (Order entered October 28, 2021) (*PAWC – Valley Township Order*). The PAWC Settlement did not require separate COSSs related to the Valley Township acquisitions in PAWC’s next base rate case nor did the Commission modify the Settlement to impose such a requirement. *Id.*

Our decision in the *PAWC – Valley Township Order* is illustrative of the importance of analyzing the necessity of COSSs within the context of individual Section 1329 acquisition proceedings. Although there is a benefit to having COSS data pertaining to Section 1329 acquisitions available in a base rate proceeding subsequent to an application approval, it is apparent from the PAWC Settlement – which included the statutory advocates as signatories – that it need not be mandated within all Section 1329

proceedings. We decline here to pre-judge the issue in all future Section 1329 proceedings when the facts and circumstances of that individual proceeding may not necessarily require a cost of service analysis. Moreover, we shall not impose such a blanket mandate requiring COSSs on all future Section 1329 proceedings involving Aqua when the Commission did not impose such a requirement in an individual application proceeding involving another regulated service provider. However, our decision herein shall not be deemed to limit the authority of the Commission to require the preparation of cost allocation studies for systems acquired in individual Section 1329 proceedings as the circumstances may warrant.

Regarding the proposal to maintain ongoing, separate COSSs for those systems acquired under Section 1329 of the Code prior to this base rate proceeding, we note that the Commission first directed the filing of a cost of service analysis as a condition of approval in Aqua's Section 1329 acquisition of the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority. *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2016-2580061 (Order entered June 29, 2017) (*New Garden*).

The intention of the conditions in the *New Garden* proceeding and similar directives in other Section 1329 proceedings was, in part, to inform the Parties and the Commission of the overall rate impact that the acquisition will have on customers within the context of the *next* base rate proceeding. *See New Garden* at 69-70. It was not to impose ongoing conditions indefinitely in all subsequent rate cases.

Thus, we shall grant Aqua Exception No. 8 and modify the Recommended Decision accordingly.

C. Revenue Allocation

1. Positions of the Parties

Aqua noted that under *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) (*Lloyd*), cost of service is the “polestar” of utility rates, and a proposed revenue allocation will only be found to be reasonable where it moves distribution rates for each class closer to the full cost of providing service. Aqua provided that its proposed revenue allocation for both water and wastewater involves a determination of: (1) the allocated cost responsibilities and the percentage of revenue under existing rates; and (2) the percentage of cost responsibilities and percentage of *pro forma* revenues under proposed rates for each customer classification. Aqua M.B. at 211-12 (citing *Lloyd* at 1020). Aqua submitted that, upon making such determinations, the Company: (1) proposed allocating revenues to each customer class that would be required to move that class toward the cost of service; and (2) determined an amount of wastewater revenues to be recovered in water rates, pursuant to Section 1311(c) of the Code (commonly referred to as Act 11).⁶⁹ Aqua M.B. at 212 (citing Aqua St. 5 at 10, 21;

⁶⁹ Section 1311(c) of the Code:

When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.

Aqua Exh. 5-A, Part I, Sch. A; Aqua Exh. 5-B, Part I, Sch. WW-A; 66 Pa. C.S. § 1311(c)).

Aqua explained that Act 11 allows a utility that provides both water and wastewater services to allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if doing so is in the public interest. Aqua M.B. at 213 (citing *Aqua 2018 Rate Case*, additional citations omitted). Aqua further explained that the public interest is served if properly incurred costs to upgrade a nonviable system can be allocated to the combined wastewater and water customer base. Aqua provided that the Commission noted that one of the benefits of Act 11 is that the costs of necessary upgrades which can be substantial can be spread among the common customer base of water and wastewater utilities. Aqua M.B. at 214-215 (citing Docket No. M-2012-2293611 (Tentative Implementation Order entered May 12, 2012, and Final Implementation Order entered August 2, 2012)).

In order to provide a direction for gradualism and avoid substantial rate shock to wastewater customers who will be subject to their first rate increases resulting from a Commission rate case, the Company allocated a portion of the wastewater revenue requirement to its water customers. Aqua M.B. at 215-216 (citing Aqua St. 1-R at 23-25). Aqua determined its Act 11 allocation from wastewater to water rates “by subtracting the proposed level of wastewater revenue after various increases from the *pro forma* cost of wastewater service for the twelve months ended March 31, 2023 from the revenue requirement for each area.” Aqua M.B. at 216 (citing Aqua St. 5 at 10; 66 Pa. C.S. § 1311). After increasing and consolidating various wastewater rates to a level that moved each division towards the cost of service while mitigating significant rate impacts, the Company proposed to allocate \$20,818,925 of the remaining shortfall

66 Pa. C.S. § 1311(c).

from wastewater revenues to water customers.⁷⁰ Aqua St. 1-R at 2-3; Aqua Exh. 1-A(a). Aqua noted that this allocation represents approximately 30% of the Company's proposed revenue requirement from wastewater to water. Aqua M.B. at 216 (citing Aqua St. 1-R at 24).

Aqua proposed that if the Commission approves a rate increase that is less than that proposed by the Company, that the scale back (or reduction) be applied proportionately based on the Company's proposed revenue allocation. Aqua further proposed that no wastewater scale back occur until the total wastewater Act 11 allocation is eliminated, and any scale back after the Act 11 allocation is eliminated be based on the Company's proposed rates. Aqua M.B. at 265 (citing Aqua St. 5-R at 19-20, 24-25).

I&E's witness, Mr. Joseph Kubas, disagreed with the Company's proposal that its water customers subsidize wastewater customers by approximately \$20.8 million because it is large and unreasonable. Mr. Kubas contended that water customers are not wastewater customers, and each utility service should recover as much of the cost to provide that service as possible. I&E M.B. at 70; I&E St. 5 at 7-8. Further, Mr. Kubas contended that the Company did not demonstrate how allocating 30% of the cost of operating wastewater systems to water customers is reasonable. I&E St. 5-SR at 6.

I&E submitted that Mr. Kubas created a rate design that applies an Act 11 subsidy from wastewater to water consistent with cost of service principles and is in the public interest. Accordingly, I&E recommended that the Company's proposed water subsidy be reduced by \$5,072,876. I&E St. 5-SR at 4-5; I&E Exh. No. 5, Sch. 1 at 1. Subsequently, in surrebuttal testimony, Mr. Kubas revised his recommended reduction to

⁷⁰ Initially, Aqua submitted that wastewater revenues of \$20,839,425 be allocated to water customers. Aqua M.B. at 216.

the subsidy necessary for wastewater systems operation by \$5,044,324. I&E St. 5-SR at 8; I&E Exh. 5-SR, Sch 1 at 1.

With regard to any scale back that may result if the Commission approves a rate increase that is less than that proposed by the Company, I&E submitted that the Company's proposed rates should be scaled back to produce the revenue requirement allowed by the Commission. I&E further proposed that, to determine the amount of the Act 11 subsidy revenue requirement to be allocated to water operations, the wastewater operations revenue requirements should be determined first, and that the water rates should then be scaled back to recover the resulting water operations' full revenue requirement. Regarding wastewater, I&E recommended that no scale back of wastewater rates should occur until the total Act 11 wastewater subsidy is eliminated. I&E R.B. at 55-56 (citing I&E M.B. at 71).

Similar to I&E, the OCA disagreed with the Company's proposal for its water customers to pay approximately \$20.8 million to subsidize its wastewater operations because the wastewater rates would not support a reasonable relationship to the utility's cost of serving the wastewater customers. According to the OCA, it is not in the public interest to use Section 1311(c) and Section 1329 in combination to require that water customers subsidize approximately 75% of the revenue requirement generated by the FMV premiums for the five wastewater systems acquired under Section 1329.⁷¹ OCA R.B. at 46-47 (citing OCA M.B. at 89-91; OCA St. 4 at 7-8).

The OCA submitted that its proposed Act 11 wastewater to water subsidy of \$11.774 million is more moderate and in the public interest than that proposed by the other Parties because it recognizes that the Company's water customers do not receive a

⁷¹ Acquired systems or customers represent Rate Zones 7 through 11, or systems/customers that were acquired by the Company since its last rate proceeding.

direct or indirect benefit from FMV premiums paid to residents of the seller municipalities and the impact of rate increases will be mitigated on the Company's legacy wastewater customers by shifting a substantial amount of their share of the wastewater increase to water customers.⁷² OCA R.B. at 47. The OCA asserted that its proposed Act 11 subsidy recognizes the benefit that customers of the acquired Section 1329 systems receive from the FMV premiums and mitigates the impact of the rate increases by shifting their share of the wastewater increase to water customers. OCA R.B. at 47 (citing OCA St. 4 at 3-4, 7-9; I&E St. 5 at 66). The OCA also proposed that, if the Commission adopts the OCA's recommendation that assigns more revenue requirement to the five wastewater systems acquired under Section 1329, then the revenue requirement calculation should be based on the Company's authorized ROE. In this manner, the OCA explained that if the Commission adopts a different capital structure and/or lower ROE than proposed by the Company, then the scale back should first reduce the revenue requirement associated with the FMV premiums, to the benefit of the acquired customers. The OCA further recommended that if the Commission reduces the revenue requirement for non-ROR reasons, then the benefit should be applied to reduce the subsidy by water operations. OCA R.B. at 53-54 (citing OCA M.B. at 96-98; OCA St. 4 at 11-12).

The OSBA criticized the Company's proposed revenue allocation for water service as being unjust, unreasonable, and in violation of *Lloyd* because it fails to move the Residential, Public, Other Water Utilities and Private Fire Protection customer classes closer to their respective cost of service. OSBA R.B. at 7-8 (citing OSBA M.B. at 9-10; *Pa. PUC v. City of Bethlehem-Water Department*, Docket No. R-2020-3020256 (Order entered April 15, 2021) (*City of Bethlehem*) at 36; *Lloyd*). The OSBA also asserted that the Company's proposal to move each customer classification toward its appropriate

⁷² Legacy systems or customers represent Rate Zones 1 through 6, or systems/customers that were under the Company at the time of its last rate case proceeding.

percentage cost of service without isolating the Act 11 allocation has no legal foundation. OSBA R.B. at 9-11 (citing OSBA St. 1-S at 4-8).

The OSBA's witness, Mr. Brian Kalcic, proposed an alternative revenue allocation for water service, exclusive of Act 11 considerations, to move customer classes toward their respective costs of service. OSBA R.B. at 8-9 (citing OSBA Exh. BK-1 W, Schs. BK-4W, BK-5W). The OSBA averred that isolating Aqua's claimed water cost of service from Act 11 subsidies is necessary because Act 11 addresses the recovery of proposed wastewater subsidies and is not related to the water cost of service. The OSBA explained that its proposed revenue allocation approach assigns a greater revenue responsibility to the Residential class than under the Company's proposal because the Company's proposed revenue allocation actually moves the Residential class away from its cost of service. The OSBA notes that in this proceeding, any revenue allocation that moves all classes toward cost of service must assign greater revenue responsibility to the Residential class. OSBA R.B. at 11-12. Regarding wastewater service, the OSBA submitted that the Company's proposed Act 11 revenue requirement be reduced by assigning an additional total increase to Aqua's Base and New Garden wastewater divisions. OSBA R.B. at 15 (citing OSBA St. 1-S at 1-3; OSBA St. 1 at 15-16).

Regarding the Company's proposed scale back of its proposed revenue allocation, the OSBA asserted that: (1) because the Company's proposed revenue allocation is cost based, using it as a starting point for any scale back is not valid; and (2) a separate scale back for reductions in the Company's allowed water service revenue requirement is necessary. OSBA R.B. at 16-17 (citing OSBA St. 1-R at 8-11). The OSBA proposed that if the Commission awards the Company a water service revenue increase that is less than Aqua's requested amount and exclusive of Act 11 considerations, then the OSBA's recommended class increases for water service should be proportionately scaled back. OSBA R.B. at 17 (citing OSBA M.B. at 19; OSBA Exh. BK-1 W, Sch. BK-4W). The OSBA also proposed that, at the conclusion of this

proceeding, the Act 11 revenues assigned to water classes should be subject to a separate scale back of Aqua's proposed allocation of Act 11 revenues to water customers. OSBA R.B. at 18 (citing OSBA M.B. at 20).

Aqua LUG submitted that the Company's proposed revenue allocation fails to sufficiently move the customer classes towards cost of service. Therefore, Aqua LUG's witness, Mr. Richard A. Baudino, proposed adjustments to the Company's proposed revenue allocation that would result in most customer classes moving closer to their costs of service, consistent with *Lloyd*. Specifically, Mr. Baudino recommended as follows: (1) move the Residential class Relative Rate of Return (RROR) from 0.96 to 0.98; (2) move the Commercial class RROR from 1.04 to 1.02; (3) move the Industrial class RROR from 0.93 to 0.99; and (4) move the Public class RROR from 1.18 to 1.15. Mr. Baudino also recommended that, in the spirit of gradualism, any excess revenue requirement above the Industrial customer cost of service should be allocated to the Residential customer class. Aqua LUG M.B. at 7, 9-10 (citing Aqua LUG St. 1 at 5-6; Aqua LUG Exh.__(RAB-2)).

Aqua LUG provided that Mr. Baudino supported the adjusted revenue allocation recommended by the OSBA witness, Mr. Kalcic, to achieve additional movement towards cost of service. Aqua LUG M.B. at 10 (citing Aqua LUG St. 1S at 3; OSBA St. 1-R at 11-12). Accordingly, Aqua LUG recommended that the Commission should modify the Company's proposed revenue allocation to reflect the OSBA's proposed adjustments or, alternatively, Aqua LUG's proposed adjustments. Aqua LUG M.B. at 7, 11 (citing OSBA St. 1, Exh. BK-1 W, Sch. BK-4W; Aqua LUG St. 1, Exh.__(RAB-2)). Aqua LUG also recommended that, if the Commission approves a revenue increase lower than the proposed revenue allocation, then the approved revenue allocation should be scaled back proportionately. Aqua LUG M.B. at 11-12 (citing Aqua LUG St. 1 at 6).

Masthope submitted that any revenue allocation pursuant to Act 11 and any rate design or rate structure will result in significant increases in wastewater rates for Masthope ratepayers. Masthope R.B. at 6 (citing Masthope M.B. at 19-24; 66 Pa. C.S. § 1311). Further, Masthope asserted that the Act 11 subsidy adjustments proposed by I&E and the OCA will result in unjust and unreasonable rates that would have an adverse effect on Masthope's wastewater customers. Moreover, Masthope recommended that, if the Commission approves revenues in amounts less than what the Company proposed, any increased revenue requirement for water and wastewater customers and the amount of revenue support to be provided by water customers should be distributed in a manner consistent with the Company's proposal. Masthope M.B. at 20-22 (citing Masthope St. 2-R at 3-5). Additionally, Masthope proposed that, in anticipation that increases in costs and the potential need for cross-subsidies will continue for several years, the Commission should hold Aqua's wastewater revenue increase at the Company's proposed level while reducing the water increase to achieve a reduction in any computed cross subsidies. Masthope M.B. at 22.

2. Recommended Decision

In her Recommended Decision, the ALJ determined that Aqua's allocation of revenues between all water and wastewater customer classifications is reasonable and should be approved. Regarding the Act 11 subsidy allocated to water customers, the ALJ recommended that the Commission adopt I&E's proposed methodology for allocating revenue and designing wastewater rates. R.D. at 91, 93.

The ALJ recommended an additional adjustment for shifting the wastewater revenue requirement to water customers. Specifically, the ALJ provided that the wastewater revenue is based upon the expenses associated with wastewater service, such as bad debt expense, which is determined using an uncollectible accounts factor. The ALJ concluded that because the Company would incur bad debt expenses from water

customers at the water uncollectible accounts factor rather than at the wastewater uncollectible accounts factor, it is not reasonable to charge water customers for bad debt expenses at the wastewater uncollectible accounts factor because water customers will ultimately pay the revenue requirement that was shifted to them. Therefore, the ALJ reasoned that, when wastewater revenue requirement is shifted to water customers, the gross wastewater revenue requirement must be reduced to a net basis using the revenue factor for each service, as reflected in Table I(B) for each of the wastewater tables in the Appendix of the Recommended Decision, to determine the water net income that the Company will receive and the wastewater net income that the Company would have received. The ALJ found that the difference between these net values is grossed up using the water revenue factor before being deducted from the gross allocated wastewater revenue requirement, thereby resulting in an adjusted gross water revenue requirement that provides the Company the same net income from water customers that it would have received from wastewater customers. R.D. at 86-87. Table Act 11 in the Appendix of the Recommended Decision provides the detail of the ALJ's adjusted gross water revenue requirement.

The ALJ addressed Mr. Kubas' recommendation to shift some of the revenue increase from the acquired systems (Rate Zones 7 through 11) to the legacy systems (Rate Zones 1 through 6).⁷³ R.D. at 87-88. Specifically, the ALJ discussed Mr. Kubas' view that, although each type of utility service should recover the cost of providing service as much as possible to the subsidy allocated to water customers, eliminating the subsidy would result in large increases to the monthly charges and rates for residential and commercial wastewater customers. The ALJ continued that

⁷³ We note that in her Recommended Decision, the ALJ presented a table prepared by Mr. Kubas "which summarized each party's proposed allocation of revenue." R.D. at 87-88 (citing I&E Exh. 5, Sch. 1). As discussed, *infra*, we shall strike the table presented at the top of page 88 in the Recommended Decision, consistent with this Opinion and Order.

Mr. Kubas reduced the subsidy allocated to water customers by recommending that the usage rate increases to the average residential customers be limited. The ALJ also addressed the proposed alternative Act 11 subsidy analyses offered by the OCA and the OSBA. R.D. at 88-89 (citing I&E St. 5 at 7-8, 10, 35-36, 38; OCA St. 4 at 1; OSBA St. 1 at 16-17).

The ALJ explained that in public utility regulation, and particularly in infrastructure improvements, it is not uncommon to approve the socialization of costs which benefit a subset of consumers over a larger group of consumers. The ALJ noted Act 11 permits the costs associated with wastewater system improvements to be shifted to water customers to avoid steep rate hikes to wastewater customers. The ALJ addressed Aqua's statement that the proposed revenue increase for both water and wastewater is primarily driven by investment in infrastructure, noting that it is important to understand that for the Acquired Systems, both the buyer, Aqua, and the selling municipalities should know that at the time of acquisition customers were likely paying rates that were well below the cost of service, either because rates had not been increased or facility improvements had been deferred. R.D. at 90.

Therefore, the ALJ reasoned that to meet the increased costs associated with system improvements, rates will need to be increased, and the increases might be substantial. The ALJ also addressed the responsibility of the community representatives of the acquired systems who sold their systems to avoid increasing taxes or utility rates or both. Specifically, the ALJ reasoned that such communities achieved a benefit from the revenue generated by the sale of their wastewater systems, and, because these communities have already enjoyed some benefit from the sale of the system, it is not equitable to the Company's water customers to mitigate the resulting increases in expenses to care for the acquired systems. R.D. at 90. Moreover, the ALJ reasoned that it is not fair for water customers to take on the burden of filling the gap between the cost of service to serve these wastewater systems because the proceeds Aqua paid

municipalities to acquire the wastewater systems are used by those municipal governments to reduce, stabilize, or eliminate municipal costs recovered through taxes to the benefit of the wastewater customers residing within those municipalities. *Id.* (citing Aqua St. 1-R at 25). The ALJ highlighted that the Commission relied on these benefits when it determined that the acquisitions were in the public interest. R.D. at 90.

According to the ALJ, although increasing rates gradually to avoid rate shock is important to consider in setting reasonable rates, such gradualism is only one consideration among many, and some level of rate shock is inevitable. The ALJ reasoned that Aqua's approach of allocating 30% of the proposed wastewater revenue requirement to water customers is arbitrary and will not result in just and reasonable rates. Therefore, the ALJ found that, given the consideration of rate shock in the setting of rates in certain circumstances, Aqua's proposal to shift 30% of the wastewater revenue requirement to water customers is not equitable. *Id.*

Additionally, the ALJ addressed the agreement of both I&E and Aqua that no scale back of the Company's proposed wastewater rates should occur until the total wastewater allocation is eliminated. The ALJ found that any scale back of water rates will first reduce the Act 11 allocation. R.D. at 90-91 (citing Aqua St. 5-R at 25; *Lloyd*).

Ultimately, the ALJ recommended adoption of I&E's proposed methodology for allocating revenue and designing wastewater rates, reasoning that I&E's approach considers the number of water and wastewater customers in each system and balances the goal of moving rates toward alignment with the cost of service while mitigating some of the large rate increases that would result if no allocation of wastewater revenue was approved. The ALJ found that I&E's approach addresses the benefits received by the communities serviced by the acquired systems from the sale of their systems to the Company, adding that I&E's method is less complicated than the method advocated by the OCA. R.D. at 91.

Regarding water allocation, the ALJ reasoned that Aqua and the OCA's approach to revenue increases for water is more reasonable than the proposed modifications of the OSBA and Aqua LUG. *Id.* at 91. The ALJ found that, but for the Act 11 subsidy allocated to water customers, Aqua's allocation of revenues between all water customer classifications and all wastewater customer classifications is reasonable and should otherwise be approved. R.D. at 91, 93 (citing OSBA M.B. at 9-20; Aqua LUG M.B. at 8-11).

The ALJ highlighted the OCA's argument that the results of the OSBA's witness, Mr. Kalcic's, class revenue allocations (before the Act 11 subsidy) are not reasonable. R.D. at 91 (citing OCA St. 4R at 5-7). Specifically, the ALJ observed that, although the Residential and Industrial classes are currently earning close to parity, Mr. Kalcic's proposal would increase their percentage of system average revenue responsibility. *Id.* Similarly, the ALJ observed that concurrently, the Commercial class is also earning close to parity, but Mr. Kalcic recommended that this class receive 74% of the system average percentage increase. R.D. at 92. The ALJ also reasoned that Aqua's proposed allocation of revenues views cost of service as a whole and does not attempt to exclude the Act 11 allocation from its analysis. *Id.* Further, the ALJ reasoned that Aqua moves each customer classification toward its appropriate percentage cost of service, including Act 11 allocation. R.D. at 92.

In reviewing the Company's proposed revenue allocation compared to the OSBA's recommended revenue allocation, the ALJ noted that it appears that the OSBA's recommendations to isolate and remove the Act 11 allocation from its analysis is motivated by its preference to decrease the revenue allocated to non-residential customer classes while increasing the revenue allocated to residential classes. R.D. at 92 (citing Aqua St. 5-R at 5). However, the ALJ emphasized that, from the perspective of customers, the effect of the increase includes both the water increase and the wastewater

allocation. Therefore, the ALJ found that Aqua's methodology better reflects the cost of service. R.D. at 92.

The ALJ also addressed Aqua LUG's witness, Mr. Baudino's, proposed reductions to the projected increases to the Commercial and Public classes. R.D. at 93 (citing Aqua LUG St. 1 at 5; Aqua LUG Exh. __ (RAB-2)). Specifically, the ALJ agreed with Aqua witness, Ms. Constance E. Heppenstall, that Mr. Baudino's recommendation, which is based on moving a portion of the Industrial class increase to the Residential class due to a larger increase to blocks 5 and 6 of the consumption rates for the Industrial class, would result in RROR between 0.98 and 0.96 and, therefore, should be rejected. R.D. at 93 (citing Aqua St. 5-R at 25). Similarly, the ALJ agreed with the OCA that Aqua LUG does not consider other inherent complexities in this case, including: (1) gradual movement of various divisions to a state-wide rate; (2) the Public Fire revenue subsidy required by statute; and (3) subsidization of wastewater operations by water operations. R.D. at 93 (citing Aqua St. 4R at 12).

3. Exceptions and Replies

a. Aqua Exception No. 9 and Replies

In its Exception No. 9, Aqua submits that the ALJ's recommendation that the Commission accept I&E's methodology for allocating wastewater revenues and wastewater rates under Act 11 should be rejected, and the Company's proposed Act 11 revenue allocation should be adopted. Aqua Exc. at 31, 34 (citing R.D. at 91, 96). Aqua challenges the ALJ's reasoning that the Company's proposed allocation of wastewater revenues is not fair to water customers because the Company and the selling municipalities should know that rates would increase at the time of a wastewater system acquisition as wastewater customers were likely paying rates that were below the cost of service. Aqua Exc. at 31-32 (citing R.D. at 89-90). Aqua counters that the Company

demonstrated that justifications advanced by I&E and restated by the ALJ are unreasonable and unsupported by record evidence. Aqua Exc. at 32. Specifically, the Company contends that I&E's testimony: (1) implies that municipal governments believed that the cost of acquiring the subject systems would be carried by existing Aqua customers; and (2) ignores the Company's explanation that, as part of the Section 1329 process, future customer rates will be impacted by the purchase price. Moreover, Aqua notes that, contrary to I&E's arguments, the Company demonstrated that it educates and engages with municipal leaders on the ratemaking process. Aqua Exc. at 32 (citing Aqua M.B. at 218-19).

Aqua also challenges the ALJ's reasoning that: (1) community representatives who decided to sell a system due to increasing taxes and/or utility rates are unable to avoid the consequences of that decision; and (2) the revenue generated by the sale of a community's wastewater system is a benefit to the communities of the acquired systems. Aqua Exc. at 32 (citing R.D. at 90). Specifically, Aqua posits that the ALJ took the testimony of Aqua's witness, Mr. Packer, out of context because Mr. Packer was responding to the proposed Act 11 revenue allocation advanced by the OCA, and although Mr. Packer did not disagree with the benefits to the communities whose systems were acquired by Aqua, he states that, "the principles of gradualism should prevail and be utilized to mitigate these first in rate increases." Aqua Exc. at 32 (citing Aqua M.B. at 217-18; Aqua St. 1-R at 25). Further, Aqua claims that the ALJ ignored Mr. Packer's testimony that over the long-term, the Commission will have sufficient opportunities in subsequent rate cases to adjust the rate design for each of the acquired systems. Aqua Exc. at 32-33 (citing Aqua St. 1-R at 25-26). Aqua asserts that the ALJ, instead, reasoned that each system should be subjected to a large and immediate rate increase in this proceeding because an immediate benefit was obtained by the communities which sold wastewater systems to the Company. Accordingly, Aqua contends that such reasoning highlights that I&E's proposal will result in rate shock. Aqua Exc. at 33.

Aqua also challenges the ALJ's determination that the Company's approach of allocating 30% of the proposed wastewater revenue requirement to water customers is "arbitrary." Aqua Exc. at 33 (citing R.D. at 90). Aqua counters that, although the ALJ cited to *Lloyd*, which rejected the definition of gradualism as limiting a rate increase to 10% of the total bill as "the magic number that will prevent rate shock," the Company explained why its proposal is just and reasonable and does not aver that its proposed 30% allocation is the "magic number." Aqua Exc. at 33 (citing Aqua R.B. at 95-99; Aqua M.B. at 216-225). Further, Aqua notes that given the size and number of the systems acquired since the Company's last base rate case and to mitigate the impacts of the initial rate increase for these systems while still moving each towards the cost of service, it is appropriate for the initial allocation of revenues to be higher. Aqua Exc. at 33 (citing Aqua M.B. at 216; Aqua St. 1-R at 24). Moreover, Aqua notes that the other Parties' alternatives are disruptive to the Company's balanced approach and would subject the customers of the acquired systems to significant and immediate rate increases. Aqua Exc. at 33.

Finally, Aqua argues that I&E's proposed rate zone-specific rate design, and Act 11 revenue allocation proposal, are inappropriate. Aqua posits that the ALJ did not analyze the Company's detailed wastewater rate design proposal beyond determining that I&E's proposed rate design should be adopted as a part of the Act 11 revenue allocation. Aqua Exc. at 34 (citing R.D. at 91; Aqua M.B. at 237-38).

In its Replies, I&E argues that the ALJ considered all of the wastewater revenue allocations presented by the Parties and properly recommended the methodology presented by I&E for allocating revenue and designing the wastewater rates. Further, I&E notes the ALJ's finding that I&E's approach: (1) takes into consideration the number of water and wastewater customers in each system; (2) balances the goal of moving rates toward alignment with the cost of service; and (3) mitigates some of the resulting large rate increases if a wastewater revenue allocation is not approved.

Moreover, I&E avers the ALJ acknowledged that I&E's approach is: (1) more beneficial to the communities served by the systems acquired by the Company pursuant to Section 1329; and (2) less complicated and more logical than the methods advocated by the other Parties. I&E R. Exc. at 10 (citing R.D. at 91).

In its Replies, the OSBA disagrees with the Company's Exception to reverse the ALJ's recommendation that reduces the Company's proposed amount by approximately \$10 million. The OSBA avers that it does not oppose the magnitude of the Act 11 subsidy reduction recommended by the ALJ because it argued in this proceeding that the Company's request to recover \$20.839 million of the wastewater revenue requirement from water service customers was not supported by the record evidence. The OSBA further notes that, as a result of its proposal to assign additional increases to Aqua's Base and New Garden Divisions, the OSBA's overall proposed wastewater increase and its recommended Act 11 revenue requirement was less than the Company's proposal. Therefore, the OSBA concludes that it supports the ALJ's recommendation to reduce the Act 11 subsidy paid by the Company's water customers. OSBA R. Exc. at 2-3 (citing OSBA St. 1 at 15-17).

In its Replies, the OCA, likewise, submits that the ALJ properly rejected the Company's Act 11 subsidy and rate design, arguing that the subsidy is unreasonable and inconsistent with generally accepted ratemaking principles. The OCA notes that, with regard to the Act 11 subsidy amount, the recommendations of I&E and the OCA are based on the same reasoning that it is not reasonable or in the public interest for water customers, who receive no benefit from wastewater operations or Section 1329 acquisitions, to support a disproportionate share of the revenue requirement driven by those acquisitions. OCA R. Exc. at 16 (citing R.D. at 89-91; 96; OCA St. 4 at 4-5; I&E St. 5 at 66). Further, the OCA contends that establishing a subsidy close to one-third of the wastewater revenue requirement would mean that wastewater rates do not support a

reasonable relationship to the utility's cost of serving the customer. OCA R. Exc. at 16 (citing OCA M.B. at 89-91).

The OCA also disagrees with the Company's claims that the subsidy is necessary to mitigate significant rate impacts for the acquired wastewater customers and that the more moderate subsidy recommended by I&E produces wastewater rate increases that are not sufficiently gradual. OCA R. Exc. at 16 (citing Aqua Exc. at 31-33). The OCA posits that the Company neglects the role that FMV ratemaking rate base and the Company's high proposed return on common equity play in worsening the rate impact on the customers of the acquired systems. Therefore, the OCA asserts that it is reasonable to assign more of the revenue requirement generated by the acquired systems. Moreover, the OCA notes that under the ALJ's recommended reduction to the Act 11 subsidy, the acquired wastewater customers and legacy wastewater customers will not pay the full cost of service, and there would still be a \$10 million subsidy by water customers. OCA R. Exc. at 16-17 (citing OCA St. 4-SR at 2-3).

b. I&E Exception No. 2 and Replies

In its Exception No. 2, I&E submits that the ALJ erred in using I&E's wastewater increase by class recommendation table that was prepared to support the rebuttal testimony of I&E's witness, Mr. Kubas, instead of I&E's updated wastewater increase by class recommendation table that Mr. Kubas submitted in support of his surrebuttal testimony. I&E explains that Mr. Kubas prepared a table in support of his rebuttal testimony that summarized the proposed revenue allocations set forth in the Parties' direct testimony. However, I&E restates that in the surrebuttal phase of the case, Mr. Kubas revised I&E's proposed wastewater revenue increase by system to reflect revisions to Aqua's original claim, late payment revenues, and proposed revenues, as well as to address the positions of the other Parties. Accordingly, I&E argues that the Commission should rely on the wastewater increases by class which were updated in

Mr. Kubas' surrebuttal testimony. I&E Exc. at 4-5 (citing R.D at 88; I&E St. 5-SR at 4; I&E Exh. 5-SR, Sch. 1 at 1; I&E St. 5-R at 1-23; I&E Exh. 5-R, Sch 1).

In its Replies, Aqua submits that I&E's surrebuttal wastewater revenue allocation should be rejected for the same reasons it argued against adopting I&E's rebuttal proposal. Aqua R. Exc. at 9 (citing I&E Exc. at 4-5).

c. OCA Exception No. 11 and Replies

In its Exception No. 11, the OCA submits that, although it supports the reduction to the subsidy, the OCA's method for allocating the revenue requirement between water and wastewater customers is more reasonable and should be adopted. OCA Exc. at 16 (citing R.D. at 89-91). The OCA asserts that, by allocating a portion of the wastewater revenue requirement to water customers, the OCA's method moves the acquired and legacy system rates closer to their cost of service while mitigating rate increases to all wastewater customers. OCA Exc. at 18 (citing OCA St. 4SR at 1-2; OCA St. 4 at 4-9).

The OCA notes that although I&E's method focuses on the gap generated by each system's revenue requirement, the OCA's method also considers how much of the gap is generated by the FMV premium paid for each acquired system. The OCA argues that, in determining relative burdens, it is not reasonable for the subset of wastewater customers benefiting from the FMV premium to further benefit by having water customers pay the portion of the acquired system's revenue requirement generated by the FMV premium. OCA Exc. at 16-17 (citing OCA R.B. at 46-49; OCA M.B. at 88-89, 91-96; OCA St. 4 at 6-8; OCA St. 4-SR at 2-3).

The OCA also claims that contrary to the ALJ's concerns regarding the complexity of the OCA's recommendation, the additional steps for implementation of the

OCA's method are warranted and not unreasonably complicated. OCA Exc. at 17 (citing R.D. at 91). The OCA explains that the calculated amount of the revenue requirement associated with the FMV premiums is allocated to the five acquired systems such that no system exceeds its cost of service, and the remainder is allocated to the legacy systems. The OCA notes that the Company's proposed class increases for each division are prorated when applied. OCA Exc. at 17 (citing OCA St. 4 at 8-10; OCA Exh. Sch. GAW-4).

Further, the OCA argues that, when compared to the OCA's method, I&E's method recommends that the Cheltenham wastewater system be assigned a larger revenue requirement and, if I&E's method is adopted, then Cheltenham's resulting rates at the Company's revenue requirement would be higher than its cost of service. OCA Exc. at 17 (citing OCA St. 4-SR at 5-6; I&E St. 4-SR at 5, 14). Moreover, the OCA notes that, although it agrees that the wastewater subsidy should be reduced, the revenue allocations should also be guided by cost-causation. Accordingly, the OCA submits that, if the OCA's allocation method is not adopted and if the revenue allocated to the Cheltenham system would otherwise exceed its cost of service, then an adjustment should be made as part of the scale back. OCA Exc. at 17 (citing OCA R.B. at 54).

The OCA also explains that it does not except to the ALJ's recommendation regarding water allocation because, but for the Act 11 subsidy, the ALJ adopted the Company's and the OCA's recommendation. The OCA provides that it is the OCA's understanding that the ALJ accepts the OCA's recommended proportional scale back across the divisions and classes and, other than the Act 11 subsidy, this is consistent with the water revenue increase allocation adopted by the ALJ and supported for the same reasons. OCA Exc. at 18 (citing R.D. at 91-93; OCA R.B. at 55-58; OCA St. 4 at 12-13).

The OCA disagrees with the ALJ's recommendation that adopts I&E's and the Company's scale-back proposal which would not reduce wastewater rates until the Act 11 subsidy is eliminated. OCA Exc. at 18 (citing R.D. at 91; Aqua St. 5-R at 25; I&E St. 5 at 63-64). The OCA recommends a different scale-back approach that would allocate additional wastewater revenue to the acquired systems and legacy systems based on the Company's authorized ROE. Therefore, the OCA maintains that if the Commission adopts a different capital structure and/or a lower ROE than proposed by the Company, then the scale back should first be applied to reduce the revenue requirement associated with the FMV premiums, to the benefit of wastewater customers. Further, the OCA maintains that if the Commission reduces revenue requirement for non-ROR reasons, or the Commission does not adopt the OCA's method for allocating wastewater revenue requirement based on FMV premiums, then the OCA agrees that the benefit should be applied to reduce the subsidy by water operations. OCA Exc. at 18 (citing OCA M.B. at 96-97; OCA St. 4 at 11-12).

In its Replies, Aqua argues that the OCA's proposed allocation of Act 11 revenues was properly rejected because it is neither fair nor reasonable. Aqua counters that the arguments advanced by the OCA in support of its proposed Act 11 revenue allocation are without merit and should be rejected for the same reasons as its revenue allocation proposal. Aqua argues that the OCA's calculation of the revenue requirement associated with FMV premiums: (1) is improper; (2) seeks to mask a large increase to wastewater base customers; and (3) ignores that the Company's proposal already accounts for the premiums which the OCA seeks to undo. Aqua adds that the OCA's scale-back method should be rejected for the same reasons as its proposed revenue allocation. Aqua R. Exc. at 9-10 (citing OCA Exc. 17; Aqua R.B. at 95-98; Aqua M.B. at 220-21, 266).

In its Replies, I&E submits that, upon consideration of all of the proposals set forth by the Parties regarding this issue, it supports the ALJ's recommendation. I&E R. Exc. at 16.

d. OSBA Exception No. 1 and Replies

In its Exception No. 1, the OSBA argues that the ALJ erred in adopting the Company's proposed revenue allocation for its water service customers. OSBA Exc. at 2 (citing R.D. at 93). First, the OSBA disagrees with the ALJ's conclusion that Aqua's methodology better reflects the cost of service compared to those advocated by the other Parties because it is based on "a combined water and wastewater revenue, or 'total bill,' evaluation." OSBA Exc. at 2-3 (citing R.D. at 81, 92). The OSBA argues that the ALJ's conclusion violates the decision in *Lloyd* that ratemaking must be conducted using each specific service's cost of service. OSBA Exc. at 3. The OSBA notes that, when developing a revenue allocation based upon an accepted cost of service study, the ALJ and the Commission must follow the requirements set forth in *Lloyd* because if ratemaking is performed on a combined or total-bill basis, such as Aqua, proposes the true impact of the revenue increases required by the Company's separate water and wastewater cost of service study will be hidden. *Id.* (citing *Lloyd* at 1015, 1020-21).

The OSBA also argues that the Company's proposed water revenue allocation violates the principles of *Lloyd* because it moves each class "toward its appropriate percentage cost of service including the Act 11 allocation." OSBA Exc. at 4 (citing R.D. at 92-93). The OSBA asserts that the plain language of Section 1311(c) of the Code sets the legal standard that must be met in all combined water/wastewater rate cases under Act 11. The OSBA specifically notes that Section 1311(c) provides that "[t]he commission when setting base rates, after notice and an opportunity to be heard, *may allocate a portion of the wastewater revenue requirement* to the combined water and wastewater customer base if in the public interest." OSBA Exc. at 4 (citing 66 Pa. C.S.

§ 1311(c) (emphasis added by the OSBA)). However, the OSBA contends that Section 1311(c) does not provide the legal authority to violate the requirement of *Lloyd* that rates for individual utility services be based on separate cost of service determinations. OSBA Exc. at 4 (citing *Lloyd*). Accordingly, the OSBA contends that the ALJ's approval of Aqua's water revenue allocation on the basis that it moves each class "toward its appropriate percentage costs of service including the Act 11 allocation" must be rejected because the ALJ made her decision without any legal basis set forth in Act 11. OSBA Exc. at 4 (citing R.D. at 92-93).

The OSBA also argues that the Company's revenue allocation violates *City of Bethlehem* where the Commission agreed with the OSBA when it determined that "the proper yardstick for measuring the degree of movement toward cost of service is the change in the absolute level of class subsidies at present and proposed rates." The OSBA asserts that in this case, the ALJ ignored the Commission's standard in *City of Bethlehem* for measuring progress towards cost of service when designing a revenue allocation. OSBA Exc. at 4-5 (citing *City of Bethlehem* at 36). In fact, the OSBA contends that its subsidy analysis demonstrates that the Company's proposed revenue allocation for water service, at the Company's requested revenue requirement level, would result in the Commercial, Industrial, and Public Fire customer classes moving toward cost of service and the Residential, Public, Other Water Utilities and Private Fire customer classes moving away from cost of service. OSBA Exc. at 5-8 (citing OSBA St. 1 at 4, 6-9; OSBA Exh. BK-1 W, Schs. BK-1W, BK-3W). Thus, the OSBA maintains that the Company's proposed revenue allocation for water service, exclusive of Act 11 subsidies, is unjust and unreasonable because it violates *Lloyd* by failing to move all of the customer classes closer to their respective cost-based revenue levels. OSBA Exc. at 8.

Finally, the OSBA further disagrees with the ALJ's finding that Aqua's revenue allocation better reflects cost of service since it moves each customer classification toward its appropriate percentage of cost of service when the Act 11

allocation is included. OSBA Exc. at 8-9. The OSBA argues, however, that the preferred cost metric used by Aqua in support of its revenue allocation is conceptually invalid. In this regard, the OSBA cites the testimony and detailed analysis (see OSBA Exc. at 8-11) of its witness, Mr. Kalcic, in reiterating its position that the Company's proposed class revenue allocation for water service, including Aqua's alternative percentage of cost of service metric, and Aqua's claim that Act 11 revenues should be included in class revenue allocation evaluations, is without legal foundation. OSBA Exc. at 9-11 (citing OSBA St. 1-S at 4-8). Therefore, the OSBA avers that the Company's proposed class revenue allocation for water service must be rejected by the Commission. OSBA Exc. at 11.

In its Replies, Aqua counters that the Company's proposals are consistent with Act 11 and *Lloyd*. Further, Aqua notes that the OSBA essentially is repeating the same arguments it made in its Briefs against the Company's proposed water revenue allocation in favor of its own water revenue allocation. The Company cites to its arguments included in its Briefs against the OSBA's position. Aqua R. Exc. at 10 (citing OSBA Exc. at 11-17; Aqua R.B. at 98-100; Aqua M.B. at 224, 228-29). Additionally, Aqua avers that the OSBA's reliance upon *Lloyd* is misplaced in that the OSBA "treats the allocation of wastewater costs as though they were a separate rate charged to water customers." Aqua R. Exc. at 10.

e. OSBA Exception No. 2 and Replies

In its Exception No. 2, the OSBA submits that the ALJ erred in rejecting the OSBA's proposed water revenue allocation. The OSBA begins its Exception No. 2 by citing to the ALJ's conclusion that "it appears that OSBA's recommendation to isolate and remove the Act 11 allocation from its analysis is motivated by a desire to decrease the revenue allocated to non-residential customer classifications, while increasing the revenue allocated to residential customer classes." OSBA Exc. at 11 (citing R.D. at 92;

Aqua M.B. at 229). In response, the OSBA argues that the ALJ's conclusion with respect to its motivations is baseless. The OSBA submits that its proposed water revenue allocation should be adopted by the Commission because it correctly isolates Act 11 revenues in its proposed revenue allocation. The OSBA explains that its approach of isolating the Company's claimed water cost of service from Act 11 subsidies: (1) is the only revenue allocation sponsored by any Party that follows both the requirements of *Lloyd* and the Commission's decision in *City of Bethlehem*; and (2) is necessary to develop a cost-based water revenue allocation, given that the Company's claimed wastewater cost of service and associated Act 11 subsidies are separate from, and unrelated to, its claimed water revenue requirement. Furthermore, the OSBA maintains that, given that Aqua's proposed revenue allocation moves the Residential class in the wrong direction (*i.e.*, away from the cost of service), the OSBA's revenue allocation assigns greater revenue responsibility to the Residential class because any revenue allocation which corrects the Company's failure to move all classes toward cost of service will assign a greater revenue responsibility to the Residential class. OSBA Exc. at 11-12 (citing OSBA M.B. at 9-14).

The OSBA repeats its argument that the Commission should adopt its alternative water revenue allocation proposal sponsored by its witness, Mr. Kalcic, in this proceeding because it: (1) implements the Company's requested revenue increase; (2) is exclusive of any allocation of Act 11 subsidies; and (3) would move all classes toward their respective cost-based revenue levels without imposing an excessive increase on any class of water customers. OSBA Exc. at 12-15, 17 (citing OSBA St. 1 at 9-11; OSBA Exh. BK-1 W, Schs. BK-4W, BK-5W). Moreover, the OSBA notes that, although it agrees with the Company's method of allocating its Act 11 revenue requirement to its water service classes, the OSBA does not agree with the overall magnitude of the Company's proposed Act 11 revenue requirement. OSBA Exc. at 15-16 (citing OSBA St. 1 at 11, 15, 17; OSBA Exh. BK-1 W, Schs. BK-1W, BK-6W).

In its replies, Aqua counters that the Company's proposals are consistent with Act 11 and *Lloyd*. Further, Aqua notes that the OSBA essentially is repeating the same arguments it made in its Briefs against the Company's proposed water revenue allocation in favor of its own water revenue allocation. The Company cites to its arguments included in its Briefs against the OSBA's position. Aqua R. Exc. at 10 (citing OSBA Exc. at 11-17; Aqua R.B. at 98-100; Aqua M.B. at 224, 228-29).

In its replies, the OCA disagrees with the OSBA's arguments in its Exception No. 2 and opines that the ALJ properly found that the OSBA's recommended total class water increases are unreasonable. The OCA agrees with the ALJ that, from the perspective of the customers, both the water increase and the wastewater allocation are included in the effect of the increases. Further, the OCA states that with the Act 11 subsidy excluded, the results of the OSBA's class revenue allocations are not reasonable. OCA R. Exc. at 18-19 (citing R.D. at 92; OSBA Exc. at 11-17). Moreover, the OCA asserts that, although the Residential, Industrial and Commercial classes are currently earning close to parity, the OSBA's proposal would result in skewed, unreasonable, and inequitable increases because the Residential and Industrial classes would experience a higher percentage of revenue responsibility than that of the Commercial class. OCA R. Exc. at 19 (citing OCA R.B. at 55-58; Aqua M.B. at 228-29; OCA St. 4R at 7, 9-10).

f. OSBA Exception No. 3 and Replies

In its Exception No. 3, the OSBA disagrees with the ALJ's adoption of I&E's recommended wastewater rate design and rate increases because it does not include an analysis of how the Company's Act 11 wastewater subsidies should be allocated to Aqua's customers. OSBA Exc. at 17 (citing R.D. at 91). Thus, the OSBA supports the Company's proposed method of allocating the Act 11 subsidy because, as discussed in more detail below, it is consistent with the OSBA's position that the recovery of Act 11 wastewater subsidies from water customers on a revenue neutral basis

by customer class is the only just and reasonable resolution of this issue that is consistent with the requirements of *Lloyd*. OSBA Exc. at 17, 20.

In support of this Exception, the OSBA references its witness, Mr. Kalcic's, review and analysis of the Company's proposed method of allocating its Act 11 revenue requirement to water customers to argue that the Company's proposed wastewater increase would not recover all of the Company's claimed wastewater revenue requirement. OSBA Exc. at 18-19 (citing OSBA St. 1 at 13-14, OSBA Exh. BK-1 WW, Sch. BK-1 WW). Further, the OSBA contends that, although Act 11 provides the statutory authority to temporarily recover the costs associated with Aqua's wastewater system from its water customers, Act 11 does not allow for any "cross-subsidization" of customer classes between water and wastewater customers. OSBA Exc. at 19. Moreover, the OSBA argues that Act 11 does not supersede the requirements of *Lloyd*, meaning that the Company's water rates, exclusive of Act 11, must be based primarily on the results of Aqua's water cost of service study. Accordingly, the OSBA requests that the Commission adopt the Company's proposal to recover Act 11 wastewater subsidies from water customers on a revenue neutral basis by customer class because it is just, reasonable, and consistent with the requirements of *Lloyd* and the language of Act 11. OSBA Exc. at 19-20 (citing OSBA St. 1 at 17-18).

In its Replies, the OCA argues that the OSBA's recommended total class water increases are unreasonable and should not be adopted by the Commission. With regard to the OSBA's argument that the ALJ erred in not accepting the OSBA's proposal with regard to the Act 11 allocation subsidy between Residential and non-Residential classes, the OCA retorts that, because the Company has much fewer wastewater customers (63,869) to non-fire water customers (415,059), most water customers do not rely upon the Company's wastewater operations and there is no reasonable basis for a particular class of water customers to have to subsidize the same class of wastewater customers. OCA R. Exc. at 19-20 (citing OSBA Exc. at 17-20; OCA St. 4-R at 10-11).

Further, the OCA counters that the OSBA's proposal results in the Residential class being assigned a larger relative percentage of Act 11 subsidy revenues than the system average, while the Commercial class is assigned significantly less than the system average and the Industrial class is not assigned Act 11 subsidy responsibility. The OCA elaborates that, because the Residential, Commercial, and Industrial class indexed RORs are all reasonably close to unity, when the OSBA's initial class revenue allocations (prior to the Act 11 revenue shift) are combined with the Act 11 revenue increases, the OSBA's recommendation unreasonably favors the Commercial class. OCA R. Exc. at 20 (citing OCA St. 4R at 9-10).

g. OSBA Exception No. 4 and Replies

In its Exception No. 4, the OSBA submits that Aqua's proposal to scale back the Company's proposed revenue allocation must be rejected. The OSBA contends that, although the ALJ acknowledged that the exclusion of wastewater rates from any scale back in this proceeding will reduce Aqua's Act 11 revenue requirement, the ALJ did not discuss how the Company's allocation of its proposed Act 11 revenue requirement of approximately \$20.8 million for water classes should be scaled back to the ALJ's recommended level of approximately \$10.2 million. OSBA Exc. at 20-21 (citing R.D. at 91, Table Act 11; Aqua M.B. at 265; OSBA Exh. BK-1 W, Sch. BK-6W). In order to ensure that the Company's Commission-approved revenue requirement is recovered from water customers on a revenue neutral basis, the OSBA recommends that the Commission: (1) scale back the wastewater class revenue requirements proportionately to reflect the Company's total approved wastewater revenue requirement level; and (2) subtract the Company's approved level of wastewater revenues, by class, from the adjusted wastewater class revenue requirement levels. OSBA Exc. at 25 (citing OSBA St. 1 at 18-19). The OSBA submits that its recommended water service and Act 11 scale-back proposals are consistent with *Lloyd* and Act 11 and would ensure that

the Aqua's approved Act 11 revenue requirement would be recovered from water customers on a revenue neutral basis, by customer class. OSBA Exc. at 25.

The OSBA repeats its argument that the Company's proposed scale back of its proposed revenue allocation must be rejected because: (1) the Company's proposed revenue allocation is not cost based and, therefore, using it as a starting point for any scale back is not valid; and (2) a separate scale back is necessary for reductions in the Company's allowed water service revenue requirement and changes in the Company's Act 11 revenue requirement. OSBA Exc. at 21-22 (citing OSBA St. 1-R at 8-11). The OSBA maintains that if the Commission awards the Company a water service revenue increase that is less than Aqua's requested amount and exclusive of Act 11 considerations, then the OSBA's recommended class increases for water service should be proportionately scaled back. OSBA Exc. at 22-23 (citing OSBA M.B. at 19-20; OSBA Exh. BK-1 W, Sch. BK-4W). Thus, the OSBA maintains its position that whatever the Act 11 revenues that the Commission decides to assign to water classes should be subject to a separate scale back, as determined by the level of Aqua's awarded wastewater revenue requirement and the overall level of final wastewater rates. OSBA Exc. at 23-24 (citing OSBA St. 1 at 12, 19; OSBA Exh. 5-B, part 1; OSBA Sch. BK-6WW).

In reply to the OSBA's position that the Commission reject the Company's proposed scale back for water rates for the same reasons that it opposed the Company's water revenue allocation, Aqua contends that the Company has demonstrated that its proposed scale back was reasonable, and therefore, the OSBA's exception regarding this matter should be rejected. Aqua R. Exc. at 10 (citing OSBA Exc. at 20; Aqua R.B. at 107-108; Aqua M.B. at 265-66).

In its Replies, I&E submits that it agrees with the ALJ's recommendation to adopt the I&E methodology for allocating revenue and designing wastewater rates,

including I&E's recommended Act 11 subsidy. I&E also agrees that no scale back of Aqua's proposed wastewater rates should be permitted until the entire wastewater Act 11 subsidy allocation is eliminated. I&E R. Exc. at 22 (citing OSBA Exc. at 20-21; R.D. at 88, 91).

h. Aqua LUG Exception No. 1 and Replies

In its Exception No. 1, Aqua LUG disagrees with the ALJ's reliance on the testimony provided by Aqua and the OCA that alleged that Aqua LUG's proposed revenue allocation would result in an unacceptable RROR. According to Aqua LUG, the ALJ never addressed the unfavorable RROR effects that her recommended revenue allocation would have on Commercial customers and the very limited progress that would be made towards cost of service rates for the other classes. Aqua LUG Exc. at 2 (citing R.D. at 93). In this regard, Aqua LUG requests that the Commission adopt its revenue allocation proposal that it developed consistent with *Lloyd*, to determine the reasonableness of the movement towards cost of service. Aqua LUG Exc. at 2-3 (citing *Lloyd*; *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2008-2073938 (Order entered March 26, 2009)).

More specifically, Aqua LUG asserts that the Company's proposed movement of the Commercial rate class closer to the Company's cost to serve, from a current RROR of 1.07 to 1.05 RROR, would not achieve sufficient movement for the Residential customer class because the resulting RROR under current residential rates would be 0.96 and would not move towards the system average increase in the Company's proposed revenue allocation. Aqua LUG Exc. at 2-3 (citing Aqua M.B. at 9; Aqua LUG St. 1 at 4). Aqua LUG maintains that its recommendation would require the Company to modify its revenue allocation so that: (1) the Residential class RROR would move from 0.96 to 0.98; (2) the Commercial class RROR would move from 1.04 to 1.02; (3) the Industrial class RROR would move from 0.93 to 0.99; and (4) the Public class

RROR would move from 1.18 to 1.15.⁷⁴ Aqua LUG Exc. at 3-4 (citing Aqua LUG M.B. at 9-10). Aqua LUG further contends that the basis for its recommendation is the unreasonableness of setting rates that preserve substantial interclass subsidies for the Commercial class (*i.e.*, the Commercial class RROR decreasing from present to proposed rates by 0.02) while not progressing towards cost of service for the Residential class (*i.e.*, the Residential RROR at present and proposed rates remaining at 0.96). Aqua LUG Exc. at 4-5. Moreover, Aqua LUG argues that, given that the Residential class has a RROR of 0.96 under present rates, it is not clear how a reasonable movement towards cost of service justifies a rejection of Aqua LUG's proposed revenue allocation. Aqua LUG adds that, by not immediately moving the Residential customer class to cost of service, Aqua LUG's recommended movement for the Residential class incorporates principles of gradualism. Aqua LUG Exc. at 5 (citing Aqua LUG M.B. at 9-10).

Accordingly, Aqua LUG requests that the Commission reject the ALJ's recommendation and direct the Company to implement the revenue allocation modifications submitted by Aqua LUG because its proposed allocations would move all customer classes closer to their cost to serve. In the alternative, Aqua LUG requests that the Commission adopt the OSBA's recommendation. Aqua LUG Exc. at 2, 6.

Next, Aqua LUG excepts to the ALJ's decision to adopt Aqua's class allocation methodology based on her determination that the Company's proposal does not attempt to exclude the Act 11 allocation from its analysis. More specifically, Aqua LUG takes issue with the discussion in the Recommended Decision where the ALJ accepted the OCA's observation that Aqua LUG's recommendation does not incorporate the subsidization of wastewater operations by water operations. Aqua LUG Exc. at 5 (citing

⁷⁴ Aqua LUG notes that it remains unopposed to the OSBA's proposed alternative revenue allocation that is also intended to adjust the Company's proposed revenue allocation by advancing various customer classes towards their cost of service. Aqua LUG Exc. at 4 (citing Aqua LUG St. 1-S at 2).

R.D. at 92). Aqua LUG submits that the ALJ's discussion lacks the appropriate context, explaining that the ALJ adopted I&E's scale-back recommendation to eliminate the subsidy to wastewater customers prior to proportionately scaling back the additional rates. Aqua LUG Exc. at 5-6 (citing R.D. at 91). Aqua LUG contends that, to the extent I&E's recommendation is adopted by the Commission, any further accounting consideration of the Act 11 subsidy would be a double count. Aqua LUG Exc. at 6. Therefore, Aqua LUG submits that, if the Commission accepts I&E's scale-back proposal to eliminate the subsidy to water customers first, then the Commission should scale back the additional water rates, consistent with Aqua LUG's proposed revenue allocation. *Id.* at 6.

Finally, Aqua LUG argues that without the I&E scale-back recommendation, the legislative authority to allocate a portion of the wastewater cost of service to water customers should not supersede the Commission's evaluation of the water revenue allocation. Aqua LUG notes the OSBA's observation that Act 11 revenue requirements are assigned on a revenue-neutral basis and do not reflect class cost of service. Aqua LUG Exc. at 6 (citing OSBA St. 1-S at 6-7). Therefore, Aqua LUG contends that pursuant to *Lloyd*, the appropriate Act 11 subsidy should be determined after establishing the appropriate water system revenue allocation on a cost of service basis. Aqua LUG Exc. at 6.

In its Replies, Aqua argues that Aqua LUG's exception should be denied because the ALJ correctly rejected Aqua LUG's proposal to move a portion of the industrial class increase to the Residential class, due to a larger increase to blocks 5 and 6 of the consumption rates for the industrial class. Aqua R. Exc. at 10-11 (citing Aqua LUG Exc. at 2-6; Aqua M.B. at 229-30).

In its Replies, the OCA argues that the Commission should reject Aqua LUG's adjustments because Aqua LUG's proposals would move classes by small

percentage increments and do not reflect the lack of accuracy of the underlying cost allocations, among other complexities in this case. Therefore, the OCA contends that the ALJ properly concluded that the Company's proposed allocation of class revenues is more appropriate. OCA R. Exc. at 19 (citing Aqua LUG Exc. at 2-6; R.D. at 93; OCA St. 4-R at 12).

i. Masthope Exception No. 2 and Replies

In its Exception No. 2, Masthope argues that the ALJ's adoption of the Act 11 subsidy adjustments results in unjust and unreasonable rates that disproportionately and negatively affect Masthope wastewater customers, particularly commercial customers. Masthope Exc. at 10-11 (citing R.D. at 84-91). Masthope explains that it expressed its concern throughout this proceeding about allocating water revenues to the Company's wastewater revenue requirement which may result in large rate increases to wastewater rates for Masthope customers and, therefore, urged the ALJ to adopt Aqua's original distribution of the proposed rate increases between and within water and wastewater rate schedules. Masthope Exc. at 10 (citing Masthope M.B. at 19-24). Notwithstanding its concerns, Masthope avers that the ALJ ultimately adopted I&E's proposed Act 11 revenue allocation methodology that would result in large increases in Masthope's wastewater usage rates (147% increase) and monthly service charge (35% increase). Masthope Exc. at 10 (citing R.D. at 84-91; Masthope R.B. at 6-7; Masthope M.B. at 19-24). Thus, Masthope requests that the Commission reverse the ALJ's recommendation to the extent it results in dramatic rate increases for Masthope water customers. Masthope Exc. at 10-11.

Masthope also argues that although Act 11 provides the Commission has broad discretion to allocate wastewater revenue requirements across a utility's combined customer base, the Commission should: (1) assure just and reasonable rates for all classes of customers, pursuant to Section 1301 of the Code, 66 Pa. C.S § 1301; (2) avoid

rate shock; and (3) embrace the principles of gradualism. Masthope Exc. at 11 (citing 66 Pa. C.S. § 1311(c); *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Order entered August 2, 2012)). Further, Masthope maintains that the impact on its community would be especially detrimental to the unique mix of part-time/seasonal residents and residential and commercial customers. Moreover, Masthope asserts that, if the Commission approves revenues in amounts less than the Company originally proposed, then the Commission should distribute any increased revenue requirement for water and wastewater customers and the amount of revenue support to be provided by water customers in a manner consistent with the Company's proposal. Furthermore, Masthope avers that the Commission should distribute any increase in rates, both between and within rate schedules, in a manner consistent with the Company's original proposal. Masthope explains that Aqua selectively proposed increases between and within rate schedules to encourage its long-term plan of rate schedule consolidation into a uniform tariff. Masthope details that by contrast, the adjustments adopted by the ALJ are excessive for certain customers in specific schedules, including commercial customers in wastewater Zone 6 who would experience as much as a 147% rate increase. Masthope Exc. at 11-12 (citing Masthope M.B. at 19-23).

In its Replies, Aqua notes that it does not oppose Masthope's Exception, explaining that Masthope supports Aqua's proposed Act 11 revenue allocation and Masthope's Exceptions lend further support to Aqua's proposed allocation of revenues. Aqua R. Exc. at 11 (citing Masthope Exc. at 10-11; Aqua R.B. at 99).

In its Replies, I&E argues that although it understands Masthope's argument, any Act 11 subsidy imposed on Aqua's water customers is for the benefit of Aqua's wastewater customers, including Masthope. I&E explains that absent the Act 11 subsidy from wastewater to water customers, the Masthope wastewater rates would have to be further increased. Further, I&E notes that in similar Commission cases, the ALJ and the Commission must balance the justness and reasonableness of all revenue

allocation and rate design components, within the complexities of a cost of service methodology, among all customer classes. Moreover, I&E asserts that as a result of making the required choices, ultimately all customer classes will be adversely affected. Therefore, I&E submits that it supports the ALJ's recommendation that the Commission adopt I&E's methodology for allocating revenue and designing wastewater rates, including I&E's recommended Act 11 subsidy. I&E R. Exc. at 24-25 (citing Masthope Exc. at 10-11; R.D. at 82-91).

In its Replies, the OCA refers to its argument that Aqua's Exception No. 9 regarding the Act 11 subsidy should be rejected, to contend that Masthope's objection to decreasing the subsidy for Masthope (one of the legacy systems) should be rejected for the same reasons. OCA R. Exc. at 17 (citing Masthope Exc. at 10-12; R.D. at 88; OCA R.B. at 51-53).

4. Disposition

At the outset, we will address I&E's Exception No. 2. Based on our review, we agree with I&E that the Commission should rely on the wastewater increases by class which were updated in Mr. Kubas' surrebuttal testimony. *See* I&E Exh. 5-SR, Sch 1 at 1. Therefore, we shall grant I&E's Exception No. 2 and strike the table presented in the Recommended Decision at the top of page 88 and replace it with the table set forth in I&E Exhibit 5-SR, Schedule 1, Page 1 of 3, as reproduced below:

Aqua Pennsylvania, Inc
R-2021-3027386 Schedule "WW-A" PSW Cost of Service Study
Zones 1 through 6 and Zones 7 through 11 and Grand Total for Aqua Wastewater

Zone	Cost of Service	Percent	Act 11 *	Percent	Adjusted Cost of Service	Revenue Present Rates	Revenue Proposed Rates	I&E Increase	Percent Increase	I&E Adjustment	Company Increase **	I&E Subsidy
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)*	(M)
Zones 1-6												
1 Residential	\$27,146,216	79.3%	(\$11,076,966)	82.4%	\$16,069,250	\$13,419,396	\$17,942,695	\$4,523,299	33.7%	\$1,887,342	\$2,635,957	-\$9,189,624
2 Non Residential	\$7,066,927	20.7%	(\$2,361,992)	17.6%	\$4,704,935	\$3,976,095	\$5,365,264	\$1,389,169	34.9%	\$656,907	\$732,262	-\$1,705,085
3 Third Party	\$1,388,690		\$0		\$1,388,690	\$1,280,031	\$1,437,920	\$157,889	12.3%	\$381	\$157,508	\$381
4 Total Sales	\$35,601,833	100.0%	(\$13,438,958)	100.0%	\$22,162,875	\$18,675,522	\$24,745,879	\$6,070,357	32.5%	\$2,544,630	\$3,525,727	-\$10,894,328
5 Contract	\$312,754		\$0		\$312,754	\$312,754	\$331,801	\$19,047	6.1%	\$0	\$19,046	\$0
6 Late Payment	\$23,436		\$0		\$23,436	\$23,436	\$31,054	\$7,618	32.5%	\$7,618	\$0	\$7,618
7 TOTALS - Zone 1-6	\$35,938,023		(\$13,438,958)		\$22,499,065	\$19,011,712	\$25,108,734	\$6,097,022	32.1%	\$2,552,248	\$3,544,773	-\$10,886,710
Zone 7												
8 Zone 7	\$9,925,668		(\$2,974,708)	-30.0%	\$6,950,960	\$3,969,765	\$6,945,307	\$2,975,542	75.0%	\$6,665	\$2,968,877	-\$2,968,043
9 Late Payment						\$8,808	\$15,410	\$6,602	75.0%	\$6,602	\$0	\$6,602
Zone 8												
10 Zone 8	\$1,831,445		(\$457,466)	-25.0%	\$1,373,979	\$998,190	\$1,599,095	\$600,905	60.2%	\$242,526	\$358,579	-\$214,940
11 Late Payment						\$16,378	\$26,237	\$9,859	60.2%	\$9,859	\$0	\$9,859
Zone 9												
12 Zone 9	\$10,316,073		(\$514,835)	-5.0%	\$9,801,238	\$7,238,362	\$11,311,729	\$4,073,366	56.3%	\$1,532,060	\$2,541,306	\$1,017,225
13 Late Payment						\$20,377	\$31,844	\$11,467	56.3%	\$11,467	\$0	\$11,467
Zone 10												
14 Zone 10	\$5,830,936		(\$1,746,595)	-30.0%	\$4,084,341	\$2,916,336	\$4,440,845	\$1,524,509	52.3%	\$366,658	\$1,157,851	-\$1,379,937
15 Late Payment						\$7,435	\$11,322	\$3,887	52.3%	\$3,887	\$0	\$3,887
Zone 11												
16 Zone 11	\$5,622,603		(\$1,686,363)	-30.0%	\$3,936,240	\$2,871,704	\$4,246,926	\$1,375,222	47.9%	\$304,027	\$1,071,195	-\$1,382,336
17 Late Payment						\$17,382	\$25,706	\$8,324	47.9%	\$8,324	\$0	\$8,324
18 TOTALS - Zone 7-11	\$33,526,725		(\$7,379,967)		\$26,146,758	\$18,064,737	\$28,654,421	\$10,589,684	58.6%	\$2,492,076	\$8,097,608	-\$4,887,891
19 WW TOTALS	\$69,464,748		(\$20,818,925)		\$48,645,823	\$37,076,449	\$53,763,155	\$16,686,705	45.0%	\$5,044,324	\$11,642,381	-\$15,774,601
20 I&E Proposed Change in Subsidy			(\$5,044,324)									
						\$10,589	\$110,519	\$40,139	57.0%	Late Payment Revenue Zones 7-11		

* Column D Adjusted to Match Aqua Exhibit 1-A(a) Schedule Act 11

** Column L Adjusted to Match Aqua Exhibit 5B-B

As will be discussed, at length, below, after our review of the Exceptions and Replies, we agree with the ALJ that Aqua's allocations of revenue between all water customer classifications and all wastewater customer classifications are reasonable and should be approved. We also agree that I&E's methodology for allocating the Act 11 wastewater revenue subsidy should be approved. Table Act 11, which is included in the Commission Tables Calculating Allowed Revenue Increase attached to this Opinion and Order, sets forth the water and wastewater revenue requirement summary for Aqua, based on I&E's allocation methodology.

Additionally, we support the ALJ's recommended adjustment to reduce the gross wastewater revenue requirement to a net basis when shifting the wastewater revenue requirement to water customers.⁷⁵ Finally, we agree with the ALJ that any scale back of water rates will first reduce the Act 11 allocation.

To recap, the allocation of revenue among a utility's rate classes involves, *inter alia*, consideration of ratemaking policy and the principles of gradualism. Here, Aqua proposed revenues to be allocated to each customer classification that would be required to move that classification toward the cost of providing service (or revenue requirement). R.D. at 84-85 (citing Aqua St. 5 at 10, 21; Aqua Exh. 5-A, Part I, Sch. A; Aqua Exh. 5-B, Part I, Sch. WW-A). Additionally, Aqua proposed to recover a shortfall of approximately 30% of the Company's proposed revenue requirement from wastewater revenues in water rates. R.D. at 85; Aqua M.B. at 216. I&E, the OCA, the OSBA, and Aqua LUG all opposed Aqua's Act 11 subsidy proposal and proposed alternative Act 11 subsidy reduction methodologies. R.D. at 87-89; Aqua LUG M.B. at 7, 9-10. The ALJ recommended I&E's methodology and agreed with I&E and the Company that any scale back of water rates should reduce the Act 11 allocation first. The ALJ reasoned that

⁷⁵ We note that, as outlined in Table Act 11, this will result in the Company's overall allowed revenue requirement being reduced by approximately \$77,706 after the Act 11 Allocation.

I&E's approach, *inter alia*: (1) considers the number of water and wastewater customers in each system; (2) balances the goal of aligning rates with the cost of service while mitigating some of the large rate increases that would result absent an allocation of wastewater revenue; and (3) acknowledges the benefits received by the communities serviced by the acquired systems. R.D. at 91.

In its Exceptions, Aqua argues that it demonstrated that justifications and arguments advanced by I&E and discussed by the ALJ were unreasonable and unsupported by record evidence, and that the ALJ misrepresented and/or ignored the testimony and exhibits presented by the Company in support of its proposed wastewater rate design. Similarly, in its Exceptions, the OSBA argues that the ALJ adopted the I&E's recommended wastewater rate design and rate increases without providing details regarding the allocation of Act 11 wastewater subsidies to water customers. We disagree with the arguments expressed by Aqua and the OSBA on these matters. In our view, the ALJ appropriately reasoned that the Company did not present sufficient evidence to demonstrate that allocating 30% of the proposed wastewater requirement to water customers is reasonable and in the public interest. Further, the ALJ appropriately found that shifting 30% of the wastewater revenue requirement to water customers is not equitable and will not result in just and reasonable rates. Indeed, we agree with the OCA's position in its Replies to Exceptions that it is not reasonable or in the public interest for those water customers who do not receive a benefit from wastewater operations or Section 1329 acquisitions to support a disproportionate share of the revenue requirement driven by such acquisitions. With regard to Aqua's and the OSBA's arguments that the ALJ did not provide sufficient analysis in her discussion, we disagree. The ALJ was aware of the positions and arguments put forth by the Company and the OSBA, including the testimonies and exhibits submitted in support of their positions. However, the ALJ has the discretion to determine whether, and to what extent, further discussion and analysis is warranted. Here, it appears that the ALJ did not believe that further consideration of these matters was necessary to recommend that I&E's proposed

wastewater allocation methodology be approved. Accordingly, we will deny Aqua Exception No. 9 and OSBA Exception No. 3.

The OCA also filed Exceptions arguing that its method for allocating a portion of the wastewater revenue requirement to water customers is more reasonable because it considers the FMV premium paid for each acquired system. We agree that a portion of wastewater customers benefitted from the revenue generated by the 1329 acquisition; however, we also agree with the ALJ's reasoning that I&E's approach for allocating the wastewater revenue requirement and designing wastewater rates is less complex than the method offered by the OCA. Indeed, I&E's approach is more streamlined than the methods advanced by the other Parties, while also addressing the benefits received by the communities serviced by the acquired systems and moving rates toward their respective cost of service. Similarly, with regard to the scale-back approach, both the OCA and the OSBA contest the ALJ's adoption of the scale-back approach; however, we are of the opinion that the scale back agreed upon by Aqua and I&E offers a less complicated method than other alternatives. Therefore, we agree with the ALJ's conclusion that any scale back of water rates will first reduce the Act 11 allocation. Accordingly, we will deny the OCA's Exception No. 11 and the OSBA's Exception No. 4.

The OSBA also filed Exceptions challenging the ALJ's reasoning and submitting that the OSBA's proposed water revenue allocation should be adopted. The OSBA is of the opinion that the ALJ violated *Lloyd*, misapplied Section 1311, and ignored Commission precedent by reasoning that Aqua's methodology better reflects cost of service and concluding that the Company's allocation of revenues is reasonable. We disagree with the OSBA. We are of the opinion that reasons considered by the ALJ upon which she based her recommendation to approve the Company's allocations of revenues between all water and wastewater customer classifications are just, reasonable, and in the public interest, and should be approved. The OSBA's contention is that Aqua's proposed

revenue allocation, which views cost of service as a whole and does not exclude the Act 11 allocation, conflicts with the requirement in *Lloyd* that the basis for individual utility service rates is specific to each service's cost of service. We find this argument unpersuasive. As noted by Aqua in its Replies, the OSBA's reliance upon *Lloyd* appears to be misplaced as wastewater costs are not stand-alone, separate rates charged to water customers. Therefore, we do not believe that the principles of *Lloyd* have been violated. The OSBA also argues that its proposed water revenue allocation correctly isolates the Act 11 allocation. We disagree. Rather, we find the ALJ's conclusion, that the Company's methodology better reflects the cost of service because Aqua's proposed allocation views cost of service "as a whole" and moves each customer classification toward its appropriate cost of service, is more persuasive and in the best interest of the public. R.D. at 92. Accordingly, we shall deny the OSBA's Exception Nos. 1 and 2.

In its Exceptions, Aqua LUG argues that the ALJ erred in adopting the Company's revenue allocations rather than the revenue allocations proffered by the OSBA and itself. Aqua LUG opines that the ALJ's recommendation is baseless and will delay progress of the movement of all customer classes towards their cost of service and result in an unfavorable RROR for Commercial customers. As discussed above, we agree with the ALJ's reasoning and basis for recommending that the Company's allocation of revenues between all water and wastewater customer classifications be approved. Accordingly, we will deny Aqua LUG's Exception No. 1.

Finally, in its Exceptions, Masthope disagrees with the ALJ's adoption of the Act 11 subsidy adjustments because they will disproportionately affect Masthope's wastewater customers. As discussed by the ALJ, it is not fair to the Company's water customers to mitigate increases in expenses to repair acquired systems and to take on the shortfall between the cost of service to serve the wastewater systems. I&E's approach for allocating wastewater revenue and designing wastewater rates allows for each service to recover as much of the cost of providing that service as possible without removing the

subsidy, which would result in large increases for every customer. R.D. at 88, 90. Indeed, we agree with I&E's position in its Replies to Exceptions that Masthope's rates would have further increased without the Act 11 subsidy from wastewater to water customers and, as a result of balancing the justness and reasonableness of all revenue allocation and rate design components with the inherent complexities of a cost of service methodology, all customers will ultimately be affected. Therefore, although we understand Masthope's point of contention, we will deny Masthope's Exception No. 2.

D. Tariff Structure and Rate Design

A utility's rate structure implements the Commission's approved revenue increase to determine how the overall increase will be allocated among the utility's various customer classes. Once a class revenue allocation is determined, development of a rate design will address how the tariffed rates and rate elements will generate the allocated revenues. I&E noted the following unique rate structure and rate design challenges present in this proceeding: (1) water base rates; (2) an Act 11 subsidy applied to water base rates to subsidize wastewater customers; (3) wastewater base rates; (4) new rate zones for numerous Section 1329 acquisitions; and (5) third-party sales rates. I&E R.B. at 49. Under the Company's proposal, a residential water customer in the Main Division of Rate Zone 1, using 4,000 gallons of water per month,⁷⁶ would experience a monthly bill increase from \$69.35 to \$81.32, or 17.3% per month, and residential customers in other water divisions would experience increases ranging from 17.3% to 51.3%. *See* Aqua Exh. 5-A, Part II, Sch. 8.⁷⁷ Wastewater customers would see increases

⁷⁶ The Company claimed that the average usage of 4,000 gallons per month is substantiated in the Company's prior rate case as the pre-COVID pandemic average residential usage was 4,068 per month for the residential class. Aqua St. 5-R at 14.

⁷⁷ Present Rates include 7.5% DSIC.

ranging from 7.9% to 84.87%, with one division seeing a proposed decrease (Rate Zone 5 – Newlin Green). *See* Aqua Exh. 5-B, Part II, Sch. WW-7.⁷⁸

1. Positions of the Parties

a. Water Rate Design

(1) Aqua's Water Rate Design Proposal

As shown in Table 8, below, the majority of Aqua's water rate divisions are grouped into three rate zones (Rate Zones 1-3) based on the similarity of their rate structure and rate design, while the Bunker Hill, Sun Valley, Phoenixville, and Belle Aire Acres Divisions are displayed separately because they are dissimilar from those divisions grouped into Rate Zones 1-3.

The majority of Aqua's water customers are charged the rates applicable to its Main Division, designated as Rate Zone 1. The Company proposed to continue to move rate divisions closer to each other and to the Rate Zone 1 in order to facilitate further consolidation with the Main Division. Aqua St. 1 at 29. Specifically, Aqua's proposal indicated that it is working to consolidate water rates for Rate Zones 1 and 2 (with the exception of Chalfont, Concord Park and Treasure Lake in Rate Zone 2). Aqua's witness, Ms. Heppenstall, explained that the Company developed the following five guidelines for the design of water rates: (1) maintain separate rate divisions for those areas with year-round usage and those areas with seasonal usage; (2) maintain a low-use block for the residential class at 2,000 gallons per month in each division, and a sixth block for the industrial classification for usage over 10 million gallons per month; (3) continue movement of those areas with year-round usage toward the Main Division

⁷⁸ Present Rates include 5.0% DSIC.

rates; (4) increase existing Main Division private fire service line rates 17.5% and private hydrant charges by 20.6%; and (5) increase the existing Public Fire Hydrant rate up to the 25% of cost of service level. *See Aqua St. 5 at 11.*

Water Operations - Rate Zones / Divisions

<u>Rate Zone 1</u> Main Division Country Club Gardens and Sand Springs Division Beech Mountain Division Bristol Township Division Mifflin Township Division Mount Jewett Division Robin Hood Lakes Division
<u>Rate Zone 2</u> Superior Division Chalfont Division Concord Park Division Treasure Lake Division
<u>Rate Zone 3</u> Oakland Beach Division CS Water (Masthope) Division Eagle Rock Division
Bunker Hill Division Sun Valley Division Phoenixville Division Belle Aire Acres Division (Receivership)*
* The James Black Water Service Company – Belle Aire Acres Development is being operated by Aqua under a Receivership established via Commission Order on September 3, 2019 at Docket No. M-2019-3012563. Aqua began its Receivership on September 11, 2019 and will continue to act as Receiver for the system until a final determination is made by the Commission. Belle Aire Acres customers are flat rate unmetered customers.

Table 8: Aqua’s water operations showing its Division by Rate Zone

As explained by the OCA’s witness, Mr. Glenn A. Watkins, Aqua’s rate design proposal pertaining to its water operations generally consisted of: (1) the continued movement of those areas with year-round usage toward the Main Division rates; (2) the continuation of its inverted-block usage rate structure; and (3) an increase to its monthly fixed customer charges. The Company’s present and proposed water rates by class, set forth in Schedule I of Aqua Exhibit 5-A, Part I, reflect its rate structure, rate design and the distribution of the increase in revenue proposals in this proceeding.⁷⁹

Table 9, below, provides a summary of the Company’s current and proposed 5/8” meter residential customer charges:

Aqua Water Current & Proposed Residential 5/8” Customer Charges				
Rate Zone	Division	Current	Proposed	Percent Change
1	Main	\$18.00	\$22.40	24.44%
2	Main	\$18.00	\$22.40	24.44%
3	Main	\$28.00	\$32.40	15.71%
BH	Bunker Hill	\$8.00	\$11.80	47.50%
PH	Phoenixville	\$3.33	\$4.90	47.15%

Table 9: Summary of Aqua’s current and proposed customer charges by Rate Zone for residential 5/8” meter water customers. OCA St. 4 at 13.

⁷⁹ Ms. Heppenstall provided updates to her revenue allocation and rate design for water service in Aqua Exhibit 5R-A, Part I, as part of her rebuttal testimony. The Company’s revised revenue exhibits reflect corrections to: (1) the 6-inch and 8-inch private fire rates in the Superior Division, and (2) Aqua’s public fire revenue under proposed rates. *See* Aqua Exh. 5R-A, Part I, Schs. 1 and 7A.

Aqua indicated that its proposal includes increases in consumption charges so that revenues by class move toward cost of service indicators and to recover the total revenue requirement. Aqua St. 5 at 12.

The Company explained its proposed rates for the remaining non-seasonal water divisions as follows:

Zone 1 – CC Garden, Sand Springs, Mifflin Township, Mount Jewett, and Robin Hood rates will move fully to Rate Zone 1 rates. Beech Mountain and Bristol Township division rates will continue to move toward Zone 1 rates.

Zone 2 – will move fully to rates in Rate Zone 1 by raising the meter charges for $\frac{3}{4}$ -inch to 4-inch to the level of Rate Zone 1 rates. All other rates were previously equal to Zone 1 rates.

Two other areas, Bunker Hill and Phoenixville, rates were increased to move toward Zone 1 rates. The Company capped the rate increases for these two areas to 48%.

Aqua St. 5 at 12.

The Company explained its proposed rate structure for seasonal areas as follows:

The Zone 3 Division has a significant number of seasonal customers and will continue to be served under the merged seasonal rate design. The customer charge is increased to \$32.40 per month, but is offset with a lower first block consumption rate than Main Division for the first 4,000 gallons. The bills for the seasonal rate structure are equalized with Main Division at the 4,000 gallon average per month and greater consumption levels.

Aqua St. 5 at 13.

The Company further explained its use of competitive service riders⁸⁰ and summarized the development of its rate proposals regarding public and private fire and those for Industrial Standby Rates, Resale, and Electric Generation Standby Rates. *See* Aqua St. 5 at 13-15; Aqua M.B. at 232-33.

(2) I&E

As previously discussed, Aqua proposed to subsidize its wastewater revenue requirement by approximately \$20.8 million with increased water revenues by the same amount under Act 11. Aqua Exh. 1-A(a), Sch. Act 11. Although the actual recommendations differ, I&E, the OCA, and the OSBA⁸¹ each recommended a reduction to the requested subsidy from Aqua water customers, indicating a reflection of that reduced subsidy through a corresponding increase to the wastewater rates proposed by the Company.

Therefore, I&E's recommended water rate design changes are based upon its proposal to reduce the Act 11 subsidy from water customers. Specifically, I&E proposed a 20% increase for water customers as compared to the Company's proposal for water customers. Thus, I&E asserted that the Company's proposed percentage increases to the water customer classes should all be scaled back to 20% of the Company's original proposed percentage increases. I&E M.B. at 73. I&E explained that this scale back of water rates, including customer charges, should be proportional to the percentage increase originally proposed by the Company. I&E St. 4 at 18-20.

⁸⁰ The Company noted that it has not proposed any changes to its competitive service riders in this proceeding. Aqua M.B. at 232.

⁸¹ "As a result of the OSBA's proposal to assign additional increases, in aggregate, of \$2.259 million to the Company's Base and New Garden Divisions, Mr. Kalcic testified that the OSBA's overall proposed wastewater increase is \$13.8 million or 37.3%, and its recommended Act 11 revenue requirement is \$18.580 million, or \$2.259 million less than Aqua's proposal." OSBA St. 1 at 16-17.

(3) OCA

Although the OCA did not agree with I&E's methodology, the OCA did agree that the wastewater subsidy should be reduced. Therefore, the OCA's recommended water rate design changes are also based upon its proposal to reduce the Act 11 subsidy from water customers. Specifically, the OCA recommended to reduce the Company's proposed Act 11 water subsidization of approximately \$20.8 million by \$9.065 million. Accepting the Company's proposed water increases by division and class, the OCA allocated the \$9.065 million to each division and class on a prorated basis. OCA St. 4 at 11.

Additionally, the OCA contended that Aqua's proposed increase to water customer charges was unsupported and that certain overhead costs were improperly included in the Company's customer cost analysis. Specifically, according to the OCA, Aqua included indirect O&M expenses, indirect depreciation expenses and indirect rate base within its customer cost analysis. OCA M.B. at 99-101.

Based on the customer cost analyses performed by its witness, Mr. Watkins, the OCA argued that there is no reasonable basis for Aqua's proposal to increase the existing monthly residential water customer charges in the Main Division of Zone 1 (\$18.00), Zone 2 (\$18.00) and Zone 3 (\$28.00) above current rates.⁸² OCA St. 4 at 16. The details of Mr. Watkins' customer cost analyses are presented in OCA Schedule GAW-7. Table 10, below, provides a summary of the OCA's residential customer cost analyses for residential 5/8" meter water customers under the OCA's and Aqua's proposed cost of capital.

⁸² The OCA accepted Aqua's proposed increases to the customer charges for Bunker Hill and Phoenixville because the current rates and proposed rates are significantly lower than the current Main Division rates. OCA St. 4 at 16.

Aqua Water Residential Customer Costs (5/8" Meter Equivalent)		
	OCA Proposed Cost of Capital	Aqua Proposed Cost of Capital
Direct Costs	\$17.07	\$19.26
Direct + Indirect Costs	\$17.36	\$19.55

Table 10: Summary of results of the OCA’s residential customer cost analyses (OCA Schedule GAW-7) for residential 5/8” meter water customers under the OCA’s and Aqua’s proposed cost of capital. *See* OCA St. 4 at 16.

Aqua contended that the OCA’s attempt to exclude certain costs from the calculation of the residential water customer charge lacks merit and undermines the support provided by Aqua for its proposed residential water customer charges. Aqua M.B. at 234-35. Aqua specifically noted its reliance on Commission precedent in the *Aqua 2004 Order* in the development of its residential customer charge⁸³ and further averred that the Commission’s determination in the *Aqua 2004 Order* was subsequently affirmed in the *2012 PPL Order*. Aqua M.B. at 234-235.

(4) Aqua LUG

Only Aqua LUG addressed the issue of non-residential water charges. Aqua LUG’s Main Brief reiterated the arguments it raised in testimony regarding changes to the design of the customer charges and the rates for consumption blocks for commercial and industrial customers. *See* Aqua LUG M.B. at 10-12. Specifically, Aqua LUG’s witness, Mr. Baudino, testified that “Commercial and Industrial customer charges

⁸³ *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805 (Order entered August 5, 2004) (*Aqua 2004 Order*).

and the rates for consumption blocks 1 through 4 are the same for both classes,” but noted “Industrial class rates also have 5th and 6th blocks that Commercial customers do not have.” Therefore, he recommended that the Company keep charges for blocks 1 through 4 of the Commercial and Industrial classes similar, while avoiding “excessive increases for blocks 5 and 6 of the Industrial class.” Aqua LUG St. 1 at 5-6. He further recommended that Aqua could shift some of the revenue allocated to the Industrial class to the Residential class to moderate any increases, if necessary. Aqua LUG St. 1 at 6.

Aqua responded to the arguments posed by Aqua LUG, contending that Aqua LUG’s proposals are unreasonable and unnecessary. Aqua M.B. at 229-230, 236-237.

b. Wastewater Rate Design

(1) Aqua’s Wastewater Rate Design Proposal

Aqua currently has eleven different wastewater rate zones, with different subsystems and eight different third-party customers. *See* Aqua Exh. 5-B, Part II, Schs. WW-2, LMK-3, EB-3, CH-3, EN-2, and NG-2. Since the Company’s last base rate proceeding, it has acquired the Limerick, East Bradford, Cheltenham, East Norriton, and New Garden systems through separate Section 1329 proceedings.⁸⁴ These five systems became Rate Zones seven through eleven, as shown in Table 11, below:

⁸⁴ *See* Aqua Pennsylvania, Inc. Tariff Sewer – PA P.U.C. No. 2, Original Page 5 through Supplement No. 6 to Tariff Sewer – PA P.U.C. No. 2, Third Revised Page 6.

Wastewater Operations - Rate Zones / Divisions

Rate Zone 1 (Main)	Rate Zone 1A	Rate Zone 1B
Media Division	Treasure Lake Division	Penn Township Division
Bidlewood Division	Village at Valley Forge Division	
Eagle Rock Division	Bunker Hill Division	
Rate Zone 2	Rate Zone 3	
Emlenton Borough Division	Beech Mountain Lakes Division	Stony Creek Division
Rivercrest Division	Deerfield Knoll Division	Thornhurst Division
White Haven Division	Laurel Lakes Division	Willistown Woods Division
Pinecrest Division	Links at Gettysburg Division	Woodloch Springs Division
Rate Zone 4	Rate Zone 5	Rate Zone 6
Honeycroft Village Division	Avon Grove School Division	CS Sewer Division (Masthope)
Lake Harmony Division	East Bradford Division	
New Daleville Division	Little Washington Division	
Peddlers View Division	Plumsock Division	
Tobyhanna Township Division	The Greens at Penn Oaks Division	
Twin Hills Division	Newlin Green Division	
	Sage Hill Division	
<u>Zones Recently Acquired Under Act 129, at 66 Pa. C.S. § 1329</u>		
Rate Zone 7 - Limerick Division		
Rate Zone 8 - East Bradford Township Division		
Rate Zone 9 - Cheltenham Township Division		
Rate Zone 10 - East Norriton Township Division		
Rate Zone 11 - New Garden Township Division		

Table 11: Aqua’s wastewater operations showing its Divisions by Rate Zone.

As a result of recent and prior acquisitions of wastewater systems, Aqua’s wastewater rates are comprised of several varying rate structures, including fixed

customer or EDU⁸⁵ charges, plus usage charges, unmetered flat rates, and structures with minimum usage allowances. Aqua proposed a similar model to its water operations for its wastewater operations with the intent of gradually grouping and consolidating divisions towards Rate Zones, specifically proposing to begin (or continue) movement to unified customer charges for metered customers.

Aqua's witness, Ms. Heppenstall, explained that the Company developed the following four guidelines for the design of wastewater rates: (1) move toward additional consolidation of rates across rate zones; (2) for metered areas, develop a rate structure that includes a customer charge or EDU charge and a single block usage charge; (3) for unmetered areas, develop a monthly flat rate equal to 4,000 gallons priced-out at the respective zone rates; and (4) where possible, eliminate an allowance. *See* Aqua St. 5 at 21-22. The Company presented a comparison of its present and proposed wastewater rates in Schedule F-WW of Aqua Exhibit 5-B, Part I.⁸⁶

⁸⁵ The Company's proposed wastewater tariff defines an EDU as follows:

Equivalent Dwelling Unit or "EDU": The EDU is a measure based upon the estimated average daily wastewater flow for the type of business, as calculated by the Pennsylvania Department of Environmental Protection regulation at 25 Pa. Code § 73.17 divided by the typical estimated average daily wastewater flow from a current single-family unit. In the Company's sole discretion, the Company may assign more than one (1) EDU for a residential Property.

See Tariff Sewer No. 3, Original Page 25.

⁸⁶ Ms. Heppenstall provided updates to her revenue allocation and rate design for wastewater service in Aqua Exhibit 5R-B, Part I, as part of her rebuttal testimony. The Company's revised revenue exhibits reflect corrections to: (1) Aqua's proposed unmetered charges for Woodloch Springs, and (2) Aqua's proposed rate for Southdown Homes. *See* Aqua Exh. 5R-B, Part II, Sch. WW-5 at 9 and 17.

In this proceeding, Aqua has proposed the same rates for Zones 1 and 2, and therefore, has merged Zone 2 into Zone 1. The proposed merger of Zone 2 into 1 (with which I&E disagrees) would mean that each subsequent zone could be reclassified up one (*i.e.*, Zone 3 customers would become Zone 2; Zone 4 customers would become Zone 3; Zone 5 customers would become Zone 4; and Zone 6 customers would become Zone 5). *See* Tariff Sewer, Original Page 5 and 6.

Additionally, as part of its consideration of the design of wastewater rates, Aqua performed an analysis of the feasibility of implementing a summer wastewater cap, as required by the settlement of its 2018 base rate proceeding. *See* Aqua Exh. 5-C. Based on this analysis, Aqua witness, Ms. Heppenstall, explained Aqua's contention that it was not appropriate to implement a summer wastewater cap for its wastewater customers:

[Aqua] performed an analysis based on capping usage at winter water usage levels for the Wastewater Base Operations. This cap would have the affect[sic] of raising the rates for all wastewater customers significantly and benefiting high water users. Our analysis, attached as Exhibit 5-C, shows that, under the cap, billed usage would decline by 38% and the average monthly bill for a residential customer using 4,000 gallons per month would rise to \$85.73, a 10.6% increase over the projected bill under proposed filed rates of \$77.49. In addition, as the wastewater operations benefit from the shift under Act 11 from wastewater to the water operations, it is conceivable that as wastewater rates rise due to the implementation of the cap, more Act 11 shifting would be needed to mitigate this increase.

Aqua St. 5 at 21-22.

(2) I&E

Consistent with the modifications I&E recommended for the Company's water rate design changes, I&E recommended similar adjustments to Aqua's proposed wastewater rates that are intended to reduce the size of Aqua's proposed Act 11 subsidy of wastewater customers. As such, I&E generally recommended higher rates for wastewater customers than those proposed by the Company, producing a larger increase for each division.⁸⁷ I&E provided a comprehensive summary of its proposed wastewater rate structure in its Main Brief that was presented in greater detail by its witness, Mr. Kubas, in his direct and surrebuttal testimony and accompanying exhibits. *See* I&E M.B. at 74-92; I&E St. 5; I&E St. 5-SR. In revising rates in Zones 1 through 6 to reduce the Act 11 contribution related to the wastewater customers in these rate zones, Mr. Kubas proposed the following recommendations shown in Table 12, below.

⁸⁷ As previously explained, I&E recommended an increase of \$6,097,022 for Rate Zones 1 through 6, as opposed to the Company's \$3,544,773 requested increase for those Zones, and an increase of \$10,589,684 for Rate Zones 7 through 11, as opposed to the Company's \$8,097,608 requested increase for those Zones. *See* I&E Exh. 5-SR, Sch. 1 at 1, Cols. I and L, lns. 7 and 18.

Summary of I&E Recommendation for Rate Zones 1-6

RZ 1:

- Increase the customer charges, unmetered rates and the volumetric charge by 46.8%.
- Increase the Media and Bunker Hill unmetered charge to \$90.00/month.
- **39.8% bill increase for an average residential customer.***

RZ 1A and 1B:

- Set these rates equal to Zone 1 rates.
- Eliminate the allowance in Zone 1B.
- **52.2% bill increase for an average residential customer in Zone 1A.***
- **42.5% bill increase for an average residential customer in Zone 1B.***

RZ 2 - Main:

- An across-the-board increase of 46.7% to tariff rates.
- No consolidation of Rate Zone 2 with Rate Zone 1 as proposed by Aqua.
- **39.7% bill increase for an average residential customer.***

RZ 2 - Pincrest:

- Maintain Aqua's proposed rate design of no increase.

RZ 3 - Main:

- Increase the customer and volumetric charges by 36.6% per month.
- Consolidate the unmetered charges to one charge.
- **29.8% bill increase for an average residential customer.***

RZ 3 - Woodloch Springs (Flat Rate):

- Accepts Aqua's proposed rate structure based upon EDU billing, with no usage charge.
- Increase the monthly unmetered charge to \$109.00/month, as opposed to Aqua's proposal of \$101.03/month (\$109.00 per EDU is the same unmetered charge I&E proposed for Zone 3 - Main customers).
- **52.5% bill increase for an unmetered commercial customer.**

RZ 4:

- An across-the-board increase of 31.1% to tariff rates.
- **24.9% bill increase for an average residential customer.***

RZ 5:

- Accepts Aqua's proposed rates.
- **20.3% bill increase for an average residential customer in RZ 5 - Main.***
- **4.4% bill decrease for an average residential customer in RZ 5 - Newlin Green.***

RZ 6:

- Increase the customer charge by 41.8%, the usage rate by 160%, and the unmetered rate by 53.5%.
- **44.6% bill increase for an average residential customer.***

* I&E assumed an average 5/8" residential customer using 3,700 gallons per month.

Table 12: Summary of I&E's recommended rate changes for Aqua's wastewater Rate Zones 1 through 6 (See I&E Exh. 5, Sch. 2 at 1, Cols. F and L; I&E Exh. 5, Schs. 3-8 at 1, Col. F; *see also*, I&E Exh. 5, Sch. 2 at 2-4, Sch. 3 at 2; Sch. 4 at 2-4; Sch. 5 at 2; I&E Exh. 5-SR, Sch. 2; Aqua Exh. 5-B, Part II, Sch. WW-7 at 11-12; Aqua Exh. 5R-B, Part II, Sch. WW-5 at 9).

As previously indicated, Zones 7 through 11 include the Limerick, East Bradford, Cheltenham, East Norriton,⁸⁸ and New Garden systems, which were acquired after the *Aqua 2018 Rate Case*. Some of these systems have rates lower than present rates in Zones 1 through 6, and therefore, I&E argued that it is unfair to keep these rates artificially lower than the rates of existing customers. As delineated in Table 13, below, I&E recommended adjustments to rates in Zones 7 through 11 to reduce the subsidy, simplify the rate structure, and limit the increase to Zone 7 flat-rate customers and certain Zone 11 usage blocks. I&E reasoned that acquiring these systems should not harm existing Aqua customers; therefore, the larger than average increase to rates in Zones 7 through 11, shown on page 3 of I&E Exhibit 5-SR, Schedule 1, balanced out by the benefits to the municipality and/or customers of the acquired systems, will, according to I&E, limit the harm to other Aqua customers by reducing the subsidy paid by other non-Zone 7-11 Aqua customers. I&E noted that it is tempering the proposed increases in order to mitigate the large increases to the monthly customer charges, usage rates, unmetered rates, and average bills for both residential and commercial customers in Zones 7-11. I&E added that it is recommending rates so that the average residential bill increase is limited to generally less than 100%. I&E St. 5 at 35-38.

⁸⁸ Aqua acquired the Whitpain system with the East Norriton system on June 19, 2020 at Docket No. A-2019-3009052.

Summary of I&E Recommendation for Rate Zones 7-11

RZ 7 - Limerick:

- Increase the customer charge by 40.6% and the volumetric rate by 33.1%.
- Eliminate the allowance (also proposed by Aqua).
- Increase the unmetered rate to \$60.00/month.
- **89.2% bill increase for an average residential customer.***

RZ 8 - East Bradford:

- Monthly customer (EDU) charge of \$55.00, as opposed to Aqua's proposal of \$39.10.
- Volumetric charge of \$1.12/100 gallons.
- Accepts Aqua's proposed monthly commercial customer charge of \$39.10.
- **74.2% bill increase for an average Multi-Family Residential customer.***
- **84.3% bill increase for an average commercial customer.**

RZ 9 - Cheltenham:

- Increase the customer charge to \$30.00/month (43.6% increase).
- Increase the volumetric charge to \$0.68/100 gallons (73.9% increase).
- **56% bill increase for an average residential customer.***

RZ 10 - East Norriton & Whitpain:

- Increase the customer charge to \$35.00/month (66.0% increase).
- Increase the volumetric charge to \$0.76/100 gallons (16.2% increase).
- Eliminate the allowance (also proposed by Aqua).
- **72.6% bill increase for an average residential customer in RZ 10 - East Norriton.***
- **99.4% bill increase for an average residential customer in RZ 10 - Whitpain.***

RZ 11 - New Garden:

- Increase the customer charge to \$43.00/month (14.2% increase).
- Increase the residential volumetric charge to \$2.20/100 gallons for usage up to 5,000 gallons/month and \$3.1626/100 gallons for usage over 5,000 gallons per month.
- Eliminate the allowance (not proposed by Aqua).
- **81.7% bill increase for an average residential customer.***

* I&E assumed an average 5/8" residential customer using 3,700 gallons per month.

Table 13: Summary of I&E's recommended rate changes for Aqua's wastewater Rate Zones 7 through 11 (*See* I&E Exh. 5, Schs. 6-7 at 1, Cols. F and G; I&E Exh. 5-R, Sch. 2 at 1, Cols. F and G; *see also*, I&E Exh. 5. Sch. 6 at 2, 4, 5, Sch. 7 at 2, 3, 4; I&E Exh. 5-R, Sch. 2 at 2).

With respect to non-residential wastewater charges, only I&E addressed this issue. Specifically, as previously explained, I&E's proposed rate design changes

regarding Rate Zone 8 – East Bradford operations were based upon its proposals to reduce the Act 11 wastewater revenue allocation from this Rate Zone to water customers.

Aqua responded to I&E's rate design proposals for wastewater rates, generally opposing the rate design modifications proposed by I&E. In this regard, the Company contended that I&E's proposals would be contrary to the principles of gradualism, resulting in significant percentage increases to an average customer bill, as well as significant dollar-for-dollar increases. *See* Aqua M.B. at 222-23. Aqua particularly noted that I&E's proposed changes to the commercial wastewater customer rates for Rate Zone 8 – East Bradford would increase the average bill by over 84%. Aqua M.B. at 245 (citing I&E Exh. 5, Sch. 6 at 5).

(3) OCA

As he contended with respect to the Company's proposed increase to water customer charges, the OCA's witness, Mr. Watkins, argued that the Company provided no support for its proposed increase to wastewater residential customer charges. OCA St. 4 at 17. Therefore, Mr. Watkins opposed Aqua's proposal to increase the wastewater Rate Zone 1 5/8" monthly residential customer charge by \$8.10 per month, from \$31.00 to \$39.10. OCA St. 4-S at 17. Mr. Watkins argued that similar to Ms. Heppenstall's customer cost analysis for water, her analysis for wastewater also includes numerous overhead costs that cannot be reasonably considered "direct costs" required to connect and maintain a customer's account. OCA St. 4-SR at 7.

Aqua contended that the OCA's arguments it proffered against the approval of the Company's proposed residential wastewater customer charges lack merit and ignore the record evidence provided by Aqua. Aqua M.B. at 238-239. Aqua averred that the OCA's proposal regarding Rate Zone 1 rates should be rejected because, as the Company's witness, Ms. Heppenstall, demonstrated, the weighted average of all

wastewater customer charges under proposed rates is lower than the customer charge that the Company can support based upon a customer cost analysis which is summarized in Table 14, below:

Rate Zone	Metered Bills	Customer Charge Revenue*	Average Customer Charge
RZ 1	\$ 16,897	\$ 660,669	\$ 39.10
RZ1A	26,337	1,146,776	43.54
RZ1B	9,833	384,486	39.10
RZ2	11,663	492,629	42.24
RZ3	27,676	1,607,722	58.09
RZ4	8,085	626,580	77.50
RZ5	6,457	607,967	94.15
RZ5 - NG	588	54,957	93.45
RZ6	16,548	829,074	50.10
RZ7	82,876	3,271,931	39.48
RZ8	14,399	562,999	39.10
RZ9	202,241	5,705,208	28.21
RZ10	56,687	1,834,952	32.37
RZ11	25,392	1,361,551	53.62
Total	\$ 505,680	\$ 19,147,501	\$ 37.86

* Under proposed rates.

Table 14: Aqua’s summary of its average wastewater customer charge by Rate Zones (Aqua M.B. at 239 (citing Aqua St. 5-R at 11)).

Aqua further asserted that the OCA’s rate analysis was “incomplete,” and noted that although Mr. Watkins proposed to maintain the existing customer charge of Rate Zone 1, he did not discuss the customer charges for Rate Zones 2 through 6. Aqua St. 5-R at 11, 14.

With regard to Rate Zones 7, 8 and 10, the only area of disagreement between Aqua and the OCA is whether the residential wastewater customer charges should be \$31.00, which is the rate recommended by the OCA for residential Rate

Zone 1, rather than the Company's proposed charges of \$39.48, \$39.10 and \$32.37, respectively.⁸⁹ Aqua M.B. at 240-41; OCA M.B. at 102-03; OCA St. 4 at 18-19.

With regard to Rate Zone 11, the OCA objected to Aqua's proposal to increase the fixed monthly charge from \$37.64 to \$51.71 per month and recommended holding it at the current \$37.64 level, to avoid moving the charge further from the \$31.00 residential customer charge recommended by the OCA for most of the wastewater rate zones. OCA M.B. at 103. Also, similar to I&E, the OCA recommended eliminating the usage allowance. OCA M.B. at 103; OCA St. 4 at 18.

Aqua contended that the OCA's proposals regarding Rate Zones 7 through 11 are similarly meritless. Aqua M.B. at 240-43.

In addition to its recommended modifications to the Company's proposed wastewater rates, the OCA offered further proposals regarding Aqua's unmetered rates. OCA M.B. at 104-108. The OCA's discussion surrounding the rate design of Aqua's metered and unmetered customers centered on its concern that under present rates, the Company's average monthly metered revenue per customer, for all customers, is different than the Company's current unmetered rate. The OCA's witness, Mr. Watkins, identified nine wastewater rate zones that have both metered and unmetered residential rates. He explained that for some zones, the metered and unmetered rates are relatively close; but in others, there is a significant difference between rates for an average metered rate customer and flat rate customer. OCA St. 4 at 20; OCA Sch. GAW-8. For example, compared to metered rates, flat rates are 57% higher in Zone 5 and 30% lower in the

⁸⁹ The OCA accepted Aqua's proposed customer charge increase for Zone 9 residential customers. *See* OCA M.B. at 241.

Limerick Zone.⁹⁰ In this regard, the OCA requested that the Company study the reasonableness of its unmetered rates and provide the results in its next base rate proceeding. OCA St. 4 at 21.

According to Aqua, there are valid reasons for the differences between metered and unmetered rates. Aqua further explained that its unmetered rates assume an average usage of 4,000 gallons per month, which is standard industry practice. Aqua St. 5-R at 14-15. As to customers who pay a flat rate in Lake Harmony and Tobyhanna, Aqua took the position that customers pay to have wastewater service available, whether they are present at the service address for a few days or for longer periods of time; residency status is not a determinative factor. Aqua St. 9-R at 29.

Based on the concerns and testimony of several Lake Harmony wastewater customers regarding flat wastewater rates, as voiced at the public input hearings, the OCA's witness, Mr. Watkins, submitted supplemental direct testimony addressing the issue in Lake Harmony and several other developments where Aqua provides wastewater service, in which the water service is unmetered. OCA St. 4 SUPP. At those locations, wastewater customers either have their own wells or receive unmetered water from a community system. In these situations, the Company will bill wastewater service at a flat rate, where it uses average metered wastewater usage from customers with metered rates to develop a proxy of usage, which is then used to develop the rates. The OCA recommended that Aqua develop a pilot program to install meters for those customers who want them.⁹¹ Under this proposal, Aqua would install water meters on customer-owned wells on an opt-in basis. These opt-in customers would be billed at the applicable

⁹⁰ The current average monthly metered rate for the Avon Grove Division in Rate Zone 5 is \$113 (before DSIC) compared to \$177 for flat-rate customers. The current average monthly metered rate for Rate Zone 7 – Limerick is \$40 (before DSIC) compared to \$28 for flat rate. OCA St. 4 at 20, Table 8.

⁹¹ Complainant John Day wrote in support of the OCA's proposal. Letter in Lieu of Brief filed January 10, 2022.

metered rate. Mr. Watkins further proposed that the Company install water meters on other customer-owned wells based upon a random sample of 10% to 20% of the unmetered customers. These customers would be billed on a flat-rate basis, but the Company would prepare “shadow” bills based upon consumption. OCA St. 4 SUPP. at 2.

Aqua opposed this recommendation for a variety of reasons including cost and feasibility. Aqua St. 5-R at 17-18; Aqua St. 9-R at 29-30.

The OCA’s witness, Mr. Watkins, further testified in response to the result of the Company’s analysis of capping non-seasonal wastewater rates. *See* OCA St. 4 at 21-22. As previously indicated, Aqua performed an analysis of the feasibility of implementing a summer wastewater cap, as required by the settlement of its 2018 base rate proceeding. *See* Aqua Exh. 5-C. The basis for the cap is to address potential inaccuracies in the calculation of wastewater volumetric charges during the summer months when irrigation, swimming pool filling, and other outside watering activities are traditionally in use.⁹² Mr. Watkins recommended that the Company continue to study the feasibility of: (1) a capping mechanism with a winter multiplier greater than 100%;⁹³ and (2) the implementation of irrigation water meters on a customer-by-customer request basis. OCA St. 4 at 22.

⁹² Mr. Watkins testified that “In my experience, I am familiar with two mechanisms to fairly treat those customers whose Summer irrigation use is significant. The first and most prevalent are capping mechanisms similar to the one considered in the study conducted by Aqua. However, more often than not, I have seen capping mechanisms with an admittedly arbitrary multiplier such as 125% of Winter usage or 150% of Winter usage as a cap. This is different from the Company’s study wherein they used a multiplier of 100%; *i.e.*, simply capped at average Winter usage.” OCA St. 4 at 22.

⁹³ The OCA acknowledged that Aqua has already conducted an analysis of a capping mechanism with a multiplier of 100% but recommended that Aqua could study a multiplier greater than 100%. OCA St. 4 at 21-22.

Aqua opposed further study of a cap on non-seasonal wastewater rates, noting that it complied with its prior commitment from the 2018 base rate proceeding to provide a study as a part of this proceeding, and the results of the study revealed that a cap only benefits high water users. In addition, the imposition of a cap on non-seasonal wastewater rates could also result in a need to shift more wastewater revenue requirement to water rates. Aqua explained that the further studies proposed by the OCA will produce results similar to the analysis presented by Aqua in this case, and thus further studies are not necessary. Aqua St. 5-R at 15. Aqua also disagreed with the OCA's proposal to install irrigation meters on a customer opt-in basis, noting that such an implementation would increase revenue requirement for the installation and reading of meters and would not reduce revenue requirement recovery. Aqua R.B. at 104.

2. Recommended Decision

In her Recommended Decision, the ALJ recommended that the Commission adopt the overall wastewater rate design advocated by I&E, which was proposed to obtain I&E's Act 11 revenue allocation proposal:

I recommend that the Commission accept the methodology of I&E for allocating revenue and designing wastewater rates. I&E's approach takes into consideration the number of water and wastewater customers in each system and balances the goal of moving rates toward alignment with the cost of service, while also mitigating some of the large rate increases that would result if no allocation of wastewater revenue was approved. I&E's approach acknowledges the benefits received by the communities serviced by the Acquired Systems from the sale of their systems to Aqua, but is less complicated than the method advocated by OCA.

R.D. at 91.

Although the ALJ recommended adoption of I&E's proposed wastewater rate design, including its recommended customer charges, the ALJ found Aqua's water and wastewater residential customer cost analyses upon which it based its proposed increases to customer charges to be reasonable, stating:

While the Commission generally disfavors the inclusion of indirect costs into the calculation of customer charges, the Commission has nevertheless permitted the allocated portions of certain indirect costs such as employee benefits, local taxes and other general and administrative costs. I find that Aqua's witness adequately demonstrated that the indirect costs included in her study fall within the ambit of permissible general and administrative costs.

R.D. at 95.

In this regard, the ALJ implicitly rejected the OCA's residential customer charge proposals for water customers, while nonetheless, adopting I&E's recommended water rate design changes, based upon its proposal to reduce the Act 11 subsidy from water customers.⁹⁴ R.D. at 91, 95.

Regarding the reasonableness of unmetered rates, the ALJ agreed with the OCA and recommended that Aqua study whether a different method of calculating a flat rate would be more reasonable for some systems than applying a system-wide average and report the results in its next base rate case. R.D. at 98.

⁹⁴ I&E asserted that the Company's proposed percentage increases to the water customer classes should all be scaled back to 20% of the Company's original proposed percentage increases. I&E M.B. at 73. I&E explained that this scale back of water rates, including customer charges, should be proportional to the percentage increase originally proposed by the Company. I&E St. 4 at 18-20.

Although the ALJ saw the benefits of Aqua studying the reasonableness of its unmetered rates, finding that there may be areas in Aqua's service territory where unique circumstances may suggest that a different method of calculating a flat rate is more reasonable, ALJ Long however, rejected the OCA's proposal for the implementation of a metering pilot for flat-rate customers in the Lake Harmony service area, providing the following reasoning:

OCA does not include any cost estimates for its recommended pilot program but proposes that the meters be installed at Aqua's cost. No doubt, that cost would be socialized to all of Aqua's wastewater ratepayers. Some customers would "opt-in" for the installation of a meter. Other customers would not opt-in. This adds a layer of administrative complexity and costs, including costs to test and maintain meters and administer this program. While the Commission certainly favors consumption-based utility rates, it is not clear that the cost of OCA's proposed pilot will achieve overall benefits to Aqua's customers that will outweigh the costs. Therefore, I recommend the Commission reject OCA's proposal.

R.D. at 97.

Finally, the ALJ recommended that the Commission reject the OCA's recommendation regarding additional studies of a non-seasonal wastewater capping mechanism. The ALJ agreed with Aqua that further study of a non-seasonal wastewater capping mechanism is unnecessary, reasoning that the OCA did not demonstrate that further study would yield better results. R.D. at 99.

3. Exceptions and Replies

a. Aqua Exception No. 10 and Replies

In its Exception No. 10, Aqua submits that the ALJ erred in recommending that Aqua be required to provide a study in its next base rate case that would determine the reasonableness of unmetered rates. Aqua maintains its position, as argued by its witness, Ms. Heppenstall, that such a study is not needed. Aqua Exc. at 35. Aqua contends that Ms. Heppenstall fully explained the basis for the differences between metered and unmetered rates, as follows:

The large difference in Limerick and East Norriton is based on the fact that these are new acquisitions with legacy rates. The Company will rectify this disparity when it sets the rates in this case. For the other rate zones, the unmetered rate is based on an assumed average usage of 4,000 gallons per month plus a customer charge. The average usage of 4,000 gallons is substantiated in the Company's prior rate case as the pre-COVID pandemic average residential usage was 4,068 per month for the residential class. For example, in Bridlewood, the calculation of the unmetered rate under present rates equals \$31.00 plus the usage rate of .7600 per 100 gallons at 4000 gallons ($\$31.00 + .7600 \times 40$) or \$61.40. This calculation of the unmetered rate based on average usage is standard in the industry and used by other regulated water and wastewater utilities in Pennsylvania. For example, Pennsylvania American Water Company's unmetered wastewater rate for Zone 1 for 2022 is \$78.41 per month which was designed to equal the metered customer charge plus the usage rate multiplied by an average usage of 3,458 gallons.

Aqua M.B. at 244 (citing Aqua St. 5-R at 14-15) (emphasis added by Aqua).

Aqua further argues that the ALJ did not find the Company's use of unmetered rates or use of an average monthly usage of 4,000 gallons to be unreasonable,

but rather only found “that the use of a 4,000-gallon average monthly usage rate may not result in fair rates, and that there may be areas where a different method of calculating a flat rate is more reasonable.” Aqua Exc. at 35 (citing R.D. at 98 (emphasis added by Aqua)). Aqua notes that its witness, Mr. Todd M. Duerr, credibly testified that the average usage of 4,000 gallons was substantiated by the pre-COVID pandemic average residential usage shown in Aqua’s last base rate proceeding, and that its average usage amount was consistent with the average usage of other water utilities such as Pennsylvania-American Water Company. Aqua Exc. at 35 (citing Aqua St. 9-R at 14-15).

Additionally, Aqua posits that any results of such a study would be “speculative,” since many of the areas without metered water service have individual customer wells, which prevents access to the usage data needed to assess average usage for an area. Aqua Exc. at 35.

In its Replies, the OCA asserts that Aqua misunderstood the ALJ’s reasoning based on her concern that the usage amount assumption (derived from the system-wide average) for flat rates may not be reasonable for all areas of Aqua’s service territory, particularly in areas where there is a significant mix of types of housing or other unique circumstances. OCA R. Exc. at 15 (citing R.D. at 98; Aqua Exc. at 35). Therefore, the OCA maintains that, where the Company’s use of a system-wide average in the derivation of its unmetered rates is causing an unreasonable disparity in the rates charged to metered and unmetered customers, it is reasonable for Aqua to study and propose adjustments to its unmetered rates, which may include an adjustment to the usage assumption applied in a particular territory. OCA R. Exc. at 15.

Moreover, in reply to Aqua’s argument that due to customers being served by unmetered individual wells in some areas of its service territory, it lacks access to the usage data needed to perform such an analysis, the OCA notes that Aqua is ignoring the

nine individual territories where it charges some customers metered rates. OCA R. Exc. at 15. The OCA continues that Aqua has usage data at the individual system level, which informs its operations and compliance with regulatory requirements for wastewater collection, conveyance, treatment, and discharge. OCA R. Exc. at 15 (citing 25 Pa. Code. Chapters 91, 92a). Other information regarding housing size, occupancy and seasonal usage may be available from property owners' associations, local municipalities, and observation. OCA R. Exc. at 15.

b. OCA Exception No. 12 and Replies

In its Exception No. 12, the OCA disagrees with the ALJ's adoption of what it believes are overly inclusive residential customer cost analyses performed by Aqua, upon which the Company has based its residential customer charges for water and wastewater customers. OCA Exc. at 19-22.

The OCA maintains that a review of the specific indirect costs included in Aqua's studies show they do not fall within the ambit of costs that the Commission has historically permitted but are merely costs related to Aqua's general operation as a utility. The OCA noted its reliance on Commission precedent, which has generally permitted only expenses directly related to meter reading, customer service, accounting and customer records and collection, but has allowed costs associated with direct labor costs, including employee benefits, workers compensation insurance and payroll taxes, where portions of indirect costs have been permitted on a case-by-case basis. OCA Exc. at 20 (citing *Pa. PUC v. Metropolitan Edison Company*, 60 Pa. P.U.C. 349 (1985); *Pa. PUC v. West Penn Power Company*, 59 Pa. P.U.C. 552 (1985); *Pa. PUC v. West Penn Power Company*, 1994 Pa. PUC LEXIS 144, *154; *Pa. PUC v. National Fuel Gas Distribution Corporation*, 83 Pa. P.U.C. 262, 371 (1994); *see also*, 2004 PPL Order and Aqua 2004 Order). The OCA notes that more recently, the Commission has rejected a utility's proposed customer charge increase based on a cost analysis that included indirect costs.

OCA Exc. at 20 (citing *Pa. PUC v. PPL Gas Utilities Corporation*, Docket No. R-00061398 (Order entered February 8, 2007) at 137) (*2007 PPL Gas Order*).

The OCA submits that even when the additional types of costs that the Commission allowed in the *PSWC 2004 Order*⁹⁵ are included, the indicated customer costs are below the current Main Division 5/8” residential water customer charge of \$18.00 and, thus, there is no reasonable basis to increase the customer charges. OCA Exc. at 21. The OCA also maintains that Aqua’s proposal to increase the wastewater Zone 1 5/8” residential customer charge to \$39.10 should be rejected because the study that Aqua relies on improperly includes indirect overhead costs that are not reasonably related to connecting and maintaining a customer’s account, such as uncollectibles expense and rate case amortization. OCA Exc. at 21.

In addition to not supporting that level of customer charge increases with a direct cost study, the OCA contends that the magnitude of the increases is not supported by the public policy of gradualism and incentivizing conservation. OCA Exc. at 21 (citing *2007 PPL Gas Order*; *Pa. PUC v. Community Utilities of Pennsylvania, Inc.*, R-2021-3025206, *et al.* (Order entered January 13, 2022) at 62-63). The more revenue recovered through customer charges, the lower the volumetric rate, which impacts customers’ incentive to conserve. OCA Exc. at 21.

Contrary to the OCA’s claims in its Exceptions, Aqua maintains that the items the OCA asserts are “overhead costs” or “indirect expenses” are actually necessary for the support of customer facilities and customer accounting and should be considered direct costs. Aqua R. Exc. at 11 (citing Aqua M.B. at 234-35).

⁹⁵ *Pa. PUC v. Philadelphia Suburban Water Company*, Docket No. R-00038805 (Order entered August 3, 2004) at 72 (*PSWC 2004 Order*).

Moreover, Aqua counters that its customer cost analysis is consistent with Commission precedent; the ALJ evaluated these costs “on a case-by-case basis” consistent with this precedent. Aqua R. Exc. at 11 (citing Aqua M.B. at 235; R.D. at 95). Aqua further asserts that the OCA’s argument that Aqua’s proposed customer charges violate gradualism and do not incentivize conservation should be rejected. Aqua R. Exc. at 11 (citing OCA Exc. at 21). Aqua argues that its rates were designed to balance these considerations with the cost of serving its customers and demonstrated that its rate design guidelines were reasonable and appropriate. Aqua R. Exc. at 11-12 (citing Aqua M.B. at 230-33, 237-38).

c. OCA Exception No. 13 and Replies

In its Exception No. 13, the OCA disagrees with the ALJ’s adoption of I&E’s wastewater rate design methodology. OCA Exc. at 22 (citing R.D. at 88-89, 91, 96; OCA M.B. at 101-04; OCA R.B. at 60-61). Rather, the OCA maintains that its proposed wastewater rate design for the legacy systems and acquired systems is more reasonable and should be adopted. OCA Exc. at 22.

The OCA noted that I&E witness, Mr. Kubas, acknowledged that he normally would not support increasing the customer charges above cost, but he did so in this case because it provided more revenue. OCA Exc. at 22 (citing I&E St. 5 at 10, 38; I&E St. 5-R at 5). The OCA argues the additional revenue is derived from I&E’s proposed 46.8% increase to Zone 1 customer charges, from \$31.00 to \$45.50 per month, which is nearly two times the increase proposed by the Company as well as I&E’s proposed increases to all of the 5/8 customer charges that range between 26% and 66% and exceed their costs. OCA Exc. at 22 (citing I&E Exh. 5, Schs. 2-8).

On the other hand, the OCA submits that under its proposal, customer charges are supported by cost analyses and move customer charges toward consolidation

with the main wastewater zone customer charges. The OCA posits that under its proposal, customers will: (1) be charged cost-based fixed rates; (2) receive proper price signals; and (3) have more control of their bills. OCA Exc. at 22-23 (citing OCA R.B. at 58-61; OCA M.B. at 102-04; OCA St. 4 at 17-20). Further, the OCA contends that unlike I&E's proposal, the OCA's recommendations flow from its proposed customer charges for Zone 1 and reasonably move other divisions toward consolidation with those charges. OCA Exc. at 22 (citing OCA St. 4 at 17-20).

In its Replies, Aqua submits that the OCA's argument regarding the adoption of I&E's proposed wastewater rate design should be denied for the same reasons that the Company opposes the ALJ's adoption of I&E's proposed wastewater rate design and revenue allocation. Aqua R. Exc. at 12 (citing OCA Exc. at 22-23; Aqua Exc. at 31-34; Aqua R.B. at 102-04; Aqua M.B. at 237-43).

In its Replies, I&E notes that it made revisions in its final schedule that addressed the positions proffered by other Parties, including the OCA. Therefore, I&E asserts that the Commission adopt I&E's final wastewater revenue allocation and rate design, as discussed in I&E Exception No. 2. I&E R. Exc. at 17 (citing I&E Exc. at 4-5; I&E St. 5-SR at 4; I&E Exh. 5-SR, Sch. 1 at 1).

d. OCA Exception No. 14, Mr. Osinski's Exceptions, and Replies

In its Exception No. 14, the OCA submits that the ALJ erred by rejecting its proposal for the implementation of a metering pilot for flat-rate customers in the Lake Harmony service area. OCA Exc. at 23-25.

Referencing Aqua's continuation of deduct metering⁹⁶ programs for some of its acquired systems, specifically its Cheltenham service territory, the OCA contends that the cost and operational data from that existing deduct metering program can help to inform how the pilot is structured. Moreover, the OCA argues that the benefits of a pilot program, which assists in moving flat-rate customers to metered rates in an area where a significant number of customers may use less than (or more than) the average usage of 4,000 gallons, outweigh the costs, which, according to the OCA, should be reasonable since the pilot would involve only a few hundred customers. OCA Exc. at 23-24.

As such, the OCA excepts to the ALJ's suggestion to delay a remedy until the next base rate case because it will delay relief to customers who, under the OCA's proposal, could begin participating in a pilot program within a few months of a final order in the current case. The OCA maintains that Aqua should be directed to adopt a program, on a pilot basis, as a reasonable and measured response to the concerns raised by its customers regarding flat rates. OCA Exc. at 24-25.

In its Replies, Aqua maintains its opposition to any requirement to install Company water meters on customer owned (wells) or community owned water supplies, in order to implement metered wastewater rates, reemphasizing the arguments presented in its briefs. Aqua R. Exc. at 12-13 (citing Aqua M.B. at 243-44; Aqua R.B. at 103). Aqua adds that it has no right to enter customers' premises to demand the installation of water meters where Aqua does not provide the water supply and posits that an "opt-in" pilot will only lead to meter installations where customers have decided that their usage is below average, thereby negating the validity of the "pilot." Aqua R. Exc. at 12.

⁹⁶ Deduct metering is a mechanism which allows individual customers, using a significant amount of outside water, such as for an irrigation system, to have a separate irrigation water meter installed. This second meter, known as a deduct meter, measures the flow of water that does not enter the wastewater system and is used to calculate a reduction in wastewater charges. *See generally*, OCA St. 4 at 21-22, and 25; OCA Exc. at 25; Aqua R. Exc. at 13; and OCA M.B. at 109.

Mr. Osinski also filed exceptions to the Recommended Decision, specifically taking issue with the flat-rate service provided to the Camp Stead Property Owners Association, which is part of Aqua's Tobyhanna Township Division. Mr. Osinski argues that the private development (Camp Stead Property Owners Association) in which he resides is served by a metered community well; however, Aqua does not meter his wastewater. Mr. Osinski contends that Aqua's practice of basing his flat rate on 4,000 gallons of consumption per month is unjustified, and as a result, he is being charged far more than he uses. Osinski Exc. at 1-4.

In its Replies to the Exceptions of Mr. Osinski, Aqua points to its response to OCA Exception No. 14, in which it addresses concerns related to the flat-rate service provided to certain customers. Additionally, Aqua notes that it responded to concerns raised by customers at residences on Camp Stead Circle in its Main Brief. Aqua R. Exc. at 13 (citing Aqua M.B. at 179-180).

Furthermore, Aqua notes that Exhibits A-G, L and Q, attached to Mr. Osinski's Exceptions, appear to be extra record evidence, not permitted to be introduced in his Exceptions, and thus, should be disregarded. Aqua R. Exc. at 13 (citing *Application of Apollo Gas Company*, 1994 Pa. PUC LEXIS 45 (Order entered February 10, 1994) at *8-9 (denying party's attempt to introduce extra-record evidence in its exceptions)).

e. OCA Exception No. 15 and Replies

In its Exception No. 15, the OCA submits that the ALJ erred by not requiring the Company to study the feasibility of affording additional customers the option of deduct metering. OCA Exc. at 25-26 (citing R.D. at 99).

The OCA explains that the ALJ did not distinguish between the studies recommended by its witness, Mr. Watkins, and, as such, did not address the OCA's recommendation for an alternative study, which Mr. Watkins opined may be the fairest for Aqua – installing irrigation water meters on a customer-by-customer request basis. OCA Exc. at 25 (citing OCA M.B. at 109-10; OCA R.B. at 65-66; OCA St. 4 at 22). The OCA notes that, to its knowledge, Aqua has not already conducted any studies on irrigation metering, also referred to as deduct metering. *Id.*

Further, the OCA argues that Aqua's objection to studying the feasibility of opening its deduct metering program to Aqua's non-Cheltenham customers is not reasonable, since the Company already has a deduct metering program in its Cheltenham service territory and two years of cost and operational data from that program. Therefore, the OCA submits that the results of that study, including either a proposal to make deduct metering available to more or all customers or a detailed explanation for why Aqua believes expansion is infeasible in other service territories, should be filed no later than Aqua's next base rate case. OCA Exc. at 25-26.

Contrary to the OCA's arguments, Aqua replies that no such study should be ordered. Aqua maintains its argument that the installation of a second meter to measure usage deductions will only increase the revenue requirement for installing and reading meters and will not reduce the revenue requirement that needs to be recovered. Aqua R. Exc. at 13 (citing Aqua R.B. at 104; Aqua M.B. at 244-45).

4. Disposition

a. Water and Wastewater Rate Design

As previously explained, the allocation of the rate increase among the customer classes of both Aqua's water and wastewater divisions, and ultimately the rate

design under each division, was a significant issue in this proceeding.⁹⁷ In cases such as the instant one before us, the ALJ and the Commission are faced with the difficult task of balancing the justness and reasonableness of all components of revenue allocation and rate design. The reality is, as a result of the difficult choices that must be made, all customer classes will inevitably experience some degree of an undesired impact. Consistent with our discussion, *supra*, regarding the issue of revenue allocation, and based on our review of the supporting information contained in the record, we find that the ALJ's determinations regarding rate design are sufficiently supported by the evidentiary record. Accordingly, based on our discussion below, we find that the OCA's arguments against the ALJ's recommendation concerning this matter are without merit.

In reaching this determination, we have reviewed the rate designs adopted by the ALJ and found them to be reasonable, affording appropriate primary consideration to cost causation principles per *Lloyd* in tandem with secondary consideration for the value of service, gradualism, and affordability.

There is not a prescribed "ratemaking formula" that the Commission must adhere to when determining just and reasonable rates. Rather, the Commission "has broad discretion in determining whether rates are reasonable" and "is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates." *Popowsky II*. Included in the Commission's broad ratemaking authority is the authority to approve alternative rates and rate mechanisms, including formula rates as well as decoupling mechanisms, performance-based rates, and multiyear rate plans. 66 Pa. C.S. § 1330(b)(1)(i)-(v).

⁹⁷ In this proceeding, the Company invoked the Commission's authority under Section 1311(c) of the Code to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company's wastewater revenue requirement from its total water and wastewater customer base. *See* 66 C.S. § 1311(c).

With that said, we acknowledge that a set of ratemaking norms have been developed over time and have been consistently utilized by parties in rate cases before the Commission to determine the appropriate level of a utility's requested revenue increase in accordance with all applicable legal and constitutional standards. These norms, or traditional ratemaking methodologies,⁹⁸ are used to determine a utility's cost of providing service, or its revenue requirement, and to determine appropriate rate structure, which includes, among other things, the appropriate allocation of the revenue requirement to various customer classes. However, while these ratemaking norms provide a rational and methodical way to analyze and determine the utility's cost of service, they also permit the consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service,⁹⁹ gradualism,¹⁰⁰ and rate affordability.¹⁰¹

We acknowledge that there are several factors that must be considered when designing a rate recovery proposal, including the concepts of gradualism and affordability. We emphasize, however, that while affordability is permitted to be considered, it is but one of many factors to be considered and weighed by the Commission in determining the utility's rates. The rate increase reflects the business challenges the Company currently faces, including required investments in the repair/replacement or improvement of its distribution systems, including newly acquired

⁹⁸ See, e.g., *Pa. PUC, et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-2015-2469275 *et al.* (Recommended Decision issued October 5, 2015) at 32-33.

⁹⁹ See 66 Pa. C.S. §§ 523, 526(a).

¹⁰⁰ See *Lloyd*, 904 A.2d at 1020 (explaining that gradualism is the principle under which utility rates are gradually increased in order to avoid rate shock, as part of what is overall considered a reasonable rate under the circumstances and is permitted in implementing large rate increases).

¹⁰¹ See *Pa. PUC et. al v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958 (Order entered March 26, 2020) at 48, 80 (the ALJ did not err in considering evidence relating to the various quality of service and rate affordability issues in the proceeding and factoring in such evidence as part of her overall determination on which expert witnesses' cost of equity to adopt for setting just and reasonable rates).

water and wastewater distribution systems; and the high costs associated with maintaining a distribution system necessary to provide safe and reliable water and wastewater service within the Commonwealth.

As discussed, *supra*, Aqua's proposal, establishing an Act 11 subsidy close to one-third of the wastewater revenue requirement would result in wastewater rates that do not bear a reasonable relationship to the Company's cost of serving those customers. In consideration of Aqua's recent Section 1329 acquisitions and the consequences of the Company's request to have water customers subsidize rate increases for customers in wastewater Rate Zones 1 through 6, as well as to absorb a significant portion of the revenue shortfalls of the newly acquired wastewater systems, Rate Zones 7 through 11, we find I&E's approach in limiting the Act 11 subsidies¹⁰² and its subsequent rate design proposals, adopted by the ALJ, to be a reasonable compromise between the conflicting objectives of moving towards consolidated rates and maintaining gradualism in customer bill impacts.

Table 15, below, provides a comparison of residential wastewater bills for a typical residential customer under the Company's proposed rates and under I&E's proposal. Under Aqua's proposed rates, residential wastewater customers would see increases ranging from 7.9% to 84.9%, with Rate Zone 5 – Newlin Green experiencing a proposed decrease. Under I&E's proposed rates, residential wastewater customers would see increases ranging from 20.3% to 86.0%, excluding the increase to Rate Zone 10 – Whitpain, where the average residential customer will experience an increase of approximately 106.6%. As I&E noted, this larger than average increase is

¹⁰² I&E's approach for allocating wastewater revenue and designing wastewater rates allows for each type of utility service to recover as much of the cost of providing services as possible without removing the Act 11 subsidy, which would result in unreasonably large increases to the monthly customer charges, usage rates, unmetered rates, and average bills for both residential and commercial wastewater customers.

justified for three reasons: (1) the average bill under current rates of \$31.66 per month is the lowest average bill for all zones; therefore, to move the average bill closer to other average bills, a larger percentage increase is necessary; (2) the Company's desire to consolidate all Zone 10 rates justifies the higher rates for Zone 10 – Whitpain to match Zone 10 – East Norriton rates; and (3) even with higher rates causing a higher than average increase for Zone 10 – Whitpain, total Rate Zone 10 operations will continue to need \$1,378,735 of subsidy from water customers. *See* I&E St. 5 at 52-53.

Wastewater Division
Bill Comparison of 5/8" Metered Residential Customers with Average Usage*

	Average Current Monthly Bill	<u>Aqua Proposal</u>		<u>I&E Proposal</u>	
		Monthly Bill	% Increase	Monthly Bill	% Increase
RZ 1 - Main	\$64.47	\$77.49	20.2%	\$90.12	39.8%
RZ 1A	\$59.01	\$77.49	31.3%	\$90.12	52.7%
RZ 1B	\$64.05	\$77.49	21.0%	\$90.12	40.7%
RZ 2 - Main	\$71.82	\$77.49	7.9%	\$100.32	39.7%
RZ 3 - Main	\$84.00	\$101.03	20.3%	\$109.04	29.8%
RZ 4 - Main	\$105.00	\$125.00	19.0%	\$131.13	24.9%
RZ 5 - Main	\$118.02	\$141.94	20.3%	\$141.94	20.3%
RZ 5 - Newlin Green	\$147.00	\$141.94	-3.4%	\$141.94	-3.4%
RZ 6 - Masthope	\$45.82	\$55.15	20.4%	\$66.60	45.4%
<u>Zones Recently Acquired</u>					
RZ 7 - Limerick	\$39.73	\$72.94	83.6%	\$73.90	86.0%
RZ 8 - East Bradford (Multifamily Residential)	\$55.36	\$83.42	50.7%	\$99.80	80.3%
RZ 9 - Cheltenham	\$36.53	\$49.34	35.1%	\$57.20	56.6%
RZ 10 - East Norriton	\$38.52	\$58.53	51.9%	\$65.40	69.8%
RZ 10 - Whitpain	\$31.66	\$58.53	84.9%	\$65.40	106.6%
RZ 11 - New Garden	\$73.03	\$100.34	37.4%	\$130.99	79.4%

* Average 5/8" residential customer using 4,000 gallons per month.

Table 15: Comparison of residential wastewater bills for a typical residential customer under the Company's proposed rates and under I&E's proposal. See Aqua Exh. 5-B, Part II, Sch. WW-7; see also, I&E Exh. 5, Sch. 2 at 2-4, Sch. 3 at 2, Sch. 4 at 2 and 4, Sch. 5 at 2, Sch. 6 at 2 and 4, Sch. 7 at 2-3; I&E Exh. 5-R, Sch. 2 at 2.

Furthermore, since the average bill under current rates is lower in Rate Zones 1 and 6 than it is for Rate Zones 2 through 5, it is reasonable that Rate Zones 1 and 6 would experience larger percentage increases compared to Rate Zones 2 through 5. Since the Company presented one cost of service study for Rate Zones 1 through 6, there is no justification for such a wide variety in rates and corresponding average bills.

The overall bill impact to a typical residential water customer bill would be overall less than the Company's proposal,¹⁰³ since I&E's recommended water rate design changes are based upon its proposal to reduce the Act 11 subsidy from water customers. In this regard, a bill for a typical residential water customer would reflect I&E's recommendation that the Company's water rates be scaled back to 20% of the Company's original proposed percentage increases, and that the recommended scale back, including customer charges, be proportional to the percentage increase originally proposed by the Company. *See* I&E M.B. at 73; I&E St. 4 at 18-20.

Moreover, the higher percentage increases to a typical residential customer bill recommended by I&E's rate design for Rate Zones 7 through 11 are indicative of the substantial revenue shortfall attributable to these newly acquired systems, even under the Company's proposed rates. Without the, albeit, more moderate Act 11 subsidy proposed by I&E, compared to Aqua's proposal, these wastewater rates would necessarily have to be increased even further. As such, we find I&E's rate design reasonably mitigates the impact of revenue increases onto these wastewater customers by recovering a portion of the Company's wastewater revenue requirement from its total water and wastewater customer base.

The OCA also excepts to the ALJ's recommendation, arguing that Aqua's proposed customer charges are based on its flawed cost of service study results, violate the principle of gradualism, and would result in a disincentive for customers to engage in conservation activities. Therefore, the OCA's wastewater rate design recommendations include its contention that there is no cost justification for increasing the present \$31.00

¹⁰³ Under the Company's proposal, a residential customer in the Main Division of Rate Zone 1, using 4,000 gallons of water per month, would experience a monthly bill increase from \$69.35 to \$81.32, or 17.3% per month, and residential customers in other water divisions would experience increases ranging from 17.3% to 51.3%. *See* Aqua Exh. 5-A, Part II, Sch. 8.

per month 5/8” residential customer charge in Rate Zone 1. Upon our consideration of the evidence and record herein, we conclude that the ALJ correctly recommended that, consistent with the *Aqua 2004 Order*, and subsequently affirmed in the *2012 PPL Order*, other customer-related costs are properly includable in a customer cost analysis. We find that the OCA proposed limitation of costs excludes customer costs that should be included in a customer charge and is unreasonably narrow.

As previously indicated, although the ALJ accepted Aqua’s water and wastewater residential customer cost analyses upon which it based its proposed increases to customer charges, the ALJ adopted I&E’s proposed rate design which includes the wastewater customer charges summarized in Table 16, below.

Further, we are persuaded by I&E’s reasoning for its increase to the 5/8” residential customer charge for Rate Zone 1:

While I normally would support not increasing the monthly 5/8th inch residential customer charge based upon cost, there are other factors to consider in this case. First, the present \$31.00 per month customer charge is below the monthly customer charges in Zones 3 through 5. Therefore, in order to move towards consolidation of the customer charges in these zones, the present Zone 1 customer charge of \$31.00 per month should be increased. Customer charges should be consolidated in Zones 1 through 6 for fairness and simplicity. Second, the remaining revenue increase will have to come from increasing the usage charge. Therefore, given this low customer charge, I recommend that the OCA proposal be rejected.

I&E St. 5-R at 5-6. Additionally, as I&E indicated, the OCA did not address the remaining meter sizes in Rate Zone 1, the other classes in Rate Zone 1, or the other customer charges in Rate Zones 2 through 6.

Wastewater Division
Comparison of 5/8" Metered Residential Customer Charges

	Current	Aqua Proposal		I&E Proposal	
	Customer Charge	Customer Charge	% Increase	Customer Charge	% Increase
RZ 1 - Main	\$31.00	\$39.10	26.1%	\$45.50	46.8%
RZ 1A	\$31.00	\$39.10	26.1%	\$45.50	46.8%
RZ 1B	\$31.00	\$39.10	26.1%	\$45.50	46.8%
RZ 2 - Main	\$36.00	\$39.10	8.6%	\$52.80	46.7%
RZ 3 - Main	\$46.00	\$58.09	26.3%	\$62.70	36.3%
RZ 4 - Main	\$62.00	\$77.50	25.0%	\$81.30	31.1%
RZ 5 - Main	\$74.00	\$93.45	26.3%	\$93.45	26.3%
RZ 5 - Newlin Green	\$110.00	\$93.45	-15.0%	\$93.45	-15.0%
RZ 6 - Masthope	\$39.64	\$50.10	20.4%	\$56.20	41.8%
<u>Zones Recently Acquired</u>					
RZ 7 - Limerick	\$28.10	\$39.48	40.5%	\$39.50	40.6%
RZ 8 - East Bradford (Mult-Family Residential)	Current Flat Rate	\$39.10		\$55.00	
RZ 9 - Cheltenham	\$20.89	\$28.21	35.0%	\$30.00	43.6%
RZ 10 - East Norriton	\$21.08	\$32.37	53.6%	\$35.00	66.0%
RZ 10 - Whitpain	\$31.66	\$32.37	2.2%	\$35.00	10.5%
RZ 11 - New Garden	\$37.64	\$51.71	37.4%	\$43.00	14.2%

Table 16: Comparison of 5/8" metered residential wastewater customer charges. *See* I&E Exh. 5, Schs. 2-7 at 1; I&E Exh. 5-R, Sch. 2 at 1.

With regard to the concerns expressed by the OCA that the Company's proposed customer charges will discourage conservation, we note that the customer charges, shown above, in the context of the total monthly bill for a typical 5/8" meter residential wastewater customer, would comprise approximately 47% to 91% of the charges on the bill under the Company's proposal and only approximately 33% $[(\$43.00 \div \$130.99) \times 100 = 33\%]$ to 84% $[(\$56.20 \div \$66.60) \times 100 = 84\%]$ under I&E's wastewater rate design proposal. This is less than the portion of a typical bill for a 5/8" meter wastewater residential customer under current rates, of which approximately 48% to 87% is attributable to the customer charge, as shown in Table 17 below:

Wastewater Division
Comparison of the Portion of a Customer's Bill Attributable to the Customer Charge

	<u>Current Rates</u>	<u>Aqua Proposed Rates</u>	<u>I&E Proposed Rates</u>
RZ 1 - Main	48%	50%	50%
RZ 1A	53%	50%	50%
RZ 1B	48%	50%	50%
RZ 2 - Main	50%	50%	53%
RZ 3 - Main	55%	57%	58%
RZ 4 - Main	59%	62%	62%
RZ 5 - Main	63%	66%	66%
RZ 5 - Newlin Green	75%	66%	66%
RZ 6 - Masthope	87%	91%	84%
<u>Zones Recently Acquired</u>			
RZ 7 - Limerick	71%	54%	53%
RZ 8 - East Bradford (Multifamily Residential)	100%*	47%	55%
RZ 9 - Cheltenham	57%	57%	52%
RZ 10 - East Norriton	55%	55%	54%
RZ 10 - Whitpain	100%*	55%	54%
RZ 11 - New Garden	52%	52%	33%

*Average use customers, using 4,000 gallons per month, are currently billed a flat rate.

Table 17: Comparison of the portion of a customer's wastewater bill attributable to the customer charge.

Regarding the Company's water rate design proposal, the portion of charges attributable to the customer charge on a typical 5/8" meter water residential customer would range from approximately 21.6% [$(\$4.90 \div \$22.66) \times 100 = 21.6\%$] for customers in the Phoenixville Division to 39.8% [$(\$32.40 \div \$81.32) \times 100 = 39.8\%$] for customers in Rate Zone 3 – Main. Reflective of I&E's effort to reduce the Act 11 subsidy, with which we agree, I&E's proposal simply scales back the Company's proposed percentage increases for water customers to 20% of the Company's original

proposal. Therefore, we find that I&E's proposal reasonably balances the principles of gradualism with the challenges of rate consolidation, especially those that come with newly acquired systems, while preserving adequate opportunity for customer savings due to conservation efforts. As such, we find no basis to reverse the ALJ's recommendation. Accordingly, OCA Exception Nos. 12 and 13 are denied.

b. Unmetered Residential Wastewater Rates

Aqua explained that similar to many wastewater systems throughout the Commonwealth, Aqua does serve a limited number of areas where wastewater customers are billed on a flat rate, meaning that unmetered customers receiving wastewater service from Aqua pay the same amount each month, *i.e.*, their water consumption does not have an effect on their monthly wastewater bills. Unmetered, flat-rate wastewater customers make up the communities of Tobyhanna, Pennsylvania (730 customers) and Lake Harmony, Pennsylvania (995 customers).¹⁰⁴ These communities were billed on a flat rate prior to Aqua's acquisition of these wastewater systems, and the Company has continued to bill the customers on a flat-rate basis. Aqua St. 9-R at 28.

There is no question that volumetric billing is preferable to flat-rate billing, as it provides better price signals and promotes conservation, as well as resulting in a more equitable distribution of the variable costs of wastewater service among ratepayers. However, in situations, such as this, where metered water information is unavailable, we acknowledge the standard industry practice of basing the flat rate on a system-wide average usage per month plus a customer charge. As indicated previously, Aqua assumes an average 5/8" meter residential customer uses 4,000 gallons per month.

¹⁰⁴ Customers in Tobyhanna and Lake Harmony obtain their water supplies from individual wells not owned or operated by a utility or a municipality/municipal authority. Aqua St. 9-R at 28.

The flat charge should be reasonable and appropriate, and sufficient to cover the intended costs. The challenge is the development of a reasonable flat-rate charge. In this regard, we cannot ignore the disparity in the rates charged to metered and unmetered customers in certain divisions where Aqua serves both types of customers, as illustrated by the OCA. For these reasons, we agree with the ALJ's recommendation that directs Aqua to study and report the results in the next base rate proceeding, in order to determine whether different methods of calculating a flat rate would be more reasonable for some systems rather than applying a system-wide average to each system. Accordingly, Aqua Exception No. 10 is denied.

The primary concern at the public input hearings voiced by customers receiving wastewater service in the Tobyhanna and Lake Harmony service areas, including Mr. Osinski, was that flat-rate billing is unfair to customers with below average usage, including customers who may be part-time residents that may use less than full-time residents. *See* Tr. at 70-71, 166-68, 175-81, and 323-25. Recognizing that customers in Lake Harmony have private water wells on their property that are not individually metered, the OCA proposed a pilot program in Lake Harmony to install meters: (1) on an opt-in basis for those customers that request metered wastewater service, (2) on other customer-owned wells based upon a random sample of 10% to 20% of the unmetered customers. *See* OCA St. 4 SUPP. at 2.

Although we find merit in the OCA's proposal that Aqua study whether a different method of calculating a flat rate would be more reasonable for some systems than applying a system-wide average, we cannot say the same for its Lake Harmony pilot program proposal. Instead, we find persuasive the testimony of Aqua's witness, Ms. Heppenstall, explaining the impracticability of the OCA's proposal:

I disagree for two reasons. One, the Company does not have the authority to meter a representative sampling of customer owned private wells. Allowing customers to opt in would

only incentivize those customers with low water consumption, not the perceived larger users. Second, there are concerns about the ability to access customers' property to properly install a meter on a well. I understand that Company Witness Todd Duerr will explain the operational issues with this pilot program in his rebuttal testimony ([Aqua St. 9-R]). There may be substantial cost involved, and Mr. Watkins' proposal is that the Company bear the cost of such installations. Finally, the lack of authority to meter all privately owned wells means that the "pilot" can never be adopted as a permanent solution. Customers would continually opt for the lesser cost alternative. Mr. Watkins' proposal is unworkable.

Aqua St. 5-R at 17-18. We also find it difficult to ignore the operational issues with the OCA's proposal, highlighted by Aqua's witness, Mr. Duerr:

First, we reinforce that industrywide flat sewer rates have been utilized to bill for public or private wastewater service in instances where customers have private wells throughout the Commonwealth. While we understand the customer's desire to limit any rate increase, resorting to changing the current methodology on which these customers are billed will not impact that reality, and in fact, some customers could be billed more. For wastewater only customers that receive water from private wells, the Company would be required to enter, traverse, and locate a customer's water well, to a property the Company does not have a right to enter, install a Company owned meter somewhere on a customer's property where a water well is located, and maintain that property going forward. That in and of itself is problematic.

Aqua St. 9-R at 29-30.

Regarding Mr. Osinski's assertion that the well servicing his community is metered, Mr. Duerr explained that "the well, the water meter, and the water distribution system are owned by the community. There are not individual meters measuring usage to

each customer's residence. As such, the Company cannot bill these individual customers based on usage from one community water meter." Aqua St. 9-R at 30-31.

Based upon our review of the record evidence, we agree with the recommendation of the ALJ that the OCA's proposal be rejected, as it is not clear that the cost of the OCA's proposed pilot will achieve overall benefits to Aqua's customers that will outweigh the costs. The OCA does not explain: (1) Aqua's authority to place a meter on a person's water line; (2) how higher-usage customers could be "incentivized" to opt-in in the future; nor (3) why wastewater cost of service should be increased to cover the cost of installing, maintaining, and reading water meters for wastewater service. As such, we find no basis to reverse the ALJ's recommendation. Accordingly, OCA Exception No. 14 and Mr. Osinski's Exceptions are denied.

With regard to the OCA's argument that the Company be required to study the feasibility of opening an irrigation or deduct metering program to Aqua's non-Cheltenham customers and file the results of the study no later than the Company's next base rate case, we agree with the ALJ that the OCA has not demonstrated that further study would yield better results. Aqua noted that further studies are not necessary because the results will be similar to the analysis presented by the Company in the instant base rate case. Further, Aqua noted that the installation of a meter to measure usage deductions will increase the revenue requirement and not reduce the revenue requirement subject to recovery. Aqua M.B. at 244-45. Moreover, beyond arguing that it is unaware if the Company has conducted any studies on irrigation metering, the OCA has not sufficiently demonstrated why the Company should be required to conduct an irrigation metering study at this time. Accordingly, we find the OCA's argument that the Commission require the Company to conduct an irrigation metering program study to be unpersuasive.

To the extent that the OCA contends that the ALJ did not sufficiently acknowledge the OCA's irrigation water meter study, we note that the ALJ was aware of the positions and arguments put forth by the OCA, including the studies recommended by the OCA; however, it is up to the ALJ to determine whether, and to what extent, further discussion and analysis is warranted. See 52 Pa. Code §§ 5.403, 5.404. Here, it appears that the ALJ did not believe that further consideration of these matters was necessary to agree with Aqua that no further study is necessary. Accordingly, we will deny OCA Exception No. 15.

E. Tariff Structure - Proposed Reconcilable Rider Mechanisms

1. Energy Cost Adjustment Mechanism (ECAM) and Purchased Water Adjustment Clause (PWAC)

In this proceeding, Aqua proposed two new reconcilable rider mechanisms in its Tariff Water No. 3 to recover the costs associated with its energy and purchased water costs. These riders are the Energy Cost Adjustment Mechanism (ECAM) and the Purchased Water Adjustment Clause (PWAC) which are described in more detail, below. Inasmuch as the Exceptions address the ECAM and PWAC in combination, we shall address the merits of the Exceptions on these two items in a single consolidated disposition at the end of this section.

a. ECAM

(1) Positions of the Parties

Aqua proposed to implement the ECAM in its Tariff Water No. 3 (Tariff Water No. 3, Original Pages 35-36) to ensure that it will recover all of the energy costs it purchases from natural gas and electric providers. Aqua St. 4 at 5; R.D. at 99. According

to the Company, the ECAM addresses both increases and decreases in the energy rates charged by energy suppliers from whom the Company purchases natural gas and electricity. *Id.* The Company provided the following explanation on how it proposes to implement the ECAM:

The mechanism would collect or refund any difference between the energy costs included in base rates from the Company's last rate filing and the actual energy costs incurred in the period of calculation. Within 60 days after the end of each calendar year, the Company would file a reconciliation of its actual costs to the amount recovered in base rates per actual thousand gallons sold as established in the last rate case. Any increase or decrease in these costs would be divided by the projected normalized volumes increased for growth to develop a volumetric surcharge/surcredit applied to metered customers in the following 12-month period. In this way, the Company is protected from uncontrollable increases in costs and customers will receive the benefit of decreases if those costs are less than those included in rates. The ECAM is included as a rider in the proposed tariff submitted with this filing and describes the mechanics of the clause. At the end of a 12-month period, the amount refunded/collected via the mechanism would be compared to the actual costs to be refunded/collected and the difference would be added or subtracted to the difference to be recovered/refunded in the following period.

Aqua St. 4 at 6; Aqua M.B. at 255-256.

The Company is of the opinion that the ECAM and PWAC are authorized under Section 1307 of the Code and, thus, qualify as an exception to the general prohibition of single-issue ratemaking.¹⁰⁵ The Company argued that the ECAM is similar

¹⁰⁵ In this case, as discussed below, the statutory advocates argued that the ECAM would constitute "single-issue ratemaking" because, if the ECAM were approved, the Company would be permitted "to automatically change customers' prices (rates) due to changes in single cost components." OCA St. 4 at 24.

to where other utilities are permitted to pass certain costs through a rider or surcharge as authorized by Section 1307 of the Code. Aqua St. 4-R at 2. The Company proposed that the same safeguards it proposed for its PWAC also apply to its ECAM, with the exception of the 3% billing cap. Aqua M.B. at 256, n.93. According to the Company, the Commission has approved similar clauses (*i.e.*, such as the State Tax Adjustment Surcharge (STAS) and the implementation of the reduced tax associated with the federal Tax Cuts and Jobs Act of 2017 (TCJA)) in circumstances where the costs are volatile, unpredictable, or significant. Aqua submitted that, if the PWAC is approved, its incentive to reduce operating costs will remain an important tenant of its regulatory compact with customers and regulators in the delivery of safe, adequate, and reliable utility service. Aqua St. 4 at 6; Aqua St. 4-R at 3. Similarly, the Company submitted that if the PWAC is approved, it would have ample incentive to take advantage of every reasonable opportunity to prevent increases and pursue decreases in its purchased water cost to the benefit of its customers. Aqua St. 4 at 5; Aqua St. 4-R at 3. In response to opponents who believe the ECAM and PWAC would discriminate in favor of competitive rate rider (CRR) customers and against all other customers because the proposed riders would not apply to CRR customers even though these customers are served, at least in part, with purchased water, the Company averred that the exclusion of contract customers from the operation of surcharges is not unduly discriminatory because the Commission has approved various surcharge provisions that exempt negotiated contract rate customers. Aqua St. 4-R at 4. The Company explained that CRR customers' contract prices would not change based on increases/decreases in the cost of purchased water or energy regardless of whether those changes are implemented through the PWAC or the ECAM or through changes in base rates. *Id.*

I&E, the OCA, and the OSBA each opposed the use of the proposed mechanisms for the recovery of energy expenses. R.D. at 100. According to I&E: (1) it is not appropriate to use a reconcilable rider such as the ECAM to recover O&M expenses because the energy expenses to be recovered via the ECAM are a minimal

portion of routine O&M expenses for which the Commission must undertake a substantive audit and implementation task if it is approved;¹⁰⁶ (2) contrary to the Company's opinion, the ECAM would reduce the incentive for the Company to minimize its energy usage and minimize costs via shopping/negotiating for lower rates;¹⁰⁷ (3) Aqua failed to clearly explain how its claim for recovery of a routine operating expense through the ECAM mechanism would be appropriate;¹⁰⁸ (4) Aqua ignores the fact that the other utilities, to which it referred in direct testimony, are energy companies and those energy costs are pass-through gas and electric commodity costs, not expenses for energy consumed by those utilities during routine operations;¹⁰⁹ (5) the proposed ECAM is discriminatory because it would only apply to tariff rate customers and not rider rate customers;¹¹⁰ (6) the Company has not shown that implementing the ECAM will result in the filing of fewer rate cases as it claimed, because the energy cost expense is not significantly volatile; nor is it a large enough expense to represent an extraordinary impact to the Company's operational output;¹¹¹ (7) the ECAM will only apply to the Water Tariff, which is problematic because the Company either will inappropriately use the Water Tariff to reconcile wastewater expenses, or the Company will simply treat water and wastewater customers unequally (I&E St. 1 at 53); and (8) the Company's arguments that it reports earnings on a quarterly basis does not negate the single-issue ratemaking nature of the ECAM because the proposed surcharge would benefit Aqua by increasing revenue in lockstep with expense increases for specific individual expenses while circumventing the normal rate case process in which the full examination of all expenses and revenues would be evaluated simultaneously. I&E St. 3-SR at 10-11.

¹⁰⁶ I&E St. 1 at 52-53; I&E St. 1-SR at 3; I&E St. 1-SR at 67.

¹⁰⁷ I&E St. 1 at 51; I&E St. 1-SR at 61.

¹⁰⁸ See I&E St. 3-SR at 9-13.

¹⁰⁹ I&E St. 1 at 51-52; I&E St. 1-SR at 65.

¹¹⁰ I&E St. 3 at 23-24; I&E St. 3-SR at 11-13.

¹¹¹ I&E St. 3 at 22-23; I&E St. 3-SR at 9-13.

The OCA echoed I&E's arguments and emphasized that Aqua's ECAM proposal amounts to single-issue ratemaking. OCA St. 4 at 24-25. The OCA submitted that the costs to be recovered through the ECAM do not warrant special recovery separate and apart from other costs recovered through base rates. OCA St. 4 at 25. The OCA notes that Aqua has exercised some control of purchased energy costs through its selection of suppliers (*See* Aqua Exh. 1-A, Schs. C-6.1.i., C-6.1.ii.) and has already captured the potential for future changes in purchased water and energy costs as part of its adjustments to its FPFTY claims. OCA St. 4 at 25; *see* Aqua Exh. 1-A, Schs. 6.1, 7.1.

The OSBA also agreed with I&E and the OCA that since the ECAM would make the Company whole for all energy cost increases between base rate proceedings, the ECAM would constitute single-issue ratemaking. OSBA M.B. at 6. The OSBA submitted that recovery of energy costs through the ECAM is unreasonable because the Company would have no incentive to control its energy usage or costs because they would automatically be passed onto customers. OSBA St. 1 at 22. The OSBA further noted that the ECAM would insulate the Company from fluctuating energy costs, thereby lowering Aqua's business risk, which should result in a lower ROE for Aqua. *Id.* However, the OSBA indicated that the Company made no such proposal, and that by lowering Aqua's business risk, while not lowering the Company's ROE, the Company's shareholders are the entities that would most benefit from the ECAM proposal. OSBA St. 1 at 22. According to the OSBA, the only way ratepayers would benefit from ECAM is if energy costs decrease between base rate proceedings; but given the economic challenges due to rising energy costs as well as the ongoing impact of the COVID-19 pandemic, the OSBA urged the Commission to incentivize Aqua to aggressively control its energy costs by rejecting the ECAM proposal. OSBA M.B. at 6.

Aqua LUG agreed with the statutory advocates' arguments that the ECAM is nothing more than an unjust and unreasonable attempt at single-issue ratemaking that should be rejected by the Commission. In addition, the Aqua LUG argued that Aqua's

circumstances with relation to its purchased water and energy expenses simply do not warrant the implementation of an automatic recovery mechanism, as the costs to Aqua for its purchases of water supplies do not constitute significant expenses that require adjustments between base rate cases. Aqua LUG M.B. at 5-6.

(2) Recommended Decision

The ALJ agreed with the statutory advocates and recommended that the ECAM for the recovery of energy costs be rejected. The ALJ found that Aqua is a large company with considerable buying power and there is no reason to believe that it cannot adequately control its energy costs through normal cost control mechanisms. R.D. at 101-02. The ALJ further found that incentivizing cost containment by including energy costs in base rates is more effective than relying on the notion of a “regulatory compact with customers and ratepayers in the delivery of safe, adequate, and reliable utility service.” *Id.* (citing Aqua St. 4 at 6). The ALJ noted that in the current economic climate, energy costs are not likely to decline, and this would be the only scenario where ratepayers would benefit from permitting the recovery of costs through a rider rather than through base rates. R.D. at 102.

The ALJ also agreed with the advocates that the ECAM equates to single-issue ratemaking. R.D. at 102. In support of this determination, the ALJ cited to a prior case involving a Collection System Improvement Charge (CSIC) rider in which the Pennsylvania Commonwealth Court declared that “single-issue rate making is prohibited if it impacts on a matter considered in a base rate case.”¹¹² R.D. at 102 (citing *CSIC Order*). In *CSIC Order*, the Court ruled that “[t]he ‘cursory’ review undertaken for a

¹¹² *Popowsky v. Pa. PUC*, 869 A.2d 1144, 1152 (Pa. Cmwlth. 2005) (*CSIC Order*), appeal denied, 895 A.2d 552 (Pa. 2006) (citing *Phila. Elec. Co. v. Pa. PUC*, 502 A.2d 722, 727-28 (Pa. Cmwlth. 1985) (*PECO 1985*) and overturning Commission’s grant of a wastewater utility’s request to implement a CSIC).

surcharge is not a substitute for the review undertaken in a base rate case to determine whether a rate is just and reasonable.” R.D. at 102 (quoting *CSIC Order*, 869 A.2d at 1157). Thus, the ALJ ruled that “[i]t is inappropriate to single out this cost for rate recovery without recognizing other possibly offsetting changes in costs and revenues that could ordinarily be thoroughly examined in a base rate proceeding, as Aqua’s claims of expenses and offsetting savings and revenues are being examined in the instant case.” R.D. at 102. The ALJ explained that to do so would violate the ratemaking principle of matching revenues, expenses, return and rate base. R.D. at 102 (citing OCA St. 3 at 15-16).

The ALJ concluded her recommendation with regard to the ECAM by noting that the financial risk of greater energy bills serves as an incentive to Aqua to seek methods to reduce its energy costs, whether through shopping for competitive suppliers or implementing other cost-saving conservation measures. R.D. at 102.

b. PWAC

(1) Positions of the Parties

Aqua proposed to implement the PWAC in its Tariff Water No. 3 (Tariff Water No. 3, Original Pages 37-38) that would enable the Company to recover the costs of water it purchases for resale from non-affiliated suppliers. Aqua St. 4 at 2. According to the Company, the rider addresses both increases and decreases in the price it pays for purchased water. *Id.* at 2-3. If rates are increased, the Company cannot recover those costs until the next rate case is filed; if rates are decreased, the customer must wait until the next rate case to benefit from that reduced cost. *Id.* at 3. Additionally, the Company proposed to include a 3% cap to its proposed PWAC as well as an audit and reconciliation process to protect its customers from unjust and unreasonable rates. *Id.*

The Company provided the following explanation on how it proposes to implement the PWAC:

The PWA[C] would adjust customers' bills by adding a charge or credit to reflect increases or decreases, respectively, in the Company's "Baseline Cost." The Baseline Cost is the annual purchased water costs approved as an operating expense in the Company's last base rate case. When one or more of the Company's suppliers change the rates for water purchased by the Company, the Company will re-compute its annual purchased water costs based on the level of consumption and other billing determinants that formed the basis for the Company's calculation of its Baseline Cost. If there is a change in purchased water costs above or below the Baseline Cost, a charge or credit, as applicable, would be added to customers' bills. More precisely, the PWA[C] provides the Company the ability to implement a charge to recover an increase in purchased water costs above the Baseline Cost or a credit to pass back savings from a decrease in purchased water costs below the Baseline Cost.

Aqua St. 4 at 3-4; Aqua M.B. at 248-49.

As noted, Aqua proposed the PWAC to address both increases and decreases in the rates charged by non-affiliated suppliers from whom the Company purchases water. R.D. at 102 (citing Aqua St. 4 at 2); Aqua Tariff Water-PA P.U.C. No. 3 at 37-38. Aqua's PWAC proposal relies, in part, on the Commission's prior approval of a similar recovery mechanism for Newtown Artesian Water Company in 2010.¹¹³ The Company noted that the PWAC for Newtown Artesian Water Company contained safeguards, and that it has proposed those same safeguards for the PWAC in this proceeding. *See* Aqua M.B. at 249, n. 88, which delineates the four safeguards.

¹¹³ *Pa. PUC v. Newtown Artesian Water Co.*, Docket No. R-2009-2117550 (Order entered April 15, 2010) (*Newtown Artesian Water*) at 6-17 affirmed by *Popowsky v. Pa. PUC*, 13 A.3d 583 (Pa. Cmwlth. 2011) (*Popowsky 2011*).

The statutory advocates have raised most of the same arguments against the PWAC that they made against the ECAM. R.D. at 103. As with the ECAM, I&E argued that the PWAC is discriminatory and that Aqua has not provided a convincing reason for treating purchased water expenses as anything other than an O&M expense which should be recovered in base rates. *Id.* (citing I&E St. 3 at 14). I&E asserted that the Company's request to use the PWAC to recover future increases in purchased water through a reconcilable surcharge is an unreasonable exception to the normal rate making treatment for purchased water expense and would violate the principle of "single issue ratemaking." *Id.* Aqua M.B. at 250. I&E submitted that in the past, the Commission only granted surcharge treatment when a utility has demonstrated that the expense in question was volatile or unpredictable and the level of the expense is significant when compared to total O&M expenses including depreciation expense. *Id.* However, in this case, I&E asserted that Aqua failed to present sufficient evidence that its purchased water expense is volatile, unpredictable, or significant.¹¹⁴

The OCA added that purchased water costs are known and are subject to agreements with the provider. OCA St. 4 at 25. Since Aqua has voluntarily entered into its contracts to purchase water with various entities, the OCA contended that those costs are not entirely beyond its control.¹¹⁵

The OSBA observed that like the ECAM, allowing Aqua to use the adjustment clause would not incentivize the Company to control its purchased water costs and the only way that ratepayers would benefit would be if purchased water costs declined between rate cases. OSBA St. 1 at 25. In addition, the OSBA's witness, Mr. Kalcic, argued that the PWAC was biased in favor of shareholders and would

¹¹⁴ See I&E St. 3 at 11-19 and I&E St. 3-SR at 7-8 for a full discussion of the PWAC issue.

¹¹⁵ See, e.g., Aqua Exh. 1-A, Sch. C-7.1.i. Also, see OCA St. 4 at 24-25 for a full discussion of the OCA's position on the ECAM and PWAC.

insulate Aqua's earnings. OSBA St. 1 at 22-25. Finally, the OSBA asserted that PWAC is unnecessary because the Company's purchased water costs are \$4.5 million, whereas Aqua's claimed water cost of service is \$575.03 million. Purchased water costs are only 0.7% of the Company's total costs. Any changes in water costs will have a minimal impact on Aqua's earnings. OSBA St. 1 at 24.

(2) Recommended Decision

The ALJ recommended that Aqua's proposed PWAC be rejected because Aqua failed to demonstrate that the PWAC is necessary, just, or reasonable. R.D. at 102-04. In reaching her decision, the ALJ relied on the arguments proffered by the statutory advocates which included many of the same arguments made in opposition to the ECAM.

The ALJ initially found that Aqua did not provide any convincing reasons why purchased water expenses should be treated as anything other than an O&M expense that are recoverable in base rates. R.D. at 103. The ALJ agreed with I&E that the Company's request for an exception to the normal ratemaking treatment for purchased water expense through a reconcilable surcharge is unreasonable based on past policy where the Commission only granted surcharge treatment when it had been demonstrated that the expense in question was volatile or unpredictable, and the level of the expense was significant when compared to total O&M expenses, including depreciation expense. R.D. at 103 (citing I&E St. 3 at 14). The ALJ found that Aqua did not present any such evidence related to its purchased water expense. R.D. at 103 (citing I&E St. 3 at 11-19; I&E St. 3-SR at 7-8).

Next, the ALJ concluded that Aqua's purchased water costs are not entirely beyond its control in that Aqua's purchased water costs are known costs because they are subject to agreements with the provider. R.D. at 103 (citing Aqua Exh. 1-A,

Sch. C-7.1.i). The ALJ also concluded that permitting Aqua to use the PWAC would not incentivize the Company to control its purchased water costs and the only way that ratepayers would benefit would be if purchased water costs declined between rate cases. R.D. at 103. The ALJ further found that the PWAC is not necessary because any changes in water costs will have minimal impact on Aqua's earnings since the Company's purchased water cost of \$4.5 million is only 0.7% of its total claimed water cost of service of \$570.03 million. R.D. at 104 (citing OSBA St. 1 at 24).

Finally, the ALJ ruled that Aqua's reliance on *Newtown Artesian Water* is misplaced. R.D. at 104. In support of her judgment, the ALJ explained:

At the time of its request, Newtown purchased nearly 60% of its water from other sources. [*Newtown Artesian Water* at 3] Its purchased water expense represented about 25% of its annual revenues and 34% of its O&M expenses for the same period. [*Newtown Artesian Water* at 3; *see also* I&E St. 3 at 18-19; I&E Exh. 3, Sch. 3 at 1-2] In stark contrast, Aqua's projected purchased water costs will amount to only about 0.7% of its total water cost of service. [OCA St. 4 at 25] Aqua is not a small utility where purchased water or energy costs constitute a significant portion of its cost of service. Aqua's costs are not so significant such that they would cause its overall cost of service to vary widely from authorized revenues as a result of suppliers' price changes. Similar to ECAM, the financial risk of greater purchased water bills serves as an incentive to Aqua to seek methods to reduce its purchased water costs, whether through shopping for competitive suppliers, supplying more of its own water, reducing water losses, or implementing other cost-saving conservation measures. Aqua has failed to demonstrate that the PWAC is necessary, just or reasonable.

R.D. at 104 (footnote numbers omitted).

c. Aqua Exception No. 11 and Replies

In its Exception No. 11, Aqua disagrees with the conclusions the ALJ reached in support of her recommendations that the proposed ECAM and PWAC be rejected. Aqua Exc. at 35-36; R.D. at 99-104. Those conclusions include: (1) the ECAM and PWAC constitute impermissible single-issue ratemaking (R.D. at 102); (2) the Company failed to demonstrate that it cannot adequately control its energy and purchased water costs through normal mechanisms (R.D. at 101-102; 104); (3) the Company's energy and purchased water costs each do not constitute a significant amount of Aqua's cost of service (*Id.*); and (4) customers are not likely to benefit from the ECAM because energy costs are not, likely to decline in this climate (R.D. at 102). For the reasons discussed below, the Company requests that the above findings be rejected and each of the reconcilable riders be approved.

First, Aqua maintains its position that the two new reconcilable riders should be approved because it has demonstrated that they satisfy the requirements for approval of reconcilable riders under Pennsylvania law and Section 1307(a) of the Code. Aqua Exc. at 36 (citing Aqua M.B. at 245-249; Aqua R.B. at 105-106). Additionally, Aqua submits that because each rider seeks to recover an expense that is easily identifiable and beyond the Company's control, it has adequately demonstrated that the ECAM satisfies the exception to the prohibition against single-issue ratemaking. Aqua Exc. at 36.

The Company also disagrees with the ALJ's finding that energy costs are not likely to decline. The Company contends that the ALJ's statement is an unsupported assertion used to undermine Aqua's otherwise unrebutted testimony that any energy cost savings would be passed through to customers in a timely manner. *Id.*

In view of the above arguments, the Company requests that, for the reasons more fully explained in its Briefs, the Commission reject the ALJ's findings and approve the proposed ECAM. Aqua Exc. at 36 (citing Aqua M.B. at 235-58; Aqua R.B. at 105-07). We refer to the "Positions of the Parties" sections, above, which address the Company's positions with regard to the issues it raised in its Exceptions here concerning these ECAM and PWAC riders.

In its reply, I&E disagrees with the Company that its ECAM and PWAC riders satisfy the requirements under Pennsylvania law and Section 1307(a) of the Code. I&E also submits that Aqua continues to aver, incorrectly, that the proposed reconcilable riders satisfy the well-recognized exception to the prohibition against single-issue ratemaking, and that each rider seeks to recover an expense that is easily identifiable and beyond the Company's control. I&E R. Exc. at 11.

In regard to the ECAM, I&E avers that the ALJ appropriately considered the counter arguments made by the statutory advocates and correctly recommended that the ECAM for the recovery of energy costs should be rejected. I&E R. Exc. at 11 (citing R.D. at 101). I&E agrees with the ALJ's reasoning that because Aqua is a large company with considerable buying power, there is no reason to believe that it cannot adequately control its energy costs through normal cost control mechanisms. In consideration of the above, and the fact that the ALJ concluded that the ECAM would equate to single-issue ratemaking, I&E believes Aqua's Exception should be denied. I&E R. Exc. at 11.

With regard to the PWAC, I&E opines that the ALJ correctly agreed with the statutory advocates by rejecting the PWAC and recommending that Aqua continue to recover its purchased water costs in base rates rather than through the PWAC. I&E R. Exc. at 11 (citing R.D. at 103). I&E agreed with the ALJ that Aqua's purchased water cost, which amounts to only 0.7% of its total water cost of service, is not a significant portion of its total water cost of service. I&E R. Exc. at 11 (citing R.D. at 104). As such,

I&E maintains that Aqua's costs are not so significant that they would cause its overall cost of service to vary widely from authorized revenues due to its suppliers' price changes. *Id.* I&E, therefore, asserts that since Aqua has failed to demonstrate that the PWAC is necessary, just or reasonable, the Commission should reject Aqua's Exception on this matter. I&E R. Exc. at 11-12.

In its reply to Aqua's Exception No. 11, the OCA renders similar arguments to those raised by I&E. OCA R. Exc. at 20-21. The OCA agrees with the ALJ to reject the ECAM because it constitutes single-issue ratemaking, and it is not appropriate to adopt this type of reconcilable rider mechanism because Aqua is adequately able to control its energy costs. OCA R. Exc. at 20 (citing R.D. at 101-02).

The OCA also submits that it supports the ALJ's recommendation to reject the PWAC because the ALJ correctly found that Aqua's reliance on *Newtown Artesian Water* was misplaced. OCA R. Exc. at 20 (citing R.D. at 103 and *Newtown Artesian Water* at 6-17). The OCA references the ALJ's Recommended Decision comparing Newtown with Aqua in which the ALJ stated that Newtown purchased nearly 60% of its water and that Newtown's expense was about 25% of its annual revenues and 34% of its operation and maintenance expenses. In contrast, Aqua's projected purchased water costs are only about 0.7% of its total water cost of service.¹¹⁶ OCA R. Exc. at 20 (citing R.D. at 104; OCA M.B. at 114).

The OCA also requests that the Commission reject Aqua's continued stance in its Exceptions that Section 1307(a) justifies implementing the ECAM and PWAC because Aqua's energy costs and purchased water costs are outside of its control. In this regard, the OCA submits that Aqua's position is unsupported because, as the ALJ found,

¹¹⁶ It is noted that the OCA appears to inadvertently state in its reply that Aqua's projected purchased water costs are about "1.4% of its total water cost of service."

due to the large size of Aqua, which has considerable buying power, there is “no reason to believe that it cannot adequately control its energy costs through normal cost control mechanisms.” OCA R. Exc. at 21 (citing R.D. at 101). Since Aqua has voluntarily entered into contracts to purchase water with various entities, the OCA contends that those are known costs for which Aqua can exercise some control. *Id.* The OCA also notes that Aqua has exercised some control through its selection of electricity suppliers. OCA R. Exc. at 21 (citing OCA R.B. at 69).

The OCA concludes its reply by asserting that the costs at issue in the ECAM and PWAC do not meet the criteria that the Commission and Courts have applied in approving a Section 1307(a) surcharge. OCA R. Exc. at 21 (citing OCA R.B. at 70-71). In this regard, the OCA argues that the associated costs are not extraordinary, substantial, unexpected, or non-recurring. Instead, the OCA opines that such costs represent the normal, ongoing costs of providing water service that are such a small percentage of Aqua’s overall cost of service that any fluctuations will have minimal impact. OCA R. Exc. at 21.

In its reply to Aqua’s Exception No. 11, the OSBA makes similar arguments as I&E and the OCA that Aqua’s ECAM and PWAC do not satisfy the requirements of Section 1307(a) of the Code. OSBA R. Exc. at 4, 5. The OSBA also disagrees with the Company’s argument that the proposed riders qualify as a “well recognized exception to the prohibition against single-issue ratemaking” because each of them would move consideration of a *single* ratemaking expense outside the context of a traditional base rate proceeding. OSBA R. Exc. at 3, 4, 6 (citing Aqua Exc. at 36). The OSBA submits that the ECAM and PWAC are classic examples of single-issue ratemaking and would provide no incentive to control its energy and purchased water costs because the ECAM, in particular, would insulate the Company from fluctuating energy costs, and any energy and purchased water cost increases under the ECAM and PWAC, respectively, would be passed along to customers. OSBA R. Exc. at 4, 5.

The OSBA also reinforces its previous argument that the ECAM would lower Aqua's business risk, which should lower its ROE. The OSBA notes that the Company did not make such a proposal in this rate proceeding. Accordingly, the OSBA remains of the opinion that if the Company's ROE is not lowered in conjunction with the resulting lower business risk, the approval of the ECAM rider would only serve to benefit the Company's shareholders. OSBA R. Exc. at 4 (citing OSBA St. No. 1 at 21-22).

d. Disposition

After thoroughly reviewing the record with respect to the ECAM and the PWAC, we shall deny Aqua's Exception No. 11 and adopt the ALJ's recommendations that reject the two reconcilable rider mechanisms in accordance with the arguments set forth by I&E, the OCA, the OSBA and Aqua LUG in this proceeding.

The primary disagreement between the Company and the opposing Parties centers on whether the tariffed ECAM and PWAC riders satisfy the requirements for approval of reconcilable riders under Pennsylvania law and Section 1307(a) of the Code. I&E, the OCA, the OSBA and Aqua LUG (opposing Parties) were opposed to these riders and argued that approving them would constitute impermissible single-issue ratemaking. I&E M.B. at 91-95; OCA M.B. at 112-15; OSBA M.B. at 5-7; Aqua LUG M.B. at 4-6. Aqua, however, took the position that Section 1307(a) specifically provides an exception to the prohibition against single-issue ratemaking, and that Aqua's proposal to add the riders is almost identical to the rider proposed and approved in *Newtown Artesian Water*. Aqua R.B. at 105. Aqua also submitted that I&E's, the OCA's, and the OSBA's attempts to distinguish this case on the basis that Aqua's cost are not as significant as in *Newtown Artesian Water* also fail.¹¹⁷ The Company argued that while

¹¹⁷ See Aqua R.B. at 105, n.41 OCA M.B. at 114; I&E M.B. at 92, 94; OSBA M.B. at 6-7.

the court in *Popowsky 2011* recognized that *Newtown Artesian Water* purchased a significant portion of its water from other sources, precedent clearly demonstrates that where an automatic adjustment clause is not specifically authorized by statute, a utility must show that the expense is easily identifiable and beyond the utility's control.¹¹⁸ Thus, Aqua contends that it has made this showing. Aqua R.B. at 105-06, n.41.

Upon our review of the record, we are not persuaded by the Company's arguments that there is a need to implement the ECAM and PWAC in this proceeding. First and foremost, we agree with the ALJ and the opposing Parties that granting Aqua's request to adopt the riders constitutes single-issue ratemaking because the costs that Aqua proposes to recover through the reconcilable surcharges apply to costs that are normal, ongoing costs of providing water service. Therefore, because we find that the costs are not unique, unexpected, or non-recurring, we conclude that it would not be prudent to permit the Company to use the Section 1307(a) statute to justify its requests for the proposed riders because the Company has not persuaded us that it has experienced any extraordinary circumstances with regard to its purchased water and energy costs when compared to the other routine O&M costs it recovers through base rates.

We also disagree with the Company's contention that since the Commission approved a similar rider in *Newton Artesian Water*, the Commission should approve its proposed riders in this proceeding. Our review of the record indicates that there is a major difference between the rider approved for *Newtown Artesian Water* and those proposed here. According to testimony presented by I&E's witness, Mr. Esyan Sakaya, "unlike Aqua's situation, Newtown purchased approximately 52% of the water sold in the first half of 2009 from the Bucks County Water Authority (I&E Exh. No. 3, Sch. 3, p.1)" and "[t]he purchased water expense was over 29% of total O&M and depreciation expense for the same period (I&E Exh. No. 3 Sch. 3, p.2)." I&E St. 3 at 18.

¹¹⁸ See Aqua M.B. at 245 (citing, in part, *Popowsky 2011*).

Here, the record indicates that Aqua only purchases 2.46% of the total water it sells. Mr. Sakaya further testified:

The total proposed purchased water expense claim is \$4,135,311 (Aqua Ex. No. 3, Sch. C-7 1.i). Subtracting the affiliated purchases of \$297,839 leaves \$3,837,472 ($\$4,135,311 - \$297,839$) of non-affiliated purchase water expense. The total Operating, Maintenance and Depreciation expense for the Company is approximately \$272,527,954 (Aqua Ex. 5-A, Sch. C, column 2, line 4, p. 9). Therefore, non-affiliated purchased water expense is only 1.4% ($\$3,837,472 / \$272,527,954$) of total operating, maintenance and depreciation expenses. This 1.4% is minimal compared to the 24% - 70% of purchased gas costs that is typical for a natural gas utility with a PGC adjustment.

I&E St. 3 at 16. We note that the OSBA's witness, Mr. Kalcic, testified that based on the \$4.15 million in total purchased water expense claim in this proceeding, "[t]he Company's total claimed cost of service for its water operations (excluding Act 11) is \$575.03 million. As such, Aqua's claimed purchased water expense amounts to only 0.7% of its total costs." OSBA St. 1 at 24.

With regard to the Company's purchased power expense the Company proposes to recover through the ECAM, Mr. Sakaya testified:

[T]he total proposed purchased power expense, projected for the FPFTY ending March 31, 2023 is \$8,182,196 (AP Ex. No. 1-A, Sch. C-6.1, line 3). The total Operating, Maintenance and Depreciation expense for the Company is approximately \$272,527,954 (AP Ex. 5-A, Sch. C, column 2, line 4, p. 9). Therefore, purchased power expense is only 3.0% ($\$8,182,196 / \$272,527,954$) of total Operating, Maintenance and Depreciation expenses. This 3.0% is nowhere near the 24% - 70% that is typical for gas utilities with a PGC adjustment. Even large variations in an expense of this size

would not represent an extraordinary impact to the Company's operational outlook.

I&E St. 3 at 23. Using Mr. Kalcic's comparison that he calculated for the Company's total percentage of purchased water to the Company's total cost, we calculate that the Company's claimed purchased energy costs amounts to only 1.4% of its total costs $[(\$8,182,196 \div \$575,030,000) \times 100 = 1.4\%]$.

In view of the above comparisons, our approval of the reconcilable rider for *Newton Artesian Water* does not justify approving the ECAM and PWAC riders in this proceeding as argued by Aqua. The *Newtown Artesian Water* case is a rare exception where we determined such a rider was absolutely necessary because of the extraordinary circumstances in that case. Such circumstances are not relevant with regard to the Company's purchased water and energy costs in this proceeding. As the ALJ and the opposing Parties appropriately observed, these expenses are routine O&M expenses that are not unique, unexpected, or non-recurring. R.D. at 100-02. Thus, we are of the opinion that granting the Company's request to adopt its ECAM and PWAC reconcilable riders would be akin to single-issue ratemaking. As emphasized by the Commonwealth Court, single-issue ratemaking is similar to retroactive ratemaking and is generally prohibited if it impacts on a matter normally considered in a base rate case such as this proceeding. *See Popowsky 2011*, 13 A.3d at 593. Additionally, we agree with the ALJ that to approve the proposed riders "would violate the ratemaking principle of matching revenues, expenses, return and rate base." R.D. at 102. Accordingly, the Company's *Newtown Artesian Water* argument in its Exceptions is denied.

Regarding the Company's Exception to the ALJ's ruling that Aqua failed to demonstrate that it cannot adequately control its energy and purchased water costs through normal mechanisms, we again are not persuaded by the Company's arguments. The Company has not submitted any convincing historical data demonstrating erratic

fluctuations in its water or energy costs between rate cases that would persuade us that such costs are beyond the Company's control. In fact, the record demonstrates otherwise. I&E witness, Mr. Sakaya, testified that historical data submitted by the Company "shows no significant price volatility from municipal water suppliers from 2019 to 2023." I&E St. 3-SR at 13 (citing Aqua Exh. 1-A(a), Sch. C-7.1.1.). Mr. Sakaya also noted that "the cost of purchased water on a cost per unit basis generally increases from rate case to rate case like many other expenses, such as payroll and benefits, but it is not volatile and subject to large unanticipated increases or decreases." I&E St. 3 at 15. The fact that the Company's purchased water and energy expenses are not volatile or unpredictable makes it easier for the Company to control its costs. In this regard, we agree with the OCA's position that because the Company's purchased water costs are known and subject to contractual agreements with various entities, Aqua's costs are not entirely beyond its control.

We also agree with the ALJ's evaluation of this matter when she stated the following with regard to the ECAM:

As the advocates observe, Aqua is a large company with considerable buying power. There is no reason to believe that it cannot adequately control its energy costs through normal cost control mechanisms. Incentivizing cost containment by including energy costs in base rates is more effective than relying on the notion of a "regulatory compact with customers and ratepayers in the delivery of safe, adequate, and reliable utility service."

R.D. at 102.

In light of the above, we conclude that Aqua has unreasonably requested an exception to the normal rate making treatment for purchased water and energy expenses by requesting that future increases be automatically recovered through a reconcilable surcharge. Accordingly, Aqua's Exception No. 11 is denied and the ALJ's

recommendation is adopted in its entirety with regard to the proposed ECAM and PWAC.

2. Federal Tax Adjustment Surcharge

a. Positions of the Parties

Aqua proposed to add a new reconcilable surcharge, entitled the Federal Tax Adjustment Surcharge (FTAS), to its water and wastewater tariffs (Tariff Water No. 3, Original Pages 32-34, and Tariff Sewer No. 3, Original Pages 16-19) which will adjust its water and wastewater base rates when there are changes in federal corporate income tax rates by adding the revenue requirement for the incremental impact of the change in the federal corporate income tax rate. Aqua St. 8 at 14-15.

Aqua explained that the FTAS is analogous to the State Tax Adjustment Surcharge (STAS) that the Company, and other major Pennsylvania utility companies, have had in place for many years, and just as the STAS provides for adjustments to base rates for changes in state taxes (and more specifically for changes under the Pennsylvania Corporate Net Income Tax), so too does the FTAS provide for adjustments to base rates for changes in federal corporate income tax. Aqua St. 8 at 18.

According to the Company, the FTAS was proposed because significant changes in the federal corporate income tax rate can substantially impact the Company's revenue requirement and it is more appropriate to adjust rates quickly to reflect significant federal tax rate changes. Aqua St. 8 at 15, 17. The Company cited the TCJA as an example to describe the difficulty and delays of implementing federal corporate tax rate changes in the current environment. Aqua St. No. 8 at 17. The Company explained that for companies like Aqua that had planned base rate cases in 2018, the lower tax rate was reflected in those decisions prospectively in early 2019, along with refunds for 2018.

Id. The Commission set temporary rates for other companies and implemented surcredits¹¹⁹ on July 1, 2018, to begin the flow through of the tax rate decrease and required those companies to record regulatory liabilities for the first half of 2018. *Id.* This process delayed receipt of the effects of the tax rate change and required changes to rates previously charged for service. *Id.* The Company expressed its concerns that the White House recently has proposed an increase in the corporate tax rate from 21% to 28% and, if enacted, this will roll back some tax reductions enacted only a few years ago. *Id.* at 15. The Company presented an analysis showing the effect the potential corporate tax increase would have on its revenue requirement. *Id.* at 16-17. The Company opined that any delay in adjusting rates can result in either significant refunds or retroactive collections after the effective date of the tax rate change and may compel Aqua to file another rate case sooner than originally planned at significant cost and time to all parties. *Id.* at 15, 16. The Company averred that the FTAS will avoid these concerns because it is designed to adjust rates as fast as possible to reflect tax rate changes. *Id.* at 18.

I&E opposed the FTAS. According to I&E, the Company's stated need for the surcharge is speculative as the Company cannot say with certainty if or when an increase to the federal corporate income tax rate might be enacted or ever take effect. I&E St. 1-SR at 32-46. Furthermore, the Commission and its advisory staff have appropriately responded to changes in tax law as they have recently dealt with this issue in response to the reduction in the federal corporate income tax rate that took effect starting January 1, 2018, because of the TCJA. *Id.* at 32. I&E is confident that the Commission would provide adequate and timely guidance on a statewide basis to affected regulated utilities if such a tax rate change occurs. Accordingly, I&E opined that there is no need for the proposed FTAS at this time.

¹¹⁹ Generally, a "surcredit" is a surcharge returned to a customer.

I&E also had concerns about allowing rate adjustments in a surcharge mechanism for excess ADIT because deferred taxes require more scrutiny of regulators and statutory parties due to subjectivity in certain circumstances in determining the proper normalization periods, particularly for tax differences associated with non-protected assets that are not subject to the strict requirements of IRS normalization rules. *Id.* at 33-39. In addition, I&E testified in favor of a one-sided interest component for a reconcilable rider where the Company must pay interest to ratepayers for excess tax amounts due to be refunded to ratepayers so that companies would be encouraged to promptly refund its customers. I&E St. 1-SR at 39-40.

The OCA also opposed the implementation of the FTAS. OCA St. 2 at 14-15. The OCA submitted that the Company's proposal to implement the FTAS is premised on Aqua's belief that the federal corporate income tax rate may be increased from 21% to 28%, but it is uncertain when the next change in the corporate federal income tax rate will occur, and whether the legislation enacting the change will include other provisions which affect corporate federal income tax liabilities. *Id.* at 15. Based on the provisions attached to the TCJA (*i.e.*, the tax treatment of net operating loss carryback and caps, and limits on net interest deductions), the OCA asserted that such provisions need to be given consideration before they are allowed. *Id.* According to the OCA, the FTAS is neither necessary nor reasonable because it is unknown when or even if the federal government will make legislative changes to the federal tax rate. *Id.* The OCA concluded that any changes to the federal corporate income tax rate should be addressed by the Commission on a generic basis. *Id.* at 16.

b. Recommended Decision

The ALJ agreed with I&E and the OCA that Aqua's proposed FTAS should be rejected because it is uncertain when the next change in the federal corporate income tax rate will occur, and it is unknown whether any future legislation enacting a change in

the federal corporate tax rate would include other provisions which would affect tax liabilities. The ALJ stated that, at this time, there is no pending legislation proposing an increase to the federal corporate income tax rate, and even if legislation was being considered in Congress, there is no way of knowing if or when and in what form the tax change would be implemented. The ALJ concluded that, while it may be true that changes in tax rates may affect utilities differently, the FTAS proposal is premature and should be rejected because there is no current legislation to actually consider, and Aqua is requesting a surcharge mechanism with no trend or context in which to evaluate it. R.D. at 106.

c. Aqua Exception No. 12 and Replies

In its Exception No. 12, the Company believes the ALJ erred in rejecting the proposed FTAS. Aqua Exc. at 36. First, Aqua opines neither the ALJ nor any of the other Parties found or concluded that the proposed method of calculation, mechanics, or safeguards contained in the FTAS were unreasonable. Aqua Exc. at 37 (citing Aqua M.B. at 261, noting that no parties contested these aspects of the FTAS).

The Company believes that the ALJ's concern – that a change in the federal corporate income tax rate is uncertain – is irrelevant to the determination of whether the FTAS is just and reasonable, because “if no change occurs, the FTAS has no impact upon customers,” and “if/when a change does occur, the FTAS will act as a temporary mechanism if/when a change occurs between a utility's base rates and will more-timely ensure that the impacts of the change are reflected in the utility's rates.” Aqua Exc. at 37 (citing Aqua M.B. at 262; Aqua St. 8-R at 9).

Aqua also argues that it has demonstrated that any change in the federal corporate income tax rate would have a significant impact upon tax expense, and the Company's rates. The Company estimates that an increase in the federal corporate

income tax rate from 21% to 28% would result in a \$14 million increase in its revenue requirement. Aqua Exc. at 37 (citing Aqua St. No. 8 at 1). The Company avers that this calculation is un rebutted; therefore, it is reasonable to infer that any changes in the federal corporate income tax rate, whether an increase or a decrease, will significantly impact the Company's base rates. Aqua Exc. at 37.

Aqua also reiterates its analogy of its proposed FTAS with the existing STAS mechanism in that “[j]ust as the STAS provides for adjustments to base rates for changes in state rates (and more specifically for changes under the Pennsylvania Corporate Net Income Tax), so too does the FTAS provide for adjustments to base rates for changes in federal corporate income tax.” Aqua Exc. at 37-38 (citing Aqua St. 8 at 18).

In reply to Aqua Exception No. 12, I&E first disagrees with the Company's representation that the ALJ “did not find or conclude that the proposed method of calculation, mechanics, or safeguards contained in the FTAS were unreasonable.” I&E R. Exc. at 12 (citing Aqua Exc. at 37). I&E submits that the ALJ did not have to consider whether the FTAS is reasonable because she concluded that the proposed FTAS is premature when she stated in her Recommended Decision that “at this time there is no pending legislation proposing an increase to the federal corporate income tax rate.” I&E R. Exc. at 12 (citing R.D. at 106). I&E notes that the ALJ further concluded that “while it may be true that future changes in tax rates may affect utilities differently, there is no current legislation to actually consider and Aqua is requesting a surcharge mechanism with no trend or context in which to evaluate it.” *Id.* In view of the fact that the ALJ made no determinations to find that the terms of the FTAS were reasonable, I&E submits that Aqua's Exception here should be rejected. *Id.*

In its reply, the OCA disagrees with Aqua's arguments in its Exceptions that the lack of evidence of any change in the federal tax liabilities is irrelevant, and that

there would be a large impact on Aqua if there is a change in the federal income tax rate. OCA R. Exc. at 22 (citing Aqua Exc. at 36-38). The OCA contends that Aqua's arguments are without merit because, if the issue of tax liabilities is "irrelevant," then there is no reason to implement Aqua's proposed FTAS. *Id.* Thus, the OCA opines that Aqua's position is consistent with the evidence that establishes that the FTAS is not necessary. *Id.* Because Aqua has not presented any evidence that a tax change is imminent and its witness admitted that "no one can say with any certainty if/when an increase to the federal corporate income tax will take effect," the OCA argues that Aqua's proposed FTAS must be rejected. *Id.*; R.D. at 106 (citing Aqua St. 8-R at 10).

The OCA also takes issue with Aqua's argument that the impact of any tax changes would be large. OCA R. Exc. at 22. The OCA asserts that Aqua's statement is pure speculation because the Company has no knowledge or certainty of any upcoming tax changes. The OCA avers that the Company has presented its FTAS as the only way to address a hypothetical tax change. Nevertheless, the OCA stresses that future, unknown changes to the federal corporate income tax rate should be addressed by the Commission on a generic basis for all the public utilities similar to what the Commission did in February 2018, when it initiated a generic proceeding to determine the effects of the TCJA on public utilities' tax liabilities. *Id.* (citing OCA M.B. at 83; OCA St. 2 at 15).

d. Disposition

We agree with the ALJ's recommendation that the Company's proposed FTAS reconcilable rider should be rejected because it is premature, and no trend or context has been established under which it can be evaluated. In reaching our decision on this matter, we share the concerns of the ALJ and the opposing Parties that it is uncertain when the next change in the federal corporate income tax rate will occur, and it is unknown whether any future legislation enacting a change in the federal corporate tax rate would include other provisions which would affect tax liabilities. Thus, we agree

with the ALJ that the FTAS proposal is premature because there is no current legislation to actually consider and Aqua is requesting a surcharge mechanism with no trend or context within which to evaluate it. *See* R.D. at 106. We further find that the FTAS is not necessary at this time because this Commission, in conjunction with our advisory staff, recently provided timely guidance on a statewide basis to the affected regulated utilities with regard to the method of calculation, mechanics, or safeguards on the methodology to use in implementing the federal corporate income tax rate that took effect starting January 1, 2018. *See Tax Cuts and Jobs Act of 2017*, Docket No.

M-2018-2641242. In our opinion, the Commission may utilize this same process again should changes in the federal tax rate occur in the future. Furthermore, we support the OCA's position that any changes to the federal corporate income tax rate should be addressed by the Commission on a generic basis for all the public utilities under its jurisdiction because "future legislation changing the federal corporate income tax rates may impact other provisions which affect corporate federal tax liabilities." *See* OCA M.B. at 83.

For the reasons above, we shall deny Aqua's Exception No. 12 and adopt the ALJ's recommendation that rejects the Company's FTAS reconcilable rider it proposed in its water and sewer tariffs.

3. Universal Service Rider

a. Positions of the Parties

Aqua proposed to include a Universal Service Rider (USR) in its water and wastewater tariffs¹²⁰ that would adjust its residential base rates to recover the costs of its

¹²⁰ *See* proposed Tariff Water No. 3, Original Pages 32-34, and proposed Tariff Sewer No. 3, Original Pages 19-21.

proposed customer assistance programs (CAP) from all residential customers, except those enrolled in the Company's CAPs. Aqua explained that its proposed USR is similar to the riders in the tariffs of its affiliated Peoples Companies¹²¹ and other energy utilities throughout the state and that it has filed the USR consistent with the terms of the *Aqua-Peoples Settlement*¹²² that was approved by the *Aqua-Peoples Acquisition Order*.¹²³ R.D. at 107; Aqua M.B. at 264; Aqua St. 10 at 9; Aqua St. 2 at 17-18.

According to the Company, the USR will be used to recover those costs associated with the following low-income offerings: (1) CAP discounts; (2) CAP arrearage forgiveness benefits; (3) CAP administration by a third party (*i.e.*, Dollar Energy Fund); and, (4) the proposed Conservation and Emergency Repair Program (\$100,000 per year). Aqua St. 10 at 9. Aqua's calculation of the costs to be recovered through the USR is based on its anticipated enrollment in the CAP, subject to an annual reconciliation and audit by the Commission. Aqua St. 10 at 10. Aqua submitted that approval of the USR will ensure that residential ratepayers are only responsible for actual costs of the program, rather than projected costs that may not come to fruition. *Id.*

¹²¹ The Peoples Companies include Peoples Gas Company, Peoples – Equitable Division, and Peoples Natural Gas Company LLC.

¹²² See *Joint Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties*, Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063; June 26, 2019 (*Aqua-Peoples Settlement*).

¹²³ See *Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC for All of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding, LLC's Membership Interests by Aqua America, Inc.*, Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 (Order entered Jan. 24, 2020) at 147-150 (*Aqua-Peoples Acquisition Order*).

The Company provided the following explanation on how its proposed USR will operate:

The USR would adjust customers' bills by adding a charge or credit to reflect increases or decreases, respectively, in the Company's "Baseline Cost." The Baseline Cost is the estimate to administer and provide benefits under the various program components in the proposed CAP. Costs and revenues under the USR will be reconciled each year, and an over or under collection, as applicable, will be included in the "E" factor of the charge.

Aqua M.B. at 264; Aqua St. 2 at 18.

The OCA argued that the USR should not be approved for the following reasons: (1) any recovery of low-income program costs should be recovered in base rates rather than through a reconcilable rider, and the associated costs should be based on net costs, rather than gross costs (R.D. at 107; OCA St. 5 at 42); (2) it is not appropriate for Aqua to use the Peoples Companies' reconcilable riders as models to recover costs for its low-income programs because when the Commission approved the reconcilable riders for Pennsylvania gas and electric utilities, the Commission relied upon specific statutory language from Pennsylvania Energy Competition Acts,¹²⁴ which are not applicable to water/wastewater companies (*Id.* at 43-44); (3) the recovery of the low-income program costs should not be subject to a reconcilable recovery rider because CAP costs: (a) are normal operating costs that represent a small portion of Aqua's total operating revenues; (b) will not vary widely based on changes in total consumption as would occur with energy CAPs; and (c) are not variable costs that fluctuate outside of Aqua's control (*Id.* at 45); and (4) the Company proposed to recover the low-income program costs only from the residential customer class (*Id.* at 46).

¹²⁴ Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2804(9); Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2203(8) (collectively, the Energy Competition Acts).

I&E agreed with the Company in opposing the OCA's position that the Company's universal service program (USP) costs be recovered through base rates. I&E argued it is preferable that the Company's costs for a full-scale universal service plan be recovered via a reconcilable surcharge mechanism that tracks dollar-for-dollar net costs similar to what is used by the Peoples Companies. I&E St. 1-R at 3.

I&E also opposed the OCA's suggestion that only net costs¹²⁵ of the program be recovered via base rates because the OCA failed to address how the Company would not potentially over or under-recover associated net costs if projections are incorporated as a component of base rates which would not be updated until the Company's next base rate case filing. I&E St. 1-R at 3-4.

I&E made the following three recommendations with regard to the Company's proposed USP: (1) in view of the fact that, for the first time, the Helping Hand program will be funded by involuntary ratepayer funding, the Company should be required to perform income verifications to admit participants into the programs to ensure legitimacy of applicants and reduce misuse of the program. (I&E St. 1 at 45; I&E St. 1-R at 5; I&E St. 1-SR at 53); (2) the Company should be required to perform the appropriate tracking, to be reported in the Company's next base rate case filing, that demonstrates its efforts to encourage participants to take advantage of the Federal Low-Income Household Water Assistance Program funds made available via the American Rescue Plan. (I&E St. 1 at 45; I&E St. 1-R at 5; I&E St. 1-SR at 53); and (3) that Aqua should be required to

¹²⁵ The OCA noted that the Company indicated that it does not conduct any collectability studies for its water or wastewater operations assessing the rate at which the Company converts billings into collected revenue. However, the Company did state that it has collection contracts which provide contingency fees ranging between 18% to 40% of the amount collected. Thus, the OCA recommended that a 28% offset (the middle of the contingency fee range) to the gross costs of the program be applied to obtain the net program costs that the Company should be permitted to recover. OCA St. 5 at 42.

monitor available federal and state assistance programs and notify customers of all available sources of aid. (I&E St. 1 at 49; I&E St. 1-SR at 54).

b. Recommended Decision

The ALJ recommended that the Commission approve the Company's proposed USR because she found "it is clear from a review of the *Aqua-Peoples Acquisition Order* that the Commission agreed that a 'comparable' funding mechanism as those used by the natural gas and electric distribution companies in Pennsylvania is preferable." R.D. at 108. She further determined that the use of the USR, which will be subject to audit and an annual reconciliation process, will allow actual costs to be maintained and tracked separately, because the costs proposed for inclusion in the Company's USR are easily identifiable, and any adjustments to the costs would be a simple mathematical exercise. R.D. at 108.

In further support of her recommendation to use the USR reconcilable surcharge to recover Aqua's low-income program costs, the ALJ determined: (1) certain costs that the Company will incur under its CAP program are outside of its control; (2) the Company's enrollment projections, which include a substantial ramp-up in projected participation between Years 1 and 3 of the CAP,¹²⁶ could be less than or exceed the projections; (3) since there is no limit on the number of customers who could participate in the CAP, costs may vary based on enrollment levels;¹²⁷ and (4) the ability to adjust and reconcile the costs associated with such programs via the USR "is particularly important when launching a new program that may not meet or could exceed

¹²⁶ Aqua St. 10 at 11.

¹²⁷ Aqua St. 10-R at 12; see also Aqua Exhibit RFB-1-R (The OCA's witness, Mr. Colton, admitting no limitation on the number of customers who could participate was proposed).

enrollment expectations.”¹²⁸ R.D. at 106-109. In view of the above, the ALJ agreed with Aqua that the reconcilable nature of the proposed USR will “ensure ratepayers are only responsible for actual program costs which may be more or less than original projections.” R.D. at 109 (citing Aqua St. 10-R at 13).

The ALJ explained that if the projected low-income program costs were included in base rates, as argued by the OCA, the costs would “be subsumed regardless of the potential difference between projected and actual costs.” R.D. at 109. The ALJ cited the *Final CAP Investigatory Order*¹²⁹ for the proposition that the Commission has recognized that the recovery of universal service costs through a surcharge, rather than in base rates, is a more effective way to ensure robust customer assistance programs. *Id.*

Finally, the ALJ found that the proposed rider is consistent with the general theme of the *Aqua-Peoples Settlement* to share best practices throughout Aqua and the Peoples Companies. The ALJ explained that this is reaffirmed by the plain language of the *Aqua-Peoples Settlement* which required that Aqua will include “a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania.” R.D. at 109 (citing *Aqua-Peoples Settlement* at ¶ 108; OCA St. 5 at 42-43). Therefore, the ALJ concluded that Aqua’s proposed USR should be approved because it complies with the terms of the *Aqua-Peoples Settlement* that was approved as part of the *Aqua-Peoples Acquisition Order*. R.D. at 109.

¹²⁸ Aqua St. 10-R at 13.

¹²⁹ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (Final Investigatory Order entered December 18, 2006) (*Final CAP Investigatory Order*) at 15. *See also* testimony of Aqua’s witness, Ms. Rita F. Black, Aqua St. 10 at 10.

c. OCA Exception No. 16 and Replies

In its Exception No. 16, the OCA excepts to the ALJ's recommendation to adopt Aqua's proposed USR to recover the costs associated with its CAPs. OCA Exc. at 26 (citing R.D. at 107-09). The OCA maintains its position that it is proper that Aqua recover the costs of the low-income programs through base rates as normal operating expenses, rather than through the reconcilable USR, and that Aqua should only be permitted to recover the *net* costs of the program. OCA Exc. at 26, 28 (citing OCA M.B. at 152-61; 175-78; OCA R.B. at 82-89).

In support of its Exception, the OCA first asserts that, contrary to the ALJ's and the Company's view, the language in the *Aqua-Peoples Settlement* that directed the Company to file "a comparable cost recovery mechanism" to the natural gas and electric utilities' cost recovery mechanism, did not require that a specific cost recovery mechanism be used. OCA Exc. at 26 (citing R.D. at 147-50). The OCA asserts that the ALJ relied on only a portion of the language in the *Aqua-Peoples Settlement*, and thus, erred by interpreting the above language to mean that Aqua *must* propose, in its next base rate proceeding, a cost-recovery mechanism *just* like that used by the natural gas and electric utilities. OCA Exc. at 26. The OCA cites to its Briefs in which it provided detailed arguments on why a reconcilable rider is not required by the *Aqua-Peoples Settlement*. OCA Exc. at 27 (citing OCA M.B. at 152-161; 175-78; OCA R.B. at 82-89).

In reply, Aqua disagrees with the OCA's position that the ALJ erred by relying on only a portion of the *Aqua-Peoples Settlement* and that the OCA is attempting to "walk back" its admission in its Briefs that Aqua was contractually obligated under this settlement to "implement a universal service program with a suite of low-income assistance programs." Aqua R. Exc. (citing Aqua R.B. at 67; OCA M.B. at 120). The Company submits that the OCA's argument is inconsistent because it wants Aqua to implement a universal service plan similar to those in place at other energy utilities, but

then proposes that Aqua be required to recover its costs differently than the energy utilities' methodology. Aqua R. Exc. at 14 (citing Aqua R.B. at 68).

I&E also disagrees with the OCA's position and replies that it agrees with the ALJ's recommendation that the *Aqua-Peoples Acquisition Order* that approved the *Aqua-Peoples Settlement* permitted Aqua to use a reconcilable rider. I&E avers that Aqua's proposed USR is consistent with the directives of the Commission in the *Aqua-Peoples Acquisition Order* and Aqua's obligation to comply with the terms of the Settlement. I&E R. Exc. at 17-18.

Next, the OCA excepts to the ALJ's conclusion that the program costs are outside of the Company's control, and that a reconcilable surcharge is necessary to allow for full cost recovery and to ensure robust customer assistance programs. OCA Exc. at 27 (citing R.D. at 107-08). The OCA avers that the ALJ disregarded the fact that there is no statutory basis for the full cost recovery of water low-income program costs as there is for energy low-income program costs. Thus, the OCA asserts that a comparison between energy utilities' mature universal services programs with a statute-defined cost recovery mechanism and Aqua's proposed discount/arrearage forgiveness programs is not appropriate. OCA Exc. at 27.

Aqua replies that it disagrees with the OCA's claims that the costs of the program are within Aqua's control, and there is no statutory basis for the cost recovery of water program costs. The Company retorts that the OCA is ignoring its own admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. Aqua R. Exc. at 14 (citing Aqua M.B. at 159; OCA St. 5SR at 29).¹³⁰ In addition, the Company argues that the OCA's assertion that there is no

¹³⁰ The Company projects that the cost of discounts for the water program alone range from \$3 million to \$8 million. The OCA projects costs of \$4 million to \$10 million under its proposal. See Aqua R.B. at 69.

statutory basis for this reconcilable rider ignores Section 1307(a) of the Code, 66 Pa. C.S. § 1307(a). Aqua claims that it has demonstrated that the rider satisfies Section 1307(a). Aqua R. Exc. at 14 (citing Aqua M.B. at 264-265; Aqua R.B. at 68-70).

Next, the OCA argues that the ALJ ignored that every other Pennsylvania water utility with low-income discount programs, including Pennsylvania-American Water Company and Pittsburgh Water and Sewer Authority (PWSA), treat their low-income program costs as normal operating costs that are recovered through base rates.¹³¹ OCA Exc. at 27 (citing OCA R.B. at 87; OCA St. 5SR at 28-29). The OCA asserts that the Commission should also require that Aqua continue doing the same in this case. The OCA adds that contrary to the ALJ's conclusion, there is no need for Aqua to use a reconcilable surcharge because Aqua does not anticipate that there will be substantial fluctuations in the costs of the program. OCA Exc. at 27 (OCA R.B. at 88; OCA St. 5 at 45-46).

The Company rejoins that the OCA disregards the fact that other water utilities' programs are not as robust as the programs proposed by Aqua. Aqua R. Exc. at 14 (citing Aqua M.B. at 158).

Finally, the OCA excepts to the ALJ's Recommended Decision because she did not address the OCA recommendations that only net costs, rather than gross costs, of low-income programs should be recovered, and those costs should be included in base rates, including a cost offset to reflect the benefits of the program to Aqua's uncollectible expenses. OCA Exc. at 28 (citing OCA St. 5 at 42). The OCA submits that the ALJ appeared to ignore the need for an offset which the OCA recommended be established to address the impact of the program on Aqua's uncollectible expenses. *Id.* According to the OCA, an offset is needed for the discount and arrearage forgiveness program costs in

¹³¹ See OCA R.B. at 87; OCA St. 5SR at 28-29.

order to prevent the double-recovery of costs. *Id.* The OCA cites to its Briefs in which it explained that the Commission previously has concluded that double recovery is possible through a reconcilable surcharge and that an offset is appropriate here. OCA Exc. at 28 (citing OCA M.B. at 153-54; OCA R.B. at 83-85).

The Company replies that it disagrees with the OCA's claims that an offsetting reduction to Aqua's uncollectibles expense associated with the proposed USP is required. The Company asserts that the OCA's Exception should be denied because this recommendation is premature and unnecessary where a reconcilable rider is used. Aqua R. Exc. at 14-15 (citing Aqua M.B. at 155-61, 264-65; Aqua R.B. at 67-71, 107).

I&E also replies that it disagrees with the OCA's arguments in its Exceptions that Aqua's net costs of the program should be recovered in base rates. I&E R. Exc. at 12. I&E further states that it supports the ALJ's determination that the *Aqua-Peoples Settlement* requires that Aqua's proposal include "a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania," which do not net their costs. I&E R. Exc. at 12 (citing R.D. at 109).

d. Disposition

The primary argument in this matter focuses on whether the *Aqua-Peoples Acquisition Order*, through the approved, modified, *Aqua-Peoples Settlement*, requires or permits Aqua to implement a reconcilable rider (*i.e.*, the proposed USR) to recover its low-income program costs in its CAP program. The ALJ, Aqua, and I&E share the opinion that it does. However, the OCA asserts in its Exceptions that the ALJ erred in her reliance on the *Aqua-Peoples Settlement* by incorrectly interpreting that it meant that Aqua was given the clearance to file the reconcilable USR exactly like those used by its Peoples' affiliates to recover the costs associated with its low-income CAP.

Upon our review of the *Aqua-Peoples Merger Order* and the *Aqua-Peoples Settlement*, we disagree with the ALJ's reliance on language in the *Aqua-Peoples Settlement* that the ALJ used as the basis to recommend that the Company's proposed USR be approved. As the OCA noted, the ALJ relied on the testimony of Aqua's witness, Ms. Rita Black, who testified with regard to the Company's implementation of the terms of Paragraph 108 of the *Aqua-Peoples Settlement* as follows:

[Paragraph 108] notes that, through the Helping Hand Collaborative process, Aqua PA was to consider development of a comprehensive and universal service and conservation program. The items for evaluation included a customer assistance program, hardship fund, water conservation program, low-income service repair program and a comparable funding mechanism as utilized by energy utilities in the Commonwealth. Following this evaluation, Aqua PA would propose a recoverable universal service plan in its next base rate proceeding using input from the Helping Hand Collaborative and best practices from the Peoples Companies.

Aqua St. 10 at 3; *see also Merger Settlement* at 135; OCA M.B. at 117; OCA R.B. at 85-86; OCA St. 5 at 7. In support of her recommendation, the ALJ averred, "[i]t is clear from a review of the *Aqua Peoples Acquisition Order* that the Commission agreed that a 'comparable' funding mechanism as those used by the natural gas and electric distribution companies in Pennsylvania is preferable." R.D. at 107-08 (citing *Aqua-Peoples Acquisition Order* at 147-150).

We disagree. We find that the *Aqua-Peoples Settlement* did not dictate that a specific cost recovery be used. When we adopted the *Aqua-Peoples Settlement*, we never *directed* that Aqua use the same mechanism used by the Peoples' Companies and other energy Companies to recover the costs of its low-income programs. Paragraph 108 of the *Aqua-Peoples Settlement*, which we approved without modification, is stated in its entirety as follows:

Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA. The items to be evaluated for inclusion in Aqua PA's proposal include: (1) a bill payment/customer assistance program; (2) a hardship fund; (3) a water conservation program; (4) a low-income service repair line and replacement program; and (5) a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania. Aqua PA will submit a rate recoverable universal service proposal in Aqua PA's next base rate case that considers the best practices learned from the Peoples Companies and through conversations from the Helping Hand collaborative.

Aqua-Peoples Settlement ¶ 108 at 23 (emphasis added). We note that Item No. 5 in Paragraph 108 merely states that the Company will include “a *comparable* funding mechanism” for evaluation, and the sentence following Item No. 5 states that Aqua will submit a “*rate recoverable universal service proposal*” in its next base rate case. However, the testimony of Aqua's witness, Ms. Black, quoted above, left out the word “rate” before “recoverable” when she stated, “Aqua PA would propose a *recoverable* universal service plan in its next base rate proceeding.” Nothing in Paragraph 108 specifically directed the type of a comparable funding mechanism that must be evaluated. The Settlement stated only that Aqua was allowed to “consider” such a funding mechanism. Furthermore, the text “rate recoverable” implies that the costs of the universal service proposal should be recovered through base rates. In this regard we, agree with the OCA's assertion that “[i]f the parties had intended to mandate use of a funding mechanism akin to the mechanisms used by Pennsylvania's energy utilities, the Settlement would have said so.”¹³² Similarly, if it were the intent of the Commission to permit the use of a reconcilable rider, we specifically would have modified Paragraph 108 to state that was our intention. Accordingly, we conclude in view of the fact that the

¹³² OCA St. 5SR at 36

settlement stated only that Aqua was allowed to “consider” such a funding mechanism, we reject the ALJ’s reliance on Paragraph 108 in support of her recommendation that the Company’s USR should be approved because it is consistent with the Commission’s directive to file a reconcilable rider to recover its low-income CAP expenses.

It is also important to note that the use of a Section 1307(a) reconcilable rider, such as is proposed here, is the exception, rather than the rule, as can be observed during the history of the Commission, how few times the use of this mechanism has been either legislatively mandated (*i.e.*, when the Energy Competition Acts specifically permitted its use for energy companies) or directed by the Commission (*i.e.*, the implementation of the STAS).¹³³ In this regard we agree with the OCA that Section 1307(a) of the Code does not authorize the Commission to approve surcharges other than in limited circumstances.¹³⁴ OCA M.B. at 157. We further note that when we established the reconcilable surcharge recovery mechanism for energy companies pursuant to the Energy Competition Acts, we concluded that, consistent with the direction given in the Energy Competition Acts, we must allow recovery through a surcharge that is either reconciled or adjusted frequently to track changes in the level of CAP costs. *See* OCA St. 5 at 44 (citing *Final CAP Investigatory Order* at 14-15). However, those energy riders that were approved under legislative mandate for the Peoples Companies and other energy companies are not appropriate models upon which to base the cost recovery for

¹³³ *See* 52 Pa. Code § 69.52, Exh. A (State Tax Adjustment Surcharge Order, entered March 10, 1970). Furthermore, as I&E’s witness, Mr. Sakaya, testified, “the PGC [Purchased Gas Cost], STAS and DSIC mechanisms are authorized by statute while the PWA [Purchased Water Adjustment] and ECA [Energy Cost Adjustment] are not, and, furthermore, the establishment of the PGC and STAS were specifically related to historic volatility.” I&E St. 3-SR at 12-13.

¹³⁴ *See* 66 Pa. C.S. § 1307(a); *CSIC Order*, 869 A.2d at 1160; *see also Pennsylvania Indus. Energy Coal. v. Pa. PUC*, 653 A.2d 1336, 1349 (Pa. Cmwlth. 1995), *aff’d per curiam*, 543 Pa. 307, 670 A.2d 1152 (1996) (*PIEC*). The general rule for expense items is that if the item in question is normally considered in a base rate case, then singling that item out for recovery outside of a base rate case is not appropriate. *CSIC Order*, 869 A.2d at 1157; *PIEC* at 1350.

Aqua's low-income water programs because there has been no legislative carve-out for water companies such as that which exists for energy companies.

We also agree with the OCA's Exceptions in which it argues that a reconcilable rider is not needed here because the Company admitted there will not be substantial fluctuation in its low-income program costs due to changes in bills. OCA St. 5 at 45 (citing OCA-V-29). Aqua disagrees with the OCA's Exception and maintains that the OCA ignores its own witness's admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. Aqua R. Exc. at 14 (citing Aqua M.B. at 159). The Company asserts that it has projected that the cost of discounts for the water program alone will range from \$3 million to \$8 million, while the OCA has projected costs of \$4 million to \$10 million under its proposal. Aqua R. Exc. at 14 (citing Aqua R.B. at 69). Nevertheless, the OCA avers that unlike natural gas bills, which may vary widely, Aqua's water bills will not experience substantial cost fluctuations due to changes in bills. OCA St. 5 at 45. The OCA explained that the variability in costs, such as those found in energy CAPs, would not be present in Aqua's program because, except for a small portion attributable to discounts on Tier 2 consumption for the lowest income, the vast bulk of discounts provided – whether using Aqua's or the OCA's proposed discounts - are applicable only to the base facility charge and to the first tier of consumption (*i.e.*, the first 2,000 gallons of use). *Id.*

We find the OCA's arguments to be more persuasive. The variability arguments presented by the Company assumes that its and the OCA's projections will vary between \$3 million to \$8 million or between \$4 million and \$10 million from month to month. We are of the opinion that such an occurrence is unlikely because the costs associated with Aqua's low-income water assistance offerings will likely start at some point between those ranges and gradually increase over time as participation in the program increases until it eventually levels off at the top of the projected ranges, taking into account the amount of public outreach conducted by the utility and the number of

customers who will actually qualify for each offering pursuant to the design of the programs. Notwithstanding the Company's and the OCA's arguments, we note that this is just one consideration to take into account in considering the reasonableness of a reconcilable surcharge; another issue is the appropriateness of implementing a reconcilable rider in this rate case proceeding rather than addressing it pursuant to Section 1307(a) in the context of a generic investigation proceeding where all water utilities would have the opportunity to participate. This is especially relevant here because, as the OCA noted, all Pennsylvania water utilities that offer discount programs, including Pennsylvania-American Water Company and PWSA, currently recover their low-income assistance program costs through base rates. OCA Exc. at 27 (citing OCA R.B. at 87; OCA St. 5SR at 28-29).

The OCA also excepted to the ALJ's adoption of the Company's position that the reconcilable USR should be approved because the program costs are outside of the Company's control and that a reconcilable surcharge is necessary to allow for full cost recovery and to ensure robust customer assistance programs. OCA Exc. at 27 (citing R.D. at 107-08). As noted, the OCA asserts in its Exceptions that the ALJ disregarded that the statutory mandate, which was enacted to permit energy companies to recover their full low-income program costs, does not apply to water utilities. The OCA further contends in its Exceptions that it is not appropriate to compare the energy utilities' mature universal services programs with a statute-defined cost recovery mechanism and Aqua's proposed discount/arrearage forgiveness programs. Aqua Exc. at 27. Aqua disagrees with the OCA's claims that the costs of the program are within Aqua's control because the OCA ignores its own admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. Aqua R. Exc. at 14 (citing Aqua M.B. at 159; OCA St. 5SR at 29). The Company also submits that, contrary to the OCA's assertion, Section 1307(a) provides a statutory basis for its proposed reconcilable rider.

Although the Company is correct that Section 1307(a) provides the statutory basis for the use of reconcilable riders, the fact remains that unlike energy companies, the water companies are not statutorily-mandated to implement universal service plans or to use a Section 1307(a) rider to recover the associated costs as are the energy companies.¹³⁵ In addition, as we stated, *supra*, use of such riders are the exception rather than the rule, and it is our preference that it is best to consider the development of a policy regarding the use of a Section 1307(a) reconcilable rider to recover water utilities' low-income programs in a generic investigation proceeding. Furthermore, we disagree with the Company that its program costs are beyond its controls; the Company is responsible for establishing the budget and parameters associated with each of its programs. In this regard, the Company has some control over the number of customers who may or may not qualify.

Next, the OCA excepted to the ALJ's Recommended Decision because the ALJ did not address its witness, Mr. Roger D. Colton's, recommendation that only net costs, rather than gross costs, of low-income programs should be recovered in base rates including via a cost offset that reflects the benefits of the program to Aqua's uncollectible expenses. OCA Exc. at 28 (citing OCA St. 5 at 42); OCA M.B. at 151-52. In this regard, the OCA averred in its Main Brief that its witness, Mr. Colton, provided the following testimony why he believed a lost revenue offset to gross low-income program costs for the discount and arrearage forgiveness programs is necessary and should be adopted:

The "basis" for my recommended lost revenue adjustment is not that Aqua PA has performed no collectability analysis. The basis for my adjustment is that, in the absence of such an adjustment, Aqua PA will recover some parts of low-income rates twice. Aqua PA's proposal to include 100% of its low-income discount through rates assumes that, in the absence of the discount, 100% of the billed revenue to discount

¹³⁵ See 66 Pa. C.S. § 2804(9) for electric utilities and § 2203(8) for gas utilities.

participants would have been collected. Only given this assumption is it reasonable to say that the dollar amount of the discount needs to be replaced by separately including that discounted revenue in rates. We know, however, that Aqua PA does not collect 100% of its low-income billings in the absence of the discount.

OCA M.B. at 153 (citing OCA St. 5SR at 30-31). The OCA further submitted in its Main Brief that Mr. Colton argued that the unpaid dollars of its low-income customers are currently reflected in base rates and that Aqua is proposing “to continue to reflect those unpaid dollars in rates and, in addition, to collect 100% of its discounted revenues again as though all of the discounted revenue would have been collected in the absence of the discount program.” OCA M.B. at 154 (citing OCA St. 5SR at 31 (emphasis in original)). Thus, the OCA recommended, that since Aqua has collection contracts which provide contingency fees between 18% to 40% of the amount collected (OCA-II-47), that an “offset in the middle of that range (28%)” should be used to reduce the cost of Aqua’s bill discount program. OCA R.B. at 83 (citing OCA St. 5 at 42).

Aqua replied that the OCA’s recommendation is premature and unnecessary where a reconcilable rider is used. Aqua R. Exc. at 14-15. Aqua’s witness, Ms. Black, submitted that the OCA’s assertions lack merit because:

[o]ver time, as participation in the program grows and matures to a stable level, bad debt levels will adjust accordingly, reflecting appropriate levels of collectability for the Company. I would further note that because we do not have a historical study of low income billing collections and its relation to bad debt, any adjustment proposed at this stage would be premature. Use of the reconcilable rider, which limits arrearage forgiveness recovery to those cost which are

actually incurred due to customers receiving benefits from timely payments, will align recovery with actual collections experience.

Aqua M.B. at 161 (citing Aqua St. 10-R at 14). Aqua averred in its Reply Brief that even if this offset were necessary and appropriate, the OCA's 28% offset is unreasonable and any offset established should be based on actual collections experience gained after implementation of the CAP to ensure the offset reflects the actual collection savings. Aqua R.B. at 70-71.

We agree with the Company. In our opinion, the OCA's proposed 28% offset is arbitrary; and it would not be prudent to adopt it as a realistic offset to reflect actual collections savings. Nevertheless, we agree with the OCA that there is a potential that the Company's CAP may result in a double recovery of low-income rates. Inasmuch as the Company acknowledged that any offset should be based on actual collections experienced gained after the implementation of the CAP to ensure it is an accurate representation of actual collections savings, we shall deny the OCA's Exception concerning its recommended offset and, instead, direct Aqua to take the necessary actions within its Company to monitor and maintain the necessary information that could be used in its next base rate proceeding to determine whether a double-recovery is occurring, and if so, to determine an appropriate offset that should be applied to prevent any double recovery. The Company is further directed to consult with the OCA and I&E to determine the necessary data needed to accomplish this directive.

Accordingly, consistent with the discussion above, we shall reverse the ALJ's recommendation and adopt the OCA's Exception No. 16, in part, by rejecting the Company's proposed reconcilable USR and requiring that the Company continue to recover its low-income program costs through base rates. However, the OCA's Exception No. 16, with regard to its requests that the Company be directed to collect only

the net costs of its low-income program in this proceeding is denied because an appropriate offset has not been determined in this proceeding and needs further review.

Therefore, consistent with the above discussion, the Company is directed to begin monitoring and reviewing the appropriate billing data for purposes of determining, in its next base rate proceeding, if, and to what extent, any offset to its low-income program cost recovery is necessary to avoid any double recovery the Company may receive through actual collections after the implementation of its CAP. The Company is further directed to consult with the OCA and I&E to determine the necessary data needed to accomplish this directive.

XII. Miscellaneous Issues

A. Universal Service Issues

1. Consideration of Affordability and CAP Design

a. Positions of the Parties

Aqua explained that before this proceeding, it made certain commitments regarding its existing Helping Hand Program¹³⁶ and the evaluation and development of a more comprehensive USP as a part of the Commission's approval of the acquisition of the Peoples Companies by Essential Utilities, Inc., f/k/a Aqua America, Inc. Aqua M.B.

¹³⁶ Several years ago, Aqua implemented a program called "A Helping Hand" to facilitate the payment of water and wastewater bills by its low-income residential customers. Helping Hand is "a program designed to help limited-income customers with arrearages to reduce the amount they owe through regular monthly payments." Under the program, "[f]or each timely payment made, participants receive a \$25 credit towards their prior arrearage." Helping Hand does not provide a discount or Percentage of Income Payment Plan (PIP). Aqua St. 10 at 4.

at 141 (citing *Aqua-Peoples Acquisition Order*). In the settlement agreement the Commission approved in the *Aqua-Peoples Settlement*, the parties agreed as follows:

108. Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA. The items to be evaluated for inclusion in Aqua PA's proposal include: (1) a bill payment/customer assistance program; (2) a hardship fund; (3) a water conservation program; (4) a low income service repair line and replacement program; and (5) a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania. Aqua PA will submit a rate recoverable universal service proposal in Aqua PA's next base rate case that considers the best practices learned from the Peoples Companies and through conversations from the Helping Hand collaborative.

Aqua M.B. at 141-142 (citing *Aqua-Peoples Settlement* at ¶ 108).

Consistent with its commitments in the *Aqua-Peoples Settlement*, Aqua has proposed to implement a CAP that builds upon the successful aspects of Helping Hand in order to further assist low-income customers throughout its service territory. Aqua M.B. at 143 (citing Aqua St. 10 at 5-8). The proposed CAP adds tiered bill discount benefits, similar to the structure in place at the Peoples Companies, and an Emergency Repair Program to the benefits already afforded under Helping Hand. The proposed three tiers are set at 100% of the Federal Poverty Level (FPL), 150% FPL, and 200% FPL, with the highest level of discounts provided to those in the first tier and gradually reducing the discounts in the other tiers. Aqua M.B. at 145 (citing Aqua St. 10 at 7; Aqua Exh. RFB-2 (setting forth the discounts to the Base Facility Customer Charge and Consumption Charge that an enrollee can obtain based on their income tier)).

The OCA analyzed the affordability of water and wastewater bills and cited to the extensive testimony of its witness, Mr. Colton. OCA M.B. at 120-131. CAUSE-PA similarly argued that existing rates are unaffordable. CAUSE-PA M.B. at 17-18. Therefore, both Parties recommended modifications to Aqua’s proposed CAP.

Among other things, the OCA argued that the benefits of the affordability program contemplated by the proposed USP should be modified to increase the level of discounts provided to customers and to adjust the structure of the income tiers. OCA M.B. at 136-39; 141-42. The OCA also recommended that the design of the discount program should evolve toward a PIP¹³⁷ similar to the program operated by Aqua’s sister utility, Peoples Gas. The OCA stated that Aqua should not immediately move to a PIP design but, rather, that a series of policy decisions by the Commission would first be needed, including what water and wastewater burden should be deemed affordable, and such decisions are best addressed in a statewide proceeding involving all water and wastewater utilities and related stakeholders and would involve additional analysis and data than is available in this rate proceeding. OCA M.B. at 135-136; OCA St. 5 at 31. The OCA proposed that Aqua be required to present a PIP in its next base rate proceeding. OCA M.B. at 144-52.

CAUSE-PA supported the OCA’s recommendations regarding discount structure and adjusted income tiers. CAUSE-PA M.B. at 21 (citing OCA St. 5 at 35,

¹³⁷ The Commission’s CAP Policy Statement provides the following:

Total payment for total electric and natural gas home energy under a percentage of income plan is determined based upon a scheduled percentage of the participant’s annual gross income. The participating household’s gross income and size place the household at a particular poverty level based on the [Federal Poverty Income Guidelines].

Table 9; OCA St. 5 at 39, Table 13; CAUSE-PA St. 1-R at 7). Additionally, CAUSE-PA stated that as its witness, Harry Geller, Esq., recommended in his direct testimony, Aqua should be required to closely monitor and analyze the water and wastewater burdens of CAP participants and should transition its proposed bill discount structure to a PIP structure if participants are not reaching acceptable levels of affordability. CAUSE-PA M.B. at 22 (citing CAUSE-PA St. 1 at 44-45; OCA St. 5 at 31).

Aqua explained in its direct and rebuttal testimony that it performed an affordability analysis and considered bill affordability as a part of the development of the proposed USP. Aqua M.B. at 144-48; Aqua R.B. at 58. The Company averred that the program, as designed, takes affordability into account and also balances the interests of ratepayers who are not low-income, but who bear the costs of universal service programs. Specifically, the Company contended that the OCA and CAUSE-PA fail to consider the effect of their proposed changes upon the rates of non-low-income customers. Aqua R.B. at 59. Aqua also argued that its proposed bill discount program should not be modified. Aqua M.B. at 153-54; Aqua R.B. at 60. Aqua stated that it should not be required to propose a PIP in its next base rate proceeding, particularly when the Company questions the cost/benefit of a PIP for water and wastewater customers at this time. Aqua submitted that once its proposed USP is in place, it can and should be evaluated in the context of a USP proceeding specifically focused on the effectiveness, costs, and benefits of the programs. Aqua R.B. at 63. Aqua further submitted that the OCA and CAUSE-PA's other suggestions regarding discount structure and adjusted income tiers, which would require programmatic changes to the existing system, were unreasonable and not feasible at this time, because Aqua will be converting its billing system to SAP in 2023 and development of the system is in the early stages. *Id.* at 61-62.

b. Recommended Decision

The ALJ agreed with the Company that substantial modification of Aqua's proposed CAP was not appropriate at this time. While the ALJ recognized that the Code permits consideration of a broad range of issues in base rate proceedings, the ALJ concluded that this rate case was not the best forum for considering "the complex social and economic issues related to affordability as it impacts CAP design." R.D. at 113. The ALJ noted the OCA's acknowledgment that the Commission has not established the water and wastewater burden that should be deemed affordable and the OCA's concession that the "policy decision of the appropriate water and wastewater burdens is best addressed in a statewide proceeding involving all water/wastewater utilities and related stakeholders or would involve additional analysis that would require more time and data than is available in this proceeding." *Id.* (citing OCA M.B. at 135-36; OCA St. 5 at 31).

For example, the ALJ pointed out that the OCA and CAUSE-PA proposed that Aqua should be required to implement a PIP in its next base rate case. The ALJ determined that this base rate proceeding was not an adequate venue for consideration of whether implementing a PIP is reasonable, and this complex issue would be better reviewed in the universal service stakeholder process which would allow the parties to review data from the current program and its associated costs through a more flexible discourse. The ALJ similarly found that many of the structural refinements to the CAP design regarding bill discount and arrearage forgiveness benefits should be more fully considered at a later time, reasoning that Aqua explained that many of these recommendations cannot be efficiently implemented until the Company converts its current customer information system (CIS) to SAP in 2023. R.D. at 113. The ALJ agreed with Aqua that consideration of the structural changes proposed by the OCA and CAUSE-PA should be deferred until Aqua's transition to SAP, noting that the Company has committed to providing arrearage forgiveness benefits for each full CAP payment

made, regardless of timeliness, when the conversion to SAP is completed. *Id.* at 113-14 (citing Aqua St. 10-R at 10).

The ALJ further reasoned that the OCA and CAUSE-PA have not demonstrated that the costs to make these proposed changes while Aqua is using its current CIS is reasonable. The ALJ stated that such proposed enhancements can be considered during the process of evaluating the effectiveness of the design of Aqua's universal service program in the future. The ALJ noted the OCA's concession that Aqua's proposed bill discount program will improve affordability for low-income customers. R.D. at 114. The ALJ also noted that Aqua's proposed USP was presented to and vetted by stakeholders participating in its Helping Hand Collaborative, including CAUSE-PA and the OCA, before this proceeding. *Id.* (citing Aqua St. 10 at 3). The ALJ further noted that Aqua was able to draw upon the knowledge and expertise of its affiliates, the Peoples Companies, and the Peoples Companies' Director of Community Assistance Program, Ms. Black, to develop the USP. The ALJ concluded that while a robust low-income program is required to offset the rate increases proposed in this case, increasing costs to non-low-income customers should also be mitigated. R.D. at 114.

c. OCA Exception No. 17, CAUSE-PA Exception No. 1, and Replies

In its Exception No. 17, the OCA avers that the ALJ erred in her determination to adopt Aqua's proposed program design without modification. OCA Exc. at 28. The OCA argues that the ALJ disregarded the evidence it presented, including OCA witness Mr. Colton's, extensive analysis of the affordability of Aqua's proposed program design for its water and wastewater discount and arrearage forgiveness proposals. *Id.* (citing OCA M.B. at 117-75; OCA R.B. at 73-82, 91-96). The OCA states that, instead, the ALJ improperly deferred the determination of the OCA's recommended program modifications to a generic proceeding sometime in the future. OCA Exc. at 28.

In so doing, the OCA believes that the ALJ misunderstood the purpose of Mr. Colton's testimony. The OCA explains that the purpose of Mr. Colton's affordability analysis was not to create a final, definitive assistance program for Aqua but, rather, Mr. Colton understood that the program would need to evolve and recommended that the affordability targets be established in a future generic proceeding and that Aqua propose a PIP in its next base rate proceeding. *Id.* at 29. The OCA emphasizes that Mr. Colton's testimony was intended to demonstrate the problems with Aqua's proposed discount and arrearage forgiveness levels, particularly for customers from 0-50% of the FPL and to show that the proposed program design will not achieve the objectives of the *Aqua-Peoples Settlement* to consider a "comprehensive universal services program." *Id.* (citing *Aqua-Peoples Settlement* at 135; OCA M.B. at 133-36; OCA R.B. at 76-77).

The OCA explains that a comprehensive universal services program should be designed to achieve affordability for customers, and the evidence Mr. Colton presented demonstrated that the discount program Aqua proposed for water and wastewater customers will significantly under-serve those customers from 0-50% of the FPL and will not help customers achieve affordability after implementation. *Id.* The OCA additionally states that the ALJ ignored the evidence of the shortcomings of the continuation of the current \$25/month arrearage forgiveness program described in Mr. Colton's testimony. OCA Exc. at 29 (citing OCA St. 5 at 59-60, Schs. RDC-1, RDC-2; OCA St. 5-SR at 7-8). As such, the OCA argues that the Commission should approve the OCA's proposed design modifications to Aqua's water and wastewater discount and arrearage forgiveness programs. OCA Exc. at 29 (citing OCA M.B. at 117-75; OCA R.B. at 73-82, 91-96).

In its Exception No. 1, CAUSE-PA avers that the ALJ erred as a matter of law and sound public policy by concluding that issues involving the design of Aqua's rate discount and arrearage forgiveness programs are not properly considered in the context of this rate proceeding. First, CAUSE-PA argues that an evaluation of the justness and

reasonableness of any proposed rate increase must necessarily analyze the effect of the rate increase on the ability of residential consumers to afford service and, consequently, the adequacy and design of rate assistance programming. CAUSE-PA Exc. at 4. CAUSE-PA states that the rules, regulations, and practices for Aqua's universal service programs affect the charges to both program participants and non-participants, and, therefore, they fit squarely within the definition of rates that must be just and reasonable and must be evaluated in this rate proceeding. *Id.* at 5 (citing *Pa. PUC v. PGW*, Docket No. R-2020-3017206 (Order on PGW's Motion *in Limine* dated July 8, 2020) at 3). CAUSE-PA notes the testimony of Mr. Geller, who explained that it is not appropriate "to raise rates for water and wastewater service without first ensuring that low and moderate income customers are able to receive affordable service under just and reasonable terms." CAUSE-PA Exc. at 5 (citing CAUSE-PA St. 1 at 10). CAUSE-PA asserts that universal accessibility is a polestar principle of ratemaking for essential, life-sustaining services like water and wastewater. CAUSE-PA Exc. at 5-6.

CAUSE-PA submits that low-income customers represent a significant portion of Aqua's residential customers, as Aqua estimates that nearly one in four households in its service territory have income below 200% of the FPL and has identified approximately 5% of its total residential customers as low-income. CAUSE-PA argues that in order to meaningfully conduct an investigation of proposed and existing rates, it is necessary to examine the lawfulness, justness, and reasonableness of rates for all consumers, including low-income consumers, and such an investigation necessarily includes an examination of the design and delivery of Aqua's universal service programs. CAUSE-PA Exc. at 6.

CAUSE-PA notes the concerns it has raised throughout the proceeding related to rate affordability for low-income customers and the inadequacy of Aqua's proposed CAP to ensure reasonable rate affordability for low-income CAP participants.

CAUSE-PA also notes that based on these concerns, it recommended that Aqua be required to: (1) implement the improved discount levels and adjusted income tiers recommended by the OCA expert witness, Mr. Colton, and supported by Mr. Geller; (2) closely monitor and analyze water/wastewater burdens of CAP participants; and (3) transition to a PIP structure if participants are not reaching acceptable levels of affordability. *Id.* at 7. CAUSE-PA further notes the testimony and evidence its witness presented that Aqua's Helping Hand arrearage forgiveness program is inadequate to address high levels of arrears accrued by low-income customers and further exacerbates rate unaffordability faced by these customers. *Id.* at 7-8. CAUSE-PA states that it has recommended that Aqua should be required to revise the structure of Helping Hand so that: (1) when entering the program, pre-program arrears are frozen and no longer accrue late fees or charges; and (2) for each in-full payment that a customer makes while enrolled in Helping Hand, 1/36th of the customer's frozen arrears, or \$25, whichever is greater, should be forgiven. *Id.* at 8.

CAUSE-PA avers that by precluding meaningful consideration of universal service issues in the context of this rate proceeding, the ALJ has disregarded the statutory mandate to ensure that all rates are just and reasonable and contradicted past precedent considering universal service issues. CAUSE-PA requests that the Commission clarify that examination of the structure and affordability of universal service programs is properly addressed in the context of this rate case. CAUSE-PA Exc. at 9-10.

Second, CAUSE-PA argues that the informal universal service stakeholder process is not a substitute for consideration of the impact a rate increase will have on low-income customers in this rate proceeding and the need to make corresponding adjustments to the rates charged through universal service programming. CAUSE-PA supports using universal service stakeholder meetings to provide a forum for parties and stakeholders to discuss issues surrounding the design and delivery of universal service programming and to reach consensus where possible. CAUSE-PA Exc. at 11.

Nevertheless, CAUSE-PA avers that informal stakeholder meetings are not an adequate substitute for a formal examination of rates produced by universal service programming in the context of a rate proceeding, because CAUSE-PA believes that informal stakeholder processes lack the tools necessary to meaningfully investigate universal services, including the use of discovery and evidentiary hearings. *Id.* at 11-12. CAUSE-PA submits that informal processes do not provide for a mechanism to require Aqua to implement, or even consider, parties' proposals and if Aqua fails to implement recommended improvements, parties would not have a clear path to take exception to or appeal Aqua's decisions. *Id.* at 12.

Third, CAUSE-PA argues that the continued need to address water and wastewater affordability on a statewide level does not preclude review of the adequacy of Aqua's low-income programs in the context of this rate proceeding. CAUSE-PA states that all rates must be just and reasonable and that the absence of a statewide affordability standard does not eliminate this requirement. CAUSE-PA Exc. at 12. CAUSE-PA supports the initiation of a statewide proceeding to establish formal Commission policy on water and wastewater affordability and applicable standards and guidelines to help ensure that all Pennsylvanians can afford water and wastewater services. *Id.* at 12-13. However, CAUSE-PA asserts that the absence of formal, statewide policy does not bar consideration of program improvements critical to ensuring low-income customers can reasonably afford to connect to and maintain water and wastewater services in the context of this or other rate proceedings. CAUSE-PA takes issue with the ALJ reaching a conclusion on several aspects of Aqua's universal service programming, such as the verification process and other program rules, while declining to reach conclusions about the overall design and benefits provided through the program. *Id.* at 13.

In its Replies to Exceptions, Aqua avers that both the OCA and CAUSE-PA's Exceptions regarding its proposed USP lack merit. Aqua R. Exc. at 15. Aqua states that the ALJ properly recognized that the Company's proposed USP will

improve affordability and benefit customers, while also balancing the implementation of this new program as a part of this base rate case with the fact that Aqua will convert its existing customer information system (CIS) to SAP in 2023. *Id.* (citing R.D. at 113-14). Aqua submits that it demonstrated that the additional income tiers, changes to benefits, and other proposed modifications that the OCA and CAUSE-PA propose are incompatible with the Company's existing CIS and would increase the costs of implementing the USP. Aqua R. Exc. at 15-16 (citing Aqua M.B. at 148-155; Aqua R.B. at 56-67).

Aqua continues that CAUSE-PA's claims regarding the use of the informal stakeholder process misread the Recommended Decision, as the ALJ did not "relegate" the evaluation of the impacts of base rate increases to the informal stakeholder process. Aqua states that, rather, the ALJ recognized that in the context of this base rate case, the informal stakeholder process could be used to further present and discuss possible modifications to the program before Aqua's next base rate case, or another case involving modifications to the USP, is initiated. Aqua R. Exc. at 16. Aqua also states that CAUSE-PA's claim that addressing affordability concerns in a statewide proceeding should not preclude an evaluation of low-income impacts and that the USP in this base rate case misses the point, because the ALJ properly found that an "affordability" determination should be made at the statewide level since it will involve all water and wastewater utilities. *Id.* (citing R.D. at 113).

d. Disposition

Upon review, we agree with the ALJ that certain modifications and determinations regarding Aqua's proposed CAP are not appropriately considered in the context of this base rate proceeding. For instance, we do not have sufficient information in this proceeding to require Aqua to propose a PIP in its next base rate proceeding, as the OCA proposes. It is unclear at this time what the cost, benefits, and overall effectiveness

of such a program would be for a water/wastewater public utility. As the ALJ stated, this complex issue would be better reviewed in a universal service stakeholder process that would allow the parties to review data from the current program and its associated costs through a more flexible discussion. The OCA itself acknowledged that before Aqua could move to a PIP design, a series of policy decisions by the Commission would first be needed, including what water and wastewater burden should be deemed affordable, and such decisions are best addressed in a statewide proceeding involving all water and wastewater utilities and related stakeholders and would involve additional analysis and data than is available in this rate proceeding. OCA M.B. at 135-36; OCA St. 5 at 31.¹³⁸

Similarly, we agree with the ALJ that the structural changes the OCA and CAUSE-PA proposed to the CAP design regarding bill discount and arrearage forgiveness benefits should be more fully considered at a later time, particularly because Aqua explained that many of these recommendations cannot be efficiently implemented until the Company converts its current CIS to SAP in 2023. *See* R.D. at 113. Aqua has presented evidence in this proceeding to demonstrate that its proposed CAP, which includes its Helping Hand arrearage forgiveness program and tiered bill discount benefits similar to the structure in place at the Peoples Companies, is reasonable. Aqua explained in its testimony that it performed an affordability analysis and considered bill affordability as part of the development of its proposed USP. Aqua St. 10 at 6-7.

¹³⁸ The Commission engaged in a holistic review of universal service and energy conservation programs of electric distribution companies (EDCs) and natural gas distribution companies (NGDCs), including a thorough examination of the effects of the Commission's current energy burden thresholds, focusing on whether existing CAP pricing was affordable for low-income customers. The Commission's review and examination resulted in the adoption of CAP policy changes and amendments to the Commission's existing CAP Policy Statement at 52 Pa. Code § 69.261–69.267. *See Amendments to Policy Statement on Customer Assistance Program, Final Policy Statement Order*, Docket No. M-2019-3012599 (Order entered November 5, 2019). The Commission has not engaged in a similar review and examination concerning water and wastewater public utilities operating in Pennsylvania.

Ms. Black testified that consistent with the Aqua-Peoples Settlement, Aqua's proposed USP was presented to and vetted by stakeholders participating in its Helping Hand Collaborative, including CAUSE-PA and the OCA, before this proceeding. The Collaborative discussed aspects of the Company's proposal, including needs analysis, projected enrollment levels, proposed discounts, program designs, and estimated costs, and the participants noted the tiered benefits were an important part of the design by providing the highest amount of benefits to the most vulnerable. Ms. Black noted that the group did not recommend any changes to the proposal at that time. Aqua St. 10 at 13.

Ms. Black further testified that the OCA and CAUSE-PA's suggestions regarding discount structure and adjusted income tiers would require programmatic changes to the existing system, which currently maintains the Company's customer data. Ms. Black explained that changes to the existing system are not recommended, as Aqua will be converting its billing system to SAP in 2023, and development of the system is in the early stages. Aqua St. 10-R at 8. Ms. Black stated that Aqua's proposed CAP is intended to improve affordability while maintaining reasonable program costs for other ratepayers from whom discounts are recovered. Ms. Black testified that the Company's proposal decreases low-income customers' monthly bill responsibilities by offering discounts that are tiered to provide larger discounts to those with lower income. *Id.* at 10.

As proposed, we conclude that Aqua's program is reasonable under the circumstances as it takes affordability into account and balances the interests of low-income customers as well as the interests of ratepayers who are not low-income but bear the costs of universal service programs. Based on the record, we agree with the ALJ that the OCA and CAUSE-PA have not demonstrated that the costs to make their proposed changes while Aqua is using its current CIS are reasonable and that any such proposed enhancements can be considered during the process of evaluating the effectiveness of the design of Aqua's universal service program in the future.

Our decision on this issue is consistent with prior decisions in which we have determined that it was not appropriate to consider proposals relating to a public utility's energy burdens, CAP, and other universal service program issues within the context of a base rate proceeding, finding that such proposals are more properly considered in a public utility's Universal Service and Energy Conservation Plan (USECP) proceeding. *See PECO Gas* at 195; *Columbia Gas* at 160. While water and wastewater public utilities are not required to file USECPs with the Commission, any possible modifications to Aqua's universal service programs, including a move toward a PIP, can be discussed as part of Aqua's Helping Hand Collaborative or a larger, statewide stakeholder proceeding and presented to the Commission in a future proceeding appropriate for addressing Aqua's universal service programs, whether it be Aqua's next base rate case or another proceeding involving modifications to the Company's USP. For these reasons, we deny OCA Exception No. 17 and CAUSE-PA Exception No. 1.

2. Income Verification

a. Positions of the Parties

I&E generally agreed with the Company's proposed USP. However, I&E's witness, Ms. Wilson, recommended that the Company be required to verify enrollees' income for CAP eligibility to ensure the legitimacy of applicants and prevent misuse or abuse of the program. I&E M.B. at 60-62 (citing I&E St. 1 at 45-47).

Aqua currently allows participants to self-attest to their income. Aqua explained that discount water programs "do not typically require income documentation for participation" and that "[p]roviding income documentation can be a barrier to enrollment for eligible households." Aqua stated that the Commission has previously encouraged self-attestation of income. Aqua noted that its witness, Ms. Black testified that during the periods where self-attestation was used, Peoples Companies "did not see a

spike in enrollment levels as a result of this flexibility and participation levels, year over year, are relatively flat.” Aqua also noted Ms. Black’s testimony that as with any income-based programs, there may be individuals that attempt to perpetrate fraud, but customers who are genuinely low-income customers are generally those that seek assistance. Aqua M.B. at 150 (citing Aqua St. 10-R at 3-4).

The OCA agreed that the Company should be permitted to use self-attestation of income and that income verification should not be required for participation in the program. The OCA recommended, however, that the Company review the income qualifications for randomly selected CAP participants and report error rates to the Commission’s Bureau of Consumer Services (BCS). The OCA stated that to the extent error rates are not reasonable, BCS and Aqua should develop appropriate remedial action. OCA M.B. at 144.

Similarly, CAUSE-PA opposed the imposition of stringent income documentation requirements for Aqua’s universal service programs, including its proposed CAP. CAUSE-PA argued that I&E did not present any evidence to support its contention that such income documentation would prevent fraud or that fraud was occurring in the first instance. CAUSE-PA also argued that restrictive income documentation requirements would be a barrier to low-income customers successfully enrolling in CAP and hinder the success of the proposed CAP at its outset. CAUSE-PA R.B. at 18. CAUSE-PA further argued that I&E’s proposal lacked critical details for how income documents will be collected and evaluated, what income documents will be accepted, and how applicants will be informed if the documentation submitted is not received or is deemed unacceptable. *Id.* at 19.

b. Recommended Decision

The ALJ agreed with Aqua that I&E's recommendation regarding income verification should be rejected. The ALJ reasoned that based on Ms. Black's experience, the benefit of removing a barrier to low-income customers outweighs the risk of abuse or harm to paying customers. R.D. at 115.

c. I&E Exception No. 3 and Replies

In its Exception No. 3, I&E argues that the ALJ erred in rejecting I&E's recommended income verification proposal for CAP eligibility. I&E avers that the ALJ erroneously accepted Aqua's position that the benefit of removing a barrier to low-income customers outweighs the risk of harm to paying customers. I&E Exc. at 6. I&E points out that when asked about Peoples' CAP during discovery, Aqua stated that "Peoples' CAP requires income documentation from an interested customer to certify income eligibility for participation" and upon recertification. *Id.* (citing I&E St. 1 at 46). I&E also points out that the ALJ acknowledged its concern that as with other income-based programs, there may be individuals who attempt to perpetrate fraud. I&E Exc. at 6 (citing R.D. at 115).

I&E contends that the Commission should accept its recommendation regarding income verification for CAP eligibility. I&E Exc. at 7. I&E states that it explained that the program Aqua proposed will be a full-scale USP funded by ratepayers. I&E also notes that it argued that the program as proposed is based on a specific level of benefits matched to a specific percentage of the FPL and, as such, logic dictates that incomes must be verified to properly administer and award the graduated program benefits. *Id.* (citing I&E M.B. at 62). I&E believes that if the Company does not perform income verifications, this would subject the USP to potential abuse that would harm responsible customers that pay their bills. I&E Exc. at 7. I&E further argues that support

for income verification is set forth in the Code and the Commission's Regulations and that in enacting Chapter 14 of the Code, 66 Pa. C.S. §§ 1401-1419, the Pennsylvania General Assembly intended to protect responsible bill paying customers from rate increases attributable to other customers' delinquencies. I&E Exc. at 7 (citing I&E M.B. at 62). I&E avers that any abuse of the CAP programs through income self-attestation by ineligible customers would have the same negative affect on the responsible, paying customers and may also harm eligible customers. I&E Exc. at 7. Moreover, I&E points out that as stated in Aqua's rejoinder testimony, Aqua's provider of administrative services, Dollar Energy Fund, already has the cost of income verification built into its proposal. *Id.* (citing I&E M.B. at 62).

In its Replies to Exceptions, Aqua avers that the ALJ correctly rejected I&E's recommendation that CAP enrollees be required to verify their income. Aqua states that its proposal is based on experience showing that income documentation can be a barrier to enrollment. Aqua R. Exc. at 17. Aqua notes that this concern must be balanced against the risk of fraud; however, Aqua stresses that when Peoples used self-attestation, it did not experience a rise in enrollment levels that was indicative of a serious effort to defraud the program. *Id.* (citing Aqua M.B. at 150). Aqua submits that the CAP is a new program for its low-income customers, and barriers to participation should be avoided when possible. Aqua R. Exc. at 18 (citing Aqua M.B. at 150; Aqua R.B. at 62).

In its Replies to Exceptions, the OCA avers that the ALJ correctly denied I&E's income verification proposal. OCA R. Exc. at 23. The OCA's position is that Aqua should be permitted to use self-attestation of income for its program. *Id.* (citing OCA M.B. at 143-144). In response to I&E's reliance on Chapter 14 in support of its proposal, the OCA states that Chapter 14 does not specifically address income verification for any CAP. The OCA also argues that the evidence does not support the idea that abuse or fraud will occur without income verification but, instead, supports the

opposite conclusion. OCA R. Exc. at 23. The OCA explains that water companies do not typically require income documentation for participation and requiring income documentation can be a barrier to enrollment. *Id.* (citing R.D. at 115; Aqua St. 10-R at 4). The OCA notes that the Commission has also previously supported the use of self-attestation of income. OCA R. Exc. at 23. The OCA further notes that during the pandemic, Peoples allowed customers to enroll using self-attestation of income and did not see a spike in enrollment levels. *Id.* (citing Aqua St. 10-R at 4; OCA R.B. at 80).

In its Replies to Exceptions, CAUSE-PA states that the ALJ properly found that I&E's recommendation to impose additional income verification requirements should be rejected. CAUSE-PA R. Exc. at 3. CAUSE-PA avers that Aqua is, in fact, proposing a verification process for its CAP, which the ALJ approved, as Aqua proposes to use self-declared income to verify CAP eligibility and for recertification purposes. CAUSE-PA points out that Aqua is not, however, proposing to require applicants to submit physical documentation of income because such a requirement would pose burdensome obstacles for low-income customers most in need of assistance. *Id.* at 4 (citing CAUSE-PA R.B. at 17-18).

CAUSE-PA additionally contends that I&E has not presented any evidence to support its contention that failure to impose income documentation requirements will cause universal service application processes to be abused and will ultimately harm other ratepayers and residential customers. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 18). CAUSE-PA states that its witness, Mr. Geller, testified that imposing more restrictive income documentation requirements, as I&E recommends, will act as a barrier to low-income customers successfully enrolling in universal service programs and hinder the success of the proposed CAP. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 18-19). CAUSE-PA submits that Aqua's low-income programs have historically had low enrollment levels, particularly when measured against the number of low-income customers Aqua estimates are eligible for assistance. *Id.*

CAUSE-PA also opposes I&E's proposal to require Aqua to implement income documentation requirements for households to recertify enrollment in Aqua's universal service programs. As discussed in CAUSE-PA's Reply Brief, Mr. Geller extensively described how periodic recertification requirements pose difficulties for vulnerable low-income customers, including seniors or individuals with disabilities, because these households more often lack access to transportation and struggle to gather and submit formal income documentation. CAUSE-PA continues that these vulnerable households are also more likely to rely on fixed income sources that tend not to change from year to year, making recertification requirements unnecessary and administratively burdensome. As Mr. Geller noted, available independent evaluations of USECPs of other regulated Pennsylvania utilities have shown that requiring submission of income documentation through program recertification is a significant cause of high program attrition. CAUSE-PA R. Exc. at 7 (citing CAUSE-PA R.B. at 19).

Further, CAUSE-PA argues that I&E's reliance on Chapter 14 to support its income documentation proposal is misplaced because I&E fails to recognize that Chapter 14's declaration of policy expressly recognizes that Chapter 14 was enacted to improve payments for those "*capable of paying*," rather than to unfairly penalize those who cannot afford services. CAUSE-PA R. Exc. at 8 (citing 66 Pa. C.S. § 1402(2)). CAUSE-PA asserts that ensuring robust access to Aqua's universal service programs is consistent with the intent of Chapter 14 to provide greater equity among all customers. CAUSE-PA R. Exc. at 8.

Moreover, CAUSE-PA is concerned that I&E's proposal continues to lack critical details for how income documents will be collected, what income documents will be accepted, how income documents will be evaluated, and how applicants will be informed if their submitted documentation is not received or is considered unacceptable. CAUSE-PA believes that failing to provide these details has the potential to lead to widespread ambiguities in program requirements that will further impede low-income

customers from successfully enrolling in Aqua's universal service programs. Accordingly, CAUSE-PA supports the income verification process Aqua proposes and opposes I&E's recommendations to impose additional income documentation requirements. *Id.* Nevertheless, CAUSE-PA states that if the Commission decides to require additional income verification for Aqua's universal service programs, including the proposed CAP, such process should be implemented on a pilot basis to allow Aqua, the Parties and stakeholders, and the Commission to monitor how CAP enrollment, retention, and costs are impacted and to determine if there is any evidence of abuse of the universal service process. *Id.* at 8-9.

d. Disposition

Upon review, we conclude that Aqua should require income documentation from an interested customer to certify income eligibility for participation in its CAP and upon recertification in a manner similar to that of the Peoples Companies.¹³⁹ I&E's witness, Ms. Wilson, testified that while the Helping Hand program has historically been funded through voluntary donations and shareholder contributions, Aqua's proposed program would be funded through the proposed Universal Service Rider and would be fully ratepayer funded. I&E St. 1 at 44; I&E Exh. 1, Sch. 8.¹⁴⁰ While as some of the Parties note, this Commission took some steps in response to the COVID-19 pandemic to reduce barriers to participation, such as encouraging self-attestation of income for enrollment and encouraging utilities to halt the process of removing customers for failure to recertify income (*see, e.g.*, Aqua St. 10-R at 4), we are not otherwise aware that this Commission has approved a ratepayer-funded low-income program that does not include

¹³⁹ See Peoples Natural Gas Company LLC Universal Service and Energy Conservation Plan 2015-2018, Docket No. M-2014-2432515, at 8-10.

¹⁴⁰ As set forth in XI.E.3, *supra*, we are rejecting the Company's proposed reconcilable USR and requiring that the Company continue to recover its low-income program costs through base rates.

some form of documented income-verification. EDC and NGDC's CAPs require participating households to document their income eligibility periodically. Given the size and nature of Aqua's proposed program, which is larger and more robust than most of the other water utilities' programs, it makes sense to implement income eligibility processes similar to those of the EDCs and NGDCs.

We addressed a similar issue in reviewing National Fuel Gas Distribution Corporation's (NFG) 2017-2020 USECP.¹⁴¹ During that proceeding, NFG disclosed that it did not require its CAP participants to reverify income eligibility after enrollment, and that during recertification, NFG was accepting the household's verbal declaration of income. *NFG* at 34-35. We directed NFG to ensure that CAP households reverify income eligibility at least once every two years, stating:

Although we recognize accepting a verbal declaration of income is less burdensome for both the customer and the CAP administrator, utilities have the responsibility to ensure that their CAPs – which are primarily funded by non-CAP residential customers – help only those customers that qualify for these programs.

Id. at 36.

Applying similar reasoning in this case, we agree with I&E that program benefits contingent on a poverty level should be based on a verified percentage of income, as the costs of these programs can have a significant impact on ratepayer bills. *See* 2020 Report on Universal Service Programs and Collections Performance of the Pennsylvania Electric Distribution Companies and Natural Gas Distribution Companies, Appendix 7, at 89. We have provided some flexibility to EDCs and NGDCs

¹⁴¹ *See National Fuel Gas Distribution Corporation's Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4*, Docket No. M-2016-2573847 (Order entered March 1, 2018) (NFG).

concerning the manner in which these utilities document income and what forms of documentation are acceptable, and these matters are not necessarily addressed in each utility's USECP. We believe that these issues and other related issues are best addressed in a utility's low-income program committee, and, in this case, may be addressed as part of Aqua's Helping Hand Collaborative. In the meantime, Aqua can use the income documentation standards that the Peoples Companies currently use. For these reasons, we shall grant I&E's Exception No. 3, modify the ALJ's recommendation on this issue, and direct Aqua to require income documentation from an interested customer to certify income eligibility for participation in its CAP and upon recertification in a manner similar to that of the Peoples Companies. Within sixty days of the entry date of this Opinion and Order, Aqua shall submit a written plan describing the process it will use for certification and recertification of income eligibility for participation in its CAP. Such plan shall be filed with the Commission at this base rate proceeding Docket, with a copy served on BCS.

3. Application Process: Transitioning Helping Hand Customers to the New Customer Assistance Program

a. Positions of the Parties

The OCA recommended that current participants in the existing Helping Hand program be automatically enrolled in the new bill discount program. OCA M.B. at 168-73, 173-75. Similarly, CAUSE-PA recommended that Aqua develop a streamlined process for enrolling existing Helping Hand customers in CAP so the existing Helping Hand customers are not required to provide duplicative information to enroll in CAP. CAUSE-PA M.B. at 26 (citing CAUSE-PA St. 1 at 47).

Aqua explained that the lack of an automatic enrollment in CAP for existing Helping Hand customers is necessary to ensure customers are eligible. Aqua

also explained that the application process for these customers is simple and does not require additional income documentation and, therefore, does not impose an incremental burden on CAP enrollees. Aqua states that it will notify Helping Hand customers by mail of the replacement and expansion of the existing program, which will detail the benefits of the CAP and encourage the customers to participate. Aqua notes that these customers can confirm their income through self-attestation and enroll over the telephone, online, or through a participating agency. Aqua M.B. at 149 (citing Aqua St. 10-R at 3). The Company believes that while it will encourage participation in the new program, existing Helping Hand customers should have the right to make an affirmative choice about whether to enter the new CAP. Aqua M.B. at 149.

b. Recommended Decision

The ALJ agreed with Aqua that the proposed application process to transition Helping Hand customers who qualify for the new CAP is reasonable and rejected the modification proposed by the OCA and CAUSE-PA. R.D. at 116.

c. OCA Exception No. 18 and Replies

In its Exception No. 18, the OCA argues that the ALJ erred in her decision to adopt Aqua's proposed application process for the new CAP. OCA Exc. at 29. The OCA avers that Aqua's existing Helping Hand customers should be automatically migrated to the new discount program, as the OCA's witness, Mr. Colton, and CAUSE-PA's witness, Mr. Geller, recommended. *Id.* at 30 (citing OCA St. 5 at 62-63; CAUSE-PA St. 1 at 46-48). The OCA states that the ALJ may not have appreciated the fact that the existing Helping Hand customers will lose their existing program benefits if the customers do not apply for the new combined discount/arrearage forgiveness program, because the existing Helping Hand program will no longer exist. OCA Exc. at 30 (citing Aqua St. 10-R at 2). As such, a group of customers that have not had their

arrears completely forgiven and who do not apply to the new CAP, will no longer have the program forgiveness to complete reducing their arrearage balance. OCA Exc. at 30 (citing OCA St. 5-SR at 3). The OCA explains that arrearage forgiveness and the discount are designed to work together to address affordability, and separate enrollments and applications mean that not all low-income customers currently enrolled in the arrearage forgiveness program will continue to receive assistance either through the to-be-discontinued arrearage forgiveness program or the new bill discount program. The OCA asserts that this problem can be avoided by automatic migration to the new programs. OCA Exc. at 30.

In its Replies to Exceptions, Aqua avers that contrary to the OCA's claims, the enrollment process involves a single application, is simple, does not require additional income documentation and, therefore, presents no incremental burden. Aqua R. Exc. at 16-17. Aqua explains that existing Helping Hand customers will be asked to submit the application to ensure they are eligible for the new USP. Additionally, Aqua avers that it will actively encourage existing Helping Hand customers to enroll in the new program. *Id.* at 17.

d. Disposition

Given our determination, above, directing Aqua to require income documentation in order to certify income eligibility for participation in its CAP, it would not be feasible for Aqua to automatically migrate its existing Helping Hand customers into its new program. Aqua should implement its proposed application process to transition Helping Hand customers who qualify for the new CAP, subject to the modification that Aqua will now require income documentation for certification purposes rather than permitting potential program participants to confirm their income through self-attestation. Accordingly, we shall deny OCA Exception No. 18 and modify the ALJ's Recommended Decision consistent with this discussion.

4. Community Education and Outreach Plan

a. Positions of the Parties

The OCA witness, Mr. Colton, recommended that Aqua be directed to develop a Community Education and Outreach Plan (CEOP) that is directed toward areas within the Company's service territory with identified concentrations of low-income need. OCA M.B. at 162 (citing OCA St. 5 at 49-50). Mr. Colton specifically proposed that the CEOP incorporate the following elements:

- (1) the outreach should focus on community-based outreach;
- (2) the outreach is best implemented through "trusted messengers" that are part of the community toward which outreach is directed;
- (3) the outreach should be focused through boots-on-the-ground grassroots strategies. This boots-on-the-ground grassroots outreach out-performs outreach such as that provided through mass media, social media, utility-sponsored efforts, and top-down sponsored events; and
- (4) the outreach should be focused on efforts to go to where the community is rather than making the community come to the utility.

OCA M.B. at 162 (citing OCA St. 5 at 49). Mr. Colton stated that Aqua's CEOP should be designed to "identify the community partners with which it proposes to work," "identify the grassroots community organizations that will provide boots-on-the-ground efforts," and identify those times and places Aqua proposes to meet the community members where they "live, work, pray and play." OCA M.B. at 162-163 (citing OCA St. 5 at 49-50).

CAUSE-PA's witness, Mr. Geller, noted the low enrollment rates in Aqua's Helping Hand and Hardship Fund and concluded that as a result, there was a critical need for "enhanced, more concerted efforts to reach and enroll low-income consumers in Aqua's service territories in assistance programs." CAUSE-PA M.B. at 37 (citing

CAUSE-PA St. 1 at 64). Accordingly, CAUSE-PA recommended that Aqua should be required to develop and implement a comprehensive and coordinated consumer outreach and education plan that should:

(1) be developed with input from the parties and interested stakeholders through Aqua's Helping Hand Collaborative; (2) set forth how Aqua will specifically promote each of its low income assistance programs; (3) be tailored to the demographics of Aqua's service territory; (4) include how Aqua will target outreach to specific communities, including those communities that have faced pervasive utility insecurity such as Black and Latinx communities; (5) specifically identify efforts to educate and enroll eligible customers at or below 50% FPL who represent those customers with the lowest incomes who struggle most profoundly to make ends meet; (6) translate all promotional and education materials into, at minimum, Spanish; and (7) identify resources and translation services for [limited English proficient/proficiency] LEP customers.

CAUSE-PA M.B. at 38 (citing CAUSE-PA St. 1 at 64).

Aqua agreed that a CEOP is an important component of universal service programs. Aqua M.B. at 150 (citing Aqua St. 10-R at 5). Aqua noted that its witness, Ms. Black, explained that Aqua's anticipated outreach and education will be similar to the CEOP that she developed for the Peoples Companies and will use the multiple touchpoints that utilities have with low-income customers and other entities, and that Aqua "plans to seek collaboration with other utilities to cross-promote its low-income programs with the goal of reducing barriers to participation and encouraging customers to avail themselves of all beneficial programs." Aqua M.B. at 151 (citing Aqua St. 10-R at 5-6). Aqua stated that its proposed CAP will include broad outreach and collaboration to ensure customers are made aware of the benefits available to them and are given significant opportunities to take advantage of the available benefits. Aqua M.B. at 151.

b. Recommended Decision

The ALJ recommended that Aqua continue to work to develop a CEOP in the manner that Ms. Black described in her testimony. The ALJ also stated that because Aqua does not appear to oppose CAUSE-PA and the OCA's recommendations for the development of the CEOP, Aqua should consider their input and incorporate their reasonable recommendations into the Company's outreach program. The ALJ reasoned that if Aqua does not adopt the OCA and CAUSE-PA's recommendations, the OCA and CAUSE-PA may seek appropriate relief from the Commission. R.D. at 118.

c. OCA Exception No. 19 and Replies

In its Exception No. 19, the OCA avers that the ALJ erred by not requiring Aqua to adopt the OCA and CAUSE-PA's recommendations for a CEOP. OCA Exc. at 30 (citing R.D. at 118; OCA M.B. at 161-64; OCA R.B. at 90-91). The OCA submits that the ALJ's recommended approach is not sufficient to address the problems that the OCA and CAUSE-PA identified regarding the development of a CEOP, and it is also not clear in what forum either the OCA or CAUSE-PA could seek appropriate relief. OCA Exc. at 30-31.

The OCA posits that while Aqua agrees that a CEOP is an important component of a universal service plan, the Company does not appear to adopt the OCA's recommendations regarding what that outreach should look like. OCA Exc. at 31. The OCA explains that it recommends that the Company incorporate a strategy of reaching low-income customers "where the community lives, works, plays and prays to be present at those locations rather than to sponsor 'events' that community members must attend." *Id.* (citing OCA St. 5 at 47-50). The OCA states that while the ALJ indicated that the OCA and CAUSE-PA may seek appropriate relief from the Commission if their recommendations are not adopted, there is not an appropriate alternative forum in which

to seek relief. The OCA submits that unlike with energy utilities, Aqua would not need to submit a plan for approval of its CEOP, and there are not any Commission policy statements, applicable regulations, or statutory requirements specifically regarding what effective outreach and education for Aqua's discount and arrearage forgiveness programs should look like. The OCA avers that the instant proceeding is the forum in which the Company's proposed approach to education and outreach should be addressed. OCA Exc. at 31.

In its Replies, Aqua maintains its position in this proceeding that it has worked, and will continue to work, with the OCA and CAUSE-PA in the development of a CEOP, consistent with the Recommended Decision. As such, Aqua states that the OCA's concern is unfounded and its Exception should be denied. Aqua R. Exc. at 17.

d. Disposition

Upon review, we conclude that Aqua should continue to develop a comprehensive and coordinated CEOP with input from the Parties, including the OCA and CAUSE-PA, and from interested stakeholders through Aqua's Helping Hand Collaborative. Within six months of the entry date of this Opinion and Order, Aqua is required to file its CEOP with the Commission at this base rate proceeding Docket, with a copy served on the Commission's BCS and Office of Communications. As the CEOP is an evolving process, the Company must continue to work collaboratively with its Helping Hand Collaborative and the Commission's Office of Communications on any potential improvements and/or changes to its outreach and education initiatives after filing its first CEOP. We will also require Aqua to file annually, after its first CEOP filing, an updated CEOP at this base rate proceeding Docket until either its next base rate proceeding or another proceeding addressing its universal service programs. This will enable us to ensure that the Company is working with the collaborative to address stakeholder concerns or whether a separate proceeding is necessary to address

outstanding matters. As such, we shall grant, in part, OCA Exception No. 19 and modify the ALJ's Recommended Decision consistent with our discussion on this issue.

B. Quality of Service

1. Unaccounted for Water

Unaccounted for water (UFW) is "Total Water Delivered for Distribution & Sale" minus "Total Sales" minus "Non-Revenue Usage and Allowance." R.D. at 119; OCA M.B. at 204; OCA St. 7 at 3-4. "Non-Revenue Usage and Allowance" includes "Main Flushing," "Blow-off Use," "Unavoidable Leakage," "Located & Repaired Breaks in Mains & Services" and "Other." Calculating UFW determines the amount of non-revenue water in a distribution system, helping to identify leaks and inaccurate meter readings. When UFW is measured, non-revenue water can be reduced which reduces chemical and power costs, provides for water conservation, and helps improve operational efficiency. *Id.* Levels of UFW above 20% are considered excessive by the Commission. 52 Pa. Code § 65.20(4).

a. Positions of the Parties

Aqua stated that its UFW is 20%, despite operational challenges of recently acquired water systems, and that no Party challenged its UFW. R.D. at 119; Aqua M.B. at 162. However, the OCA argued that Aqua should modify its reporting of UFW by being required to submit a Section 500 UFW calculation for each of its water systems and that the information submitted should be based on the same data that is required for American Water Works Association (AWWA) Audits and the annual Chapter 110

Reports submitted to the PADEP.¹⁴² OCA M.B. at 206; OCA St. 7 at 6. Aqua opposed the modified reporting of UFW because Aqua's Section 500 Report is prepared on a consolidated basis and contains financial and operating data regarding operating the entire company. Aqua contended that it should not be treated differently by requiring it to prepare separate reports for operating divisions, that Section 500 Reports require different information than Chapter 110 Reports submitted to PADEP, and that AWWA Water Audits are a different measurement from UFW measurements prepared for the Section 500 Reports. In addition, Aqua noted that on November 18, 2021, the Commission issued a Notice of Proposed Rulemaking (NOPR) concerning proposed language for a regulation at 52 Pa. Code § 65.20(a), relating to water conservation measures. Aqua argued that committing to file separate Schedule 500 reports for each operating division while that NOPR is pending is redundant, time consuming and inefficient. R.D. at 120; Aqua M.B. at 162-63.

b. Recommended Decision

The ALJ found that the OCA did not demonstrate that its modification will result in a significant benefit to Aqua's customers. Therefore, the ALJ concluded that the OCA's proposed modification to the reporting of UFW should be rejected. R.D. at 120.

c. OCA Exception No. 24 and Replies

In its Exception No. 24, the OCA argues that the ALJ erred in concluding that Aqua should not be required to submit Section 500 reports for each of its distribution systems. The OCA disagrees that it has not demonstrated that its modification will result in a significant benefit to Aqua's customers and avers that requiring Aqua to submit a

¹⁴² The Section 500 Forms are filed as part of the Company's PUC Annual Reports, and the Chapter 110 Reports are filed pursuant to the Company's requirements in its Annual Department of Environmental Protection (DEP) reports.

Section 500 Report for each of its distribution systems would identify levels of UFW which is a localized issue. The OCA contends that the identification and reduction of UFW benefits all water customers by reducing non-revenue water, which reduces chemical and power costs. OCA Exc. at 35.

In reply, Aqua asserts that Section 500 Reports are filed by utilities on a consolidated basis, and the OCA has offered no reason why Aqua should be singled out to prepare separate reports for operating divisions. Furthermore, Aqua avers that reporting on water loss in the annual Section 500 Report should not be revised while the Commission's NOPR, discussed above, which provides for AWWA water audit reports on an annual basis, remains pending. Aqua R. Exc. at 21.

d. Disposition

Upon review, we agree with the ALJ that the OCA's proposed modification to the reporting of UFW should be rejected. No significant benefits to Aqua's customers have been identified to treat Aqua differently by requiring it to prepare separate reports for operating divisions with different information than the financial and operating data that is currently provided in the Section 500 Report on a consolidated basis for the entire Company. In addition, we agree with Aqua that revising reporting requirements on water loss in the annual Section 500 Report should not be done at this time while the Commission's NOPR on this issue is pending. Therefore, we shall deny the OCA's Exception No. 24.

2. Pressure Measurements

The Commission's Regulations at 52 Pa. Code § 65.6(d) require a water utility to conduct pressure surveys by measuring pressures at "representative" points on its system:

(d) *Pressure surveys.* At regular intervals, but not less than once each year, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the pressures maintained at representative points on its system. The surveys should be made at or near periods of maximum and minimum usage. Records of these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained by the utility for a period of at least three years and shall be made available to representatives, agents, or employees of the Commission upon request.

52 Pa. Code § 65.6(d).

With respect to variations in pressure levels, the Commission's Regulations require that a water utility shall maintain normal operating pressures between 25 pounds per square inch (psi) and 125 psi at the main, except that during periods of peak seasonal loads, the pressures at the time of hourly maximum demand may be between 20 psi and 150 psi, and that during periods of hourly minimum demand the pressure may not be more than 150 psi. 52 Pa. Code § 65.6.

a. Positions of the Parties

With respect to pressure surveys, the OCA argued that Aqua is not in compliance with 52 Pa. Code § 65.6(d) regarding the placement of the measurement point to track water pressure within Aqua's system because appropriately "representative points" means readings taken "at only a low and high pressure point." OCA M.B. at 210.

Aqua disagreed with the OCA's interpretation of 52 Pa. Code § 65.6(d) and maintained that its method of conducting pressure surveys on its system is compliant with the regulation. Aqua noted that it records pressures annually at more than 24,000 hydrants in its systems, and it described its operational procedures to monitor pressures

by using local recordings as proxy checks for system performance. If an abnormality from the standard is observed, or if a customer reports a pressure problem, Aqua will conduct a follow-up investigation and address the issue. Aqua M.B. at 166-67; Aqua St. 9-R at 6.

In addition, the OCA recommended that Aqua should reduce pressures to all customers below 125 psi or be responsible for any damages resulting from higher pressures. Further, the OCA argued that Aqua should install pressure reducing valves for customers experiencing high pressures or be responsible for damages if it fails to reduce pressures to all customers below 125 psi. OCA M.B. at 210; OCA St. 7 at 13. The OCA cited an example of a water customer from Chesterbrook who testified at the public input hearing and described that he had experienced extremely high pressures, some as high as 200 psi, which caused damage to his home and neighborhood. Tr. at 230-43.

Aqua argued that the Commission recently considered and rejected a similar argument presented by the OCA in *Pa. PUC v. Pennsylvania-American Water Co.*, Docket No. R-2020-3019371 (Order entered February 25, 2021) (*PAWC*).¹⁴³ Aqua M.B. at 169-70. Aqua averred that, like *PAWC*, Aqua provides pressure in excess of 125 psi in situations where it is needed to serve customers in challenging terrain and to flow water between operating districts with different pressures. Aqua contended that the OCA's recommendation should be rejected. *Id.*

¹⁴³ In *PAWC*, the OCA recommended that PAWC should either provide a pressure reducer protecting a customer's service line or provide an insurance policy covering repair or replacement of the service as protection to service lines and inside plumbing in situations where PAWC elected to provide service at higher than 125 psi. The Commission concluded that it was not reasonable to "impose the requirement of insuring the customer service line upon the distribution utility." *PAWC* at 127.

b. Recommended Decision

Regarding the pressure surveys, the ALJ concluded that 52 Pa. Code § 65.6 does not define what is meant by “representative points” on a water system, and that if the Commission intended to limit pressure surveys to those taken at “one high and one low pressure point” on a system to be sufficiently “representative,” the regulation would include that language. The ALJ found that there is no evidence that Aqua’s current system is not reasonable for maintaining generally normal operating pressures between the range of 25 psi and 125 psi or that the points where measurements are taken are not sufficiently “representative.” R.D. at 121-22.

The ALJ concluded that Aqua should not be directed to reduce upstream water pressures or install additional pressure valves in this proceeding. Noting that the Commission has repeatedly held that public utilities are not required to render perfect service, the ALJ found that a handful of customer experiences are not sufficient for the Commission to mandate operational changes on Aqua’s distribution system at this point in time. However, the ALJ stated that as Aqua tracks pressure complaints more closely, it may be able to target areas that may require system improvements. R.D. at 123-24.

c. OCA Exception No. 25 and Replies

In its Exception No. 25, the OCA argues that the ALJ erred in concluding that Aqua should not be required to conduct pressure surveys at one high and one low pressure point on its system and that Aqua should not be required to reduce upstream water pressures or install additional pressure valves. The OCA contends that the intent of 52 Pa. Code § 65.6 is to ensure that water utilities are providing water service with pressures in reasonable ranges, and it is only logical and consistent with expert opinion that pressures be surveyed at a minimum at one high and one low point to get a fully comprehensive and useful understanding of the pressure reading of a system.

Furthermore, the OCA avers that allowing Aqua to continue providing service to customers at levels above 125 psi is not consistent with Aqua's obligation to provide safe, adequate and reliable service under 66 Pa. C.S. § 1501. OCA Exc. at 35-37.

In reply, Aqua argues that its system of pressure measurements satisfies the requirements of 52 Pa. Code § 65.6(d) and that the ALJ correctly rejected the OCA's arguments that Aqua's processes violate the regulation. In addition, Aqua states that the Recommended Decision recognizes that there are places in its system where higher pressures are necessary to ensure adequate water service to downstream customers. Aqua asserts that in the customer example from Chesterbrook offered by the OCA, this customer's property is located close to one of Aqua's largest treatment plants and pressures in excess of 200 psi are necessary to serve customers at higher elevations. Aqua references the Commission's decision in *PAWC* in arguing that it is not reasonable in certain situations to require Aqua to reduce pressures or to insure the customer against damages if the customer's required reducing valve fails. Aqua R. Exc. at 21-22.

d. Disposition

With respect to the pressure surveys, we agree with the ALJ's conclusion that, in promulgating the regulation at 52 Pa. Code § 65.6(d), if the Commission intended to limit pressure surveys in any way to define the meaning of "representative points," *e.g.*, to those taken at one high and one low pressure point, the regulation would include such language. Without such a requirement, the ALJ found that there is no evidence that Aqua's current system is not reasonable for maintaining generally normal operating pressures or that the points of measurement are not sufficiently representative. Therefore, we agree that Aqua's system of pressure measurement satisfies the requirements of 52 Pa. Code § 65.6(d).

Additionally, we agree with the ALJ that Aqua should not be directed to reduce upstream water pressures or install additional pressure valves based upon this proceeding. While we are sympathetic to the experience of the customer from Chesterbrook of failing pressure valves and property damage, the Commission has repeatedly held that public utilities are not required to render perfect service. *Rounce v. PECO Energy Co.*, Docket No. C-2015-2506941 (Order entered December 9, 2016); *Bertsch v. PPL Elec. Util. Corp.*, Docket No. C-2011-2251784 (Order entered April 2, 2012). Although a few customer experiences are not sufficient for the Commission to mandate operational changes on Aqua's distribution system at this point in time, we encourage Aqua to identify and explore ways to target areas that may benefit from system improvements as it investigates and tracks individual pressure complaints. We shall deny the OCA's Exception No. 25.

3. Isolation Valves

Isolation valves are installed on water mains so that the flow of water can be shut off in sections of the distribution system in case of a water main break or for other main repairs and replacements. Aqua M.B. at 170. Exercising an isolation valve means operating the valve through complete full open and close cycles until it operates with little resistance. Exercising isolation valves prevents them from seizing up and getting stuck due to corrosion or other deposits. An isolation valve that cannot be fully closed will increase water loss during a water main break. Inoperable valves will need to be replaced or repaired. OCA M.B. at 211-12; OCA St. 7 at 14.

a. Positions of the Parties

With respect to critical isolation valves, Aqua stated that all of its 270 such valves have been identified and currently have an exercising schedule within Aqua's work order management system, and that it exercises these valves at least once every four

years. Aqua M.B. at 171. The OCA determined that Aqua's exercising schedule for its critical isolation valves is reasonable and recommended that any critical isolation valves that could not be exercised should be repaired or replaced as soon as practicable after they are found to be inoperable. OCA M.B. at 212.

For non-critical isolation valves, Aqua operates according to a twelve-year inspection and exercising program. Aqua averred that it has committed to various non-critical valve inspection measures as part of its 2020 management audit with the Commission. Aqua M.B. at 171-172. The OCA argued that Aqua's schedule to inspect non-critical isolation valves is too long and that they should be inspected on a five-year cycle. OCA M.B. at 213. Aqua contended that the cost of the OCA's recommendation, for which the OCA did not provide any estimates, may exceed any operational benefit due to the amount of time and additional workforce needed to implement it, and that the proposed timeline is inefficient and redundant. Aqua M.B. at 172; Aqua St. 9-R at 13-14.

b. Recommended Decision

The ALJ found that the OCA did not meet its burden of proving that requiring a five-year inspection cycle for non-critical valves is necessary or will derive a benefit to Aqua's system commensurate with the cost of the program. However, the ALJ recommended that the Commission direct Aqua to develop an isolation valve inspection and exercise program, to be implemented no later than 180 days from the effective date of rates resulting from this proceeding, which establishes a defined schedule to exercise each of its non-critical isolation valves within a set inspection cycle and, subsequently, maintain records of its attempts to inspect and exercise its isolation valves noting whether it was successful. R.D. at 125.

c. Aqua Exception No. 13, OCA Exception No. 26, and Replies

In its Exception No. 13, Aqua argues that the ALJ erred by requiring the Company to develop an isolation valve inspection and exercise program, because it has already developed an appropriate inspection and exercise program. Further, Aqua contends that it has made commitments through its 2020 management audit relating to the inspection of non-critical valves, and it committed to ensure the exercising of these valves is completed over a twelve-year period. Aqua asserts that the ALJ's recommendation is duplicative of Aqua's existing program and commitments and should be rejected. Aqua Exc. at 38-39.

In reply, the OCA agrees with the ALJ's recommendation that Aqua must develop an isolation valve inspection and exercise program. The OCA disagrees with Aqua that it has already developed such a program and that the ALJ's recommendation is duplicative of such program. Rather, the OCA contends that certain findings in Aqua's 2020 management audit state that "several aspects of a comprehensive critical valve testing program are missing or in progress, and the company should expand the program to track testing and operation of non-critical valves..." and Aqua's operating procedure "does not include information on valve inspection, scheduling, or valve criticality – all of which would be critical components of a valve inspection manual or program." OCA R. Exc. at 24 (citing *Aqua Pennsylvania, Inc., Peoples Natural Gas Company LLC, Peoples Gas Company LLC, Management and Operations Audit*, Docket Nos. D-2020-3018771, D-2020-3018773, and D-2020-3018774 (issued April 2021) (*Aqua 2020 Management Audit Report*)). Furthermore, the OCA argues that a specific replacement time for non-critical valves has not been approved by the Commission and Aqua has not provided support for the longer twelve-year exercising schedule. The OCA asserts that the Commission should adopt the ALJ's recommendation to direct Aqua to develop an isolation and inspection exercise program to be implemented no later than

180 days from the effective date of rates resulting from this proceeding. OCA R. Exc. at 24-25.

In its Exception No. 26, the OCA argues that the ALJ erred in concluding that Aqua should be required to inspect non-critical isolation valves every twelve years instead of five years. The OCA avers that it demonstrated that a five-year inspection cycle would provide a benefit to Aqua and its customers. OCA Exc. at 37-38.

In reply, Aqua contends that the ALJ correctly denied the OCA's recommendation that Aqua implement the OCA's proposed five-year inspection cycle for non-critical valves. Aqua reiterates that it has made commitments through its 2020 management audit to exercise its non-critical valves over a twelve-year period, and that it has identified all valves in its system and is developing a schedule for exercising the non-critical isolation valves. Also, Aqua avers that the OCA's proposal is not supported by cost estimates for the amount of time and additional workforce that would be needed. Aqua R. Exc. at 22.

d. Disposition

Upon review of the record, we conclude that the OCA did not meet its burden of proving that requiring a five-year inspection cycle for non-critical isolation valves is necessary or will be cost-beneficial to Aqua's system. The OCA did not provide any cost estimates for the implementation of its recommended five-year program. Without any cost estimates, it is not possible to determine whether any benefits from the accelerated program will be commensurate with its costs. The costs associated with any additional time and workforce needed for the program could exceed its operational benefit and render it inefficient and redundant. For these reasons, we will not require Aqua to implement a five-year inspection cycle for non-critical isolation valves. Accordingly, the OCA's Exception No. 26 shall be denied.

We will, however, adopt the ALJ's recommendation and direct Aqua to develop an isolation valve inspection and exercise program, to be implemented no later than 180 days from the effective date of rates resulting from this proceeding, which establishes a defined schedule to exercise each of its non-critical isolation valves within a set inspection cycle and requires Aqua to maintain records of its attempts to inspect and exercise its isolation valves noting whether it was successful. Although Aqua contends that such a directive is duplicative because it has already developed an appropriate inspection and exercise program and made commitments through its 2020 management audit relating to the inspection of non-critical valves, we agree with the ALJ that the development of a non-critical isolation valve inspection and exercise program at this time is reasonable. The findings referenced by the OCA from the Commission's 2020 Aqua management audit that Aqua should expand its valve inspection program to track testing and operation of non-critical valves and that its operating procedure should include information on valve inspection, scheduling, or criticality, along with the fact that a specific replacement time for non-critical valves has not been approved by the Commission, support the ALJ's recommendation to develop a more formal valve inspection program. *See* OCA R. Exc. at 24 (citing *Aqua 2020 Management Audit Report*). Therefore, Aqua's Exception No. 13 will be denied.

4. Fire Hydrants

Aqua has over 21,000 public fire hydrants throughout its systems. In response to discovery, Aqua identified sixteen public fire hydrants on its systems that cannot provide the minimum fire flow of 500 gallons per minute (gpm) at 20 psi. Aqua M.B. at 172.

a. Positions of the Parties

The OCA recommended that each of the sixteen fire hydrants that cannot provide the minimum fire flow should be marked as such so that they will only be used for flushing and blow-offs and Aqua should provide confirmation to the OCA and other parties when this is completed. OCA M.B. at 213; OCA St. 7 at 17. Aqua stated that it has planned main replacement projects to address these hydrants within the next three years and, during this time, Aqua will attempt to either find alternative locations for the hydrants or remove them. Aqua M.B. at 172; Aqua St. 9-R at 15. The OCA agreed with this approach, so long as the hydrants will be marked and only used for flushing and/or blow-offs until they are moved or replaced. OCA M.B. at 213-14; OCA St. 7SR at 8.

b. Recommended Decision

The ALJ stated that the OCA and Aqua largely resolved their disputes regarding Aqua's plan to address the sixteen fire hydrants in its system that cannot provide the minimum fire flow of 500 gpm at 20 psi. Given the limited number of fire hydrants at issue and the importance to fire companies to know that these hydrants are not reliable for fire protection, the ALJ found that the OCA's recommendation that Aqua should mark the hydrants for only flushing and/or blow-offs until they are moved or replaced, and report to the OCA and other Parties when this is completed, is reasonable and should be adopted. R.D. at 125.

c. Disposition

No Party filed Exceptions on this issue. Finding the ALJ's recommendation to be reasonable, we shall adopt it without further comment.

5. Flushing

Flushing addresses sediments that build up in pipes that may affect the taste, clarity, and color of water. There are no Commission or PADEP requirements for main flushing. In a discovery response, Aqua indicated that all systems were flushed in 2020 under its main flushing program, but six systems were not flushed in 2019 due to staffing issues. OCA M.B. at 214; OCA St. 7 at 17.

a. Positions of the Parties

The OCA recommended that Aqua improve its flushing program in its Southeast Pennsylvania (SEPA) division by flushing the system once every three years because there are a substantial number of complaints regarding flushing-related issues which would likely be eliminated under a regular flushing program. OCA M.B. at 214.

Aqua disagreed with the OCA's recommendation. Aqua argued that the OCA offered no evidence, and that there is no industry standard, supporting a three-year flushing schedule. Also, Aqua averred that flushing is labor-intensive, somewhat disruptive and can result in significant non-revenue water volume. Aqua stated that certain factors, including water quality samples, customer issues, system geometry, daily water volume in an area, and proximity to wells and tanks, dictate how and when flushing occurs. Aqua contended that it should retain flexibility regarding flushing its distribution system and a three-year schedule is not warranted. Aqua M.B. at 174-175; Aqua St. 9-R at 17-18.

b. Recommended Decision

The ALJ noted that a three-year flushing program may eliminate customer complaints and the need for Aqua to assess certain factors in determining whether and

when to flush the system. However, the ALJ found that, based on Aqua's witness testimony that flushing can be labor intensive and result in UFW, it is not possible to conclude that it is reasonable to impose the costs on ratepayers for a three-year flushing program which may or may not result in the benefits identified by the OCA. R.D. at 126.

c. OCA Exception No. 27 and Replies

In its Exception No. 27, the OCA argues that the ALJ erred in concluding that Aqua should not be required to flush its SEPA system every three years. The OCA asserts that Aqua did not offer support for its position that flushing a system can be labor intensive and result in UFW, and it contends that a three-year flushing program is reasonable and consistent with industry standards. OCA Exc. at 38.

In reply, Aqua contends that the OCA's proposal "is an expensive and a wasteful solution in search of a problem." Aqua avers that the number of customer complaints does not suggest a serious water quality issue requiring a change to its flushing procedures. Furthermore, Aqua argues that the OCA's proposal would result in additional lost water from increased flushing and add to labor and water treatment costs. Aqua R. Exc. at 22-23.

d. Disposition

Upon review of the record, we agree with the ALJ that it is not possible based on the record to determine whether any benefits of a three-year flushing program will outweigh the costs associated with it. While such a program may reduce customer complaints and provide for a pre-determined flushing frequency, as the OCA argues, flushing the system can be labor intensive, disruptive and result in UFW, according to Aqua. Without any additional evidence or a clear industry standard supporting a

three-year flushing program, we find that requiring Aqua to flush its SEPA system every three years is not warranted. Therefore, we shall deny the OCA's Exception No. 27.

6. Per- and Polyfluoroalkyl Substances (PFAS)

Aqua maintains a website, www.waterfacts.com, with information about its testing and treatment for PFAS contamination in its water supplies. The most recent test results for some water sources were from 2016, 2017 and 2018, without explanation why more recent test results were not provided. Aqua M.B. at 175; OCA M.B. at 215; OCA St. 7 at 19.

a. Positions of the Parties

The OCA indicated that its understanding that testing was stopped at certain sites was because the test results indicated less than 13 parts per trillion for PFAS, which is Aqua's standard, and that Aqua ceases testing for sources that test below 13 parts per trillion. The OCA recommended that Aqua should add a statement to its website explaining why testing was stopped for water sources that it no longer tests for PFAS. Aqua agreed to implement the OCA's recommendation and stated it will include clarifying comments on its website regarding the reasons testing ceased at certain sites. Aqua M.B. at 175-76; Aqua St. 9-R at 19; OCA M.B. at 215; OCA St. 7 at 19.

b. Recommended Decision

The ALJ found that as no other party presented testimony on this issue, and Aqua agreed to the OCA's recommendation regarding PFAS reporting, Aqua's PFAS procedures should be accepted by the Commission.

c. Disposition

No Party filed Exceptions on this issue. Finding the ALJ's recommendation to be reasonable, we shall adopt it without further comment.

C. Customer Service

Under the *Aqua-Peoples Settlement*, the settling parties agreed that Aqua would commit to the following "Customer Service" improvement metrics:

83. Aqua commits to improve Aqua's call center performance to meet or exceed the same performance standards that the Peoples Companies agreed to meet in the 2013 Settlement concerning the acquisition of Equitable Gas Company (Docket No. A-2013-2353647 et al.) for the following three metrics in each of the five calendar years (2020-2024) following closing:

- i. percent of calls answered within 30 seconds of at least 82%,
- ii. busy-out rate of no more than 0.25%,
- iii. average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no higher than 2.5% for 2024.

Aqua-Peoples Settlement at 146-147.

In this proceeding, the OCA and CAUSE-PA asserted that Aqua failed to comply with certain of the customer service related commitments made by Aqua in the *Aqua-Peoples Settlement*. R.D. at 127-131. As will be discussed more fully below, the OCA challenged Aqua's compliance with Paragraph No. 83, above, of the settlement commitments. In this regard, the OCA challenged Aqua's compliance with: (1) percent of calls answered within 30 seconds of at least 82%; and (2) average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no

higher than 2.5% for 2024. *See* OCA M.B. at 188-193. The OCA stated that Aqua met the busy-out rate standard, but for reasons argued in its OCA St. 6, Aqua had not met the standards for calls answered and average call abandonment rate.

The OCA also challenged Aqua's compliance with Paragraph 85 of the *Aqua-Peoples Settlement, infra*, regarding the Company's commitment to complete a root cause analysis (RCA) of customer complaints. *See* OCA M.B. at 193-94. In addition, the OCA argued that Aqua's failure to comply with customer service related issues, in addition to other considerations, were an additional reason to reject the Company's request for a management performance adjustment to its ROE, discussed, *supra*. *See* OCA MB at 75-77; 181-82; 204.

1. Calls Answered Commitment Under the *Aqua-Peoples Settlement*

a. Positions of the Parties

The OCA asserted that Aqua was not in compliance with the calls answered commitment under the *Aqua-Peoples Settlement*. The OCA proffered its calculation of the utility's percentage of calls in which a customer affirmatively seeks to talk to a live representative. OCA M.B. at 190 (citing OCA St. 6 at 10); *also*, OCA Exh. BA-2 for calculation of annual average results for each of the performance standards using monthly information provided by Aqua. According to the calculations of the OCA witness Ms. Barbara A. Alexander, as measured by the calls in which the customer selects the option to speak with a representative, the annual calls answered average for 2019 was 70.56%, for 2020 was 72.86%, and for 2021 through July was 50.64%. *Id.*

Based on the foregoing, the OCA witness, Ms. Alexander, pointed out that Aqua has never met the 82% call answering standard as measured by the typical

measurement of the percentage of calls in which the customer affirmatively seeks to talk to a live representative.

Additionally, the OCA took issue with Aqua's calculation of the percentage of calls answered within 30 seconds based on the Company's use of "aggregated" data. Aqua used data from a combination of the results for customers seeking to speak to a representative with all calls handled without that request through its automated menu, Interactive Voice Response (IVR), system. Use of data from the IVR system was described as an "aggregate" of data. The OCA found use of aggregate data to be objectionable as it would, in its view, skew the data results.¹⁴⁴ OCA St. 6 at 10.

In response to the position of the OCA concerning Aqua's compliance with the percentage of calls answered, Aqua noted that OCA witness Ms. Alexander acknowledged that the Company's percentage exceeded the 82% threshold for both 2019 and 2020. Aqua M.B. at 184. Consequently, the disagreement between Aqua and the OCA regarding this metric centered upon the inclusion of calls handled by Aqua's IVR system in calculating the calls answered percentage. *Id.*

Aqua explained that the IVR is an automated way to service customers that call in with questions or concerns. *See* Aqua St. 10-R at 15-16. Aqua cites to the applicable terms of the *Aqua-Peoples Settlement*, Paragraph No. 83, and argues that the Peoples Companies include IVR contacts in calculating service level performance. Aqua continues that the use of IVR contacts data is a standard calculation in measuring contact

¹⁴⁴ In response to discovery, Aqua stated that it utilizes two call centers located in Illinois and North Carolina which handle calls from Pennsylvania customers. OCA St. 6 at 9. The Merger Settlement requires annual average performance standards in the three areas mentioned above [Aqua-Peoples Settlement Paragraph No. 83] that can be measured to reflect the performance provided to Pennsylvania customers. Since both call centers handle calls from all of Aqua's customers in several states, the performance standards reflect the average of all calls at both call centers. *See* OCA St. 6 at 9.

center performance. Based on the foregoing, Aqua submits that the position of the OCA, that the IVR system should not be “aggregated” with the Company’s person-to-person telephonic contacts, should be rejected.

b. Recommended Decision

The ALJ agreed with Aqua that the Company met its commitment under the *Aqua-Peoples Settlement* to answer 82% of customer calls within 30 seconds. The ALJ rejected the position of the OCA that use of the IVR data to calculate the Company’s performance related to the call center standards metric, made Aqua’s data unreliable and, therefore, not in compliance with the terms of the settlement. The ALJ agreed that use of aggregate data was consistent with the settlement and reasonable because it is the standard used by the Peoples Companies. R.D. at 128.

c. OCA Exception No. 20 and Replies

In its Exception No. 20, the OCA disagrees with the ALJ that use of aggregate data is reasonable. The OCA argues that the calls answered standard should be measured only by the number of customers who choose to speak with a representative because use of aggregate data, which also includes customers who use the IVR system (and do not attempt to reach a representative), skews the results. OCA Exc. at 31-32. The OCA notes that these calls are clearly “answered” within less than thirty seconds, but the calls are irrelevant to the issues discussed and agreed to in the *Aqua-Peoples Settlement*. OCA Exc. at 32.

Therefore, based on its position that use of the IVR data (or aggregated data) is not reasonable under the *Aqua-Peoples Settlement*, the OCA argues that the Commission should adopt its recommendation. *See, i.e.*, OCA M.B. at 204, pertaining to the directive for Aqua to issue a compliance document. The OCA submits that due,

inter alia, to Aqua’s failure to meet the obligations of the *Aqua-Peoples Settlement*, the Commission should reject Aqua’s claim for exemplary management performance.
OCA Exc. at 32

In its Replies to Exceptions, Aqua distinguishes the contentions asserted by the OCA about what may be “reasonable.” According to Aqua, the OCA’s position disregards the clear language of the commitment of the *Aqua-Peoples Settlement*. In this regard, Aqua argues the express language of the settlement commits the Company to improve its call center performance to meet or exceed the same performance standards that the Peoples Companies are under. Aqua continues that this is the result of the metric - – percentage of calls answered within 30 seconds of at least 82%. Because the Peoples Companies include IVR contacts in calculating service level performance, which is a standard calculation in measuring contact center performance, Aqua argues that it should be permitted to do so and that it is reasonable to do so in its calculation. Aqua R. Exc. at 18-20.

d. Disposition

On consideration of the record evidence, we shall deny the OCA’s Exception No. 20, consistent with the discussion herein and adopt the recommendation of the ALJ. There is no dispute that the analogue for this metric is the performance metric adopted by the Peoples Companies. Based on the use of aggregated data for the calculation as used to measure the performance of the Peoples Companies, we agree with the recommendation of ALJ Long that use of this data is acceptable for Aqua. When viewed in this light, it appears that Aqua has complied with its commitments.

Based on the foregoing, we will deny the OCA’s Exception No. 20 in full recognition that, in any future proceeding, where the metric is shown to inaccurately reflect Pennsylvania-specific conditions, its calculation may be revisited.

2. Calls Abandonment Commitment Under the *Aqua-Peoples Settlement*

a. Positions of the Parties

Under the *Aqua-Peoples Settlement*, Aqua committed to: “[an] average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no higher than 2.5% for 2024.” The OCA noted that Aqua’s annual call abandonment rate metric had not been met. *See* OCA St. 6 at 10. The OCA, through its witness Ms. Alexander, observed that the call abandonment rates were: 4.56% in 2019, 4.32% in 2020, and 13.15% in 2021, through July. *Id.*

The OCA also, as noted, objected to Aqua’s measure of the call abandonment rate by combining the performance when customers affirmatively seek to speak with a customer service representative with all calls handled via the IVR system. The OCA argued that use of the IVR system data results in an inaccurate measurement of customer experience for those attempting to reach a customer service representative. OCA St. 6 at 10.

Aqua conceded that it had not, for the applicable period, met the percentage of average call abandonment metric commitment of the *Aqua-Peoples Settlement*. Aqua explained, however, that unanticipated circumstances outside of its control were substantial factors in preventing the Company from express compliance. *See* Aqua M.B. at 185-86.

Aqua, through its witness, Ms. Black, explained that the failure to meet the metric was primarily attributed to unanticipated United States Postal Service (USPS) delays. Aqua explained that the unanticipated USPS delivery delays caused many customer bills to be delivered late and resulted in higher-than-normal call volumes.

The impact of the postal service delay and severe weather events in meeting this metric was identified in an annual report filed on February 1, 2021.

Aqua noted that the *Aqua-Peoples Settlement* contemplated a situation where the Company may miss a benchmark and such failure would be addressed in collaboratives as contemplated by the terms of the *Aqua-Peoples Settlement*. Under the terms of the settlement, Aqua is required to compile an annual report to apprise stakeholders of its compliance with the settlement terms.

b. Recommended Decision

On consideration of the position of the Parties, the ALJ agreed with Aqua. The ALJ noted that the *Aqua-Peoples Settlement* contemplated a situation where events outside of the Company's control that prevent compliance with the literal terms of the settlement commitments could occur. She found that Aqua transparently explained in the February 1st report the reason for its failure to meet the call abandonment benchmark for 2020-21. The events resulting in Aqua's failure to meet the settlement commitment were viewed as an isolated situation and did not, in her opinion, equate to a failure to comply with the settlement. R.D. at 128.

c. OCA Exception No. 21 and Replies

In its Exception No. 21, the OCA disagrees with and, therefore, excepts to, the ALJ's conclusion that Aqua "[s]hould be excused from its obligation to reduce its average call abandonment rate to 4% or less." OCA Exc. at 32.

The OCA argues that the evidence shows that as of July 2021, the call abandonment rate was 13.15%, compared to a rate of 4.56% in 2019. The OCA argues that, in the year before and in the partial year following the unusual circumstances in

late 2020, Aqua never met the “no higher than 4%” metric for its call abandonment rate, even when calculated using the aggregate calls that included IVR data. OCA Exc. at 32-33 (citing OCA St. 6SR at 5; OCA M.B. at 192-93).

The OCA, contrary to the conclusion of the ALJ, takes the position that Aqua’s failure to achieve its commitment level was not an isolated event that happened because of unforeseen circumstances. The OCA points out that the Company has not met the 4% abandonment rate in any of the last two and one half years. OCA Exc. at 33.

In its Replies to Exceptions, Aqua stresses two points: (1) the settlement commitment did not become effective until after the merger was approved by the Commission in 2020, and thus prior performance data under this metric is not relevant to assess its compliance with the commitment; and (2) the ALJ concluded that the *Aqua-Peoples Settlement* contemplated that unexpected circumstances could prevent compliance. Based on the foregoing, the Company maintains that the failure to meet this metric is, in fact, an isolated situation which does not equate to a failure to comply with the settlement commitment. Aqua R. Exc. at 19.

d. Disposition

On consideration of the positions of the Parties, we shall deny the Exceptions of the OCA in this matter. We note that there is a substantial disparity in the percentage of calls abandoned for year 2021 (as of July 2021, 13.15 %; *see* OCA Exc. at 32). While we find the substantial difference in the target percentage under the metric and the actual performance of Aqua to be a concern, we accept the reasoning of the presiding ALJ that the Company provided a reasonable basis to account for the disparity. On balance, we agree that the substantial difference in the abandoned call percentage for the calendar year 2021 resulted from unanticipated conditions and is an isolated event. While the OCA notes that the Company has never met its target prior to the periods of

time of the 2021 report, the Company notes that the approval of the merger conditions in 2020 renders this data not material to our consideration of the year at issue, 2021.

Based on the foregoing, the OCA's Exception No. 21 is denied consistent with the discussion in this Opinion and Order. We advise the Parties that the annual report will provide a basis for cooperation between interested stakeholders should further concerns arise regarding compliance.

3. Commitment to Complete a Root Cause Analysis (RCA) of Customer Complaints

a. Positions of the Parties

The OCA explained that this area of concern arises pursuant to Paragraph No. 85 of the *Aqua-Peoples Settlement*. Paragraph No. 85 is reprinted below:

85. Aqua PA will develop a system to track Aqua PA customer complaints in a live Excel spreadsheet, consistent with Paragraph 47 in the Joint Petition for Settlement submitted in Aqua PA's recent base rate case (Docket Nos. R-2018-3003558 and R-2018-3003561). Aqua PA will review this information and conduct a root cause analysis [(RCA)] of adverse trends at least annually.

Aqua-Peoples Settlement at 147.

The OCA took the position that Aqua failed to comply with the development of a RCA.¹⁴⁵ *See* OCA M.B. at 193-94. The OCA asserted that Aqua has not provided requested information on the methodology and timetable for the completion of the RCA contemplated by the *Aqua-Peoples Settlement*. The OCA further stated that Aqua has not indicated a methodology for tracking whether its responses to customer disputes or complaints were incorrect or improper, which, we are advised, is a key component of any RCA of customer complaints.¹⁴⁶ *Id.*

Aqua, through its witness, Ms. Black, acknowledged that the RCA has not been completed. Aqua referenced a “live spreadsheet” that has not yet been finalized. Aqua M.B. at 187. Aqua attributed the lack of finalization to the fact that it has been working with the OCA to develop the spreadsheet based upon the OCA’s requested parameters. *Id.* (citing Aqua St. 10-R at 17).

b. Recommended Decision

The ALJ concluded that Aqua sufficiently demonstrated its good faith efforts to come into compliance with the benchmarks set forth in the *Aqua-Peoples*

¹⁴⁵ A RCA requires a fundamental review of the policies and practices that resulted in an informal customer complaint and the internal evaluation of how to prevent the complaint or fix the underlying cause. *See* OCA St. 6 at 12. The OCA acknowledged that Aqua provided a confidential spreadsheet of complaints and their “root cause,” but did not provide an actual analysis of the root cause. OCA M.B. at 193-194.

¹⁴⁶ As the OCA witness, Ms. Alexander, noted, “[t]his lack of analysis of customer complaint trends and identification of the root cause for any complaint trends is also troubling in light of the volume of ‘justified’ complaints and ‘notices of infractions’ from the Commission’s [BCS] after that office’s handling of informal complaints submitted by Aqua customers.” OCA St. 6 at 13.

Settlement concerning the development of a RCA. R.D. at 129. The ALJ acknowledged that the development of a RCA is an ongoing process.¹⁴⁷

c. OCA Exception No. 22 and Replies

In its Exception No. 22, the OCA argues that Aqua has not complied with the commitment to conduct a RCA of customer complaint data consistent with the *Aqua-Peoples Settlement*. The OCA stresses that the terms of the settlement required Aqua to develop a system to track Aqua customer complaints in a live Excel spreadsheet and to review this information and conduct a RCA of adverse trends at least annually. The OCA takes the position that Aqua has failed to do this, and it disagrees with the ALJ's conclusion that Aqua's compliance with this settlement obligation should not be determined based upon "good faith efforts." OCA Exc. at 33.

The OCA further argues that, based on a comparison of Aqua's performance compared to other utilities, such comparison shows why it is "critical" for Aqua to comply with this term of the *Aqua-Peoples Settlement* in this regard.¹⁴⁸ The OCA points out that Aqua had a high number of customer complaints and, in order to address Aqua's high percentage of justified complaints, it asserts that the Company should be required to conduct a RCA of customer complaint data to spot issues and concerns that require attention and potential changes in policies or processes as soon as practicable. OCA Exc. at 33.

¹⁴⁷ The ALJ further noted that, upon the conversion to SAP, Aqua's witness, Ms. Black, stated that the Company's RCA efforts can be enhanced by increasing the visibility of case trends through enhanced reporting of case types. R.D. at 129.

¹⁴⁸ In 2020, Aqua had the highest number of "justified" complaints compared to other Pennsylvania water utilities; 16% of the closed and evaluated customer complaints were justified compared to 5% for other major water utilities. *See* OCA Exc. at 33 (citing 2020 Utility Consumer Activities Report and Evaluation at 12; OCA M.B. at 180; OCA R.B. at 110). In October 2021, Aqua's justified average complaint percentage was 13%. OCA Exh. BA-5; OCA R.B. at 111. *Id.*

For these reasons, the OCA submits that Aqua is not in compliance with this term of the settlement. Therefore, the Commission should modify the Recommended Decision and adopt the OCA's recommendation. OCA Exc. at 33-34.

In its Replies to Exceptions, Aqua explains that it has been attempting to work collaboratively with the OCA to develop the spreadsheet's parameters. Aqua R. Exc. at 20. With respect to the RCA, Aqua further explains that the RCA occurs on an on-going basis. The Company states that, if an isolated employee error is identified, coaching on compliance is provided. If multiple similar complaints are received, the issue is escalated to the customer contact team for review. *Id.*

Aqua concludes its Replies by noting that it is working to "enhance" and "formalize" the RCA process, which will be facilitated by Aqua's upcoming conversion to the SAP operating system. Based on this representation, Aqua asserts that the OCA's contentions regarding its RCA efforts are without merit and that the OCA's Exception should be denied. Aqua R. Exc. at 20.

d. Disposition

On consideration of the record, we shall grant the OCA's Exception No. 22, in part, and deny it, in part. The Parties appear to have little to no disagreement concerning the "live" spreadsheet data. The controversy appears to surround the use of the spreadsheet data in development of the RCA. We do not, therefore, dismiss, out of hand, the concerns expressed by the OCA in the development of the RCA.

The Company's commitment, as memorialized in Paragraph No. 85 of the *Aqua-Peoples Settlement*, cross-references Paragraph No. 47 of the 2018 Settlement, which was approved by the Commission in the *Aqua 2018 Rate Case*. Paragraph No. 47 of that 2018 Settlement reads as follows:

47. The Company shall continue to provide water and wastewater customer complaints in a live Excel spreadsheet that shall be made available in future general rate proceedings. The water and wastewater customer complaint logs shall contain separate searchable columns for date of complaint, street number, street name, city (zip code is preferable), and code for the type of complaint. The Company and OCA agree to continue to discuss how to incorporate into a live Excel spreadsheet the following additional information regarding whether a Company employee made a site visit, if the problem was the responsibility of the Company or the customer, and the date the complaint was resolved. The Company and the OCA agree to have that discussion within 90 days after the entry of a final order in this proceeding. Additionally, the Company agrees to provide a legend explaining the abbreviations used in the complaint logs.

Our review of the cross-referenced language connotes a more collaborative process between the OCA and Aqua was intended for the development of the RCA that goes beyond the submission of live spreadsheet data. Based on our review, we direct Aqua, the OCA and I&E to engage in collective exchanges regarding the spreadsheet data and cooperatively apprise each of how this data will be developed into a RCA that can reflect meaningful trends so as to, potentially, reduce contested issues in future proceedings. Accordingly, we shall grant the OCA's Exception No. 22, in part, and deny it, in part.

4. Management Performance Adjustment to Aqua's ROE Based Upon Asserted Levels of Customer Satisfaction

a. Positions of the Parties

The OCA's overall position was in vigorous opposition to the base rate increase request of Aqua. *See, e.g.*, OCA M.B. at 1-16. In addition to its objection to any increase in rates due to the adverse economic impact of the COVID-19 pandemic on the

service territory of Aqua, the OCA also took the position that Aqua's customer service performance was below that of comparable utilities. The OCA, through its witnesses, Ms. Alexander and Mr. Colton, addressed areas where Aqua was alleged to have failed to meet basic standards of utility performance pursuant to Sections 526 and 1501 of the Code, 66 Pa. C.S. §§ 526, 1501.

Based on the foregoing, as well as other factors discussed in Section X.D.2 of this Opinion and Order, *supra*, the OCA opposed Aqua's request for a management performance adjustment to its ROE. The OCA noted that the request was not supported but was refuted by the testimony of its witness Mr. David J. Garrett, who provided specific analyses of customer service and customer assistance measures. Namely, as noted in Section X.D.2, *supra*, the OCA, through its witness Mr. Garrett, testified that the Company has not conducted any comparative analyses to determine if Aqua's management performance is any different than other regulated utilities, in or out of its proxy group. OCA M.B. at 75-76.

The OCA, as a remedy for Aqua's alleged failure to implement the commitments agreed to in the *Aqua-Peoples Settlement*, and for other areas in which the OCA contended were inadequate, requested:

. . . that Aqua be held accountable for these previously agreed-to performance standards. OCA St. 6 at 23.
[OCA witness Alexander] recommends that Aqua develop and submit a compliance plan to the stakeholders that, after review, should be submitted to the Commission for approval and implementation. *Id.* The plan should include specific action steps and deadlines for achieving compliance. *Id.*

OCA M.B. at 204.

Accordingly, the OCA reinforced its argument that there was no basis for awarding a rate of return higher than Aqua's estimated cost of equity. *See* OCA St. 3SR at 10.

As discussed, in detail, under Section X.D.2 of this Opinion and Order, Aqua requested an upward adjustment to its ROE for superior management performance. Aqua argued that in accordance with Section 523 of the Code, 66 Pa. C.S. § 523, the Commission is required to consider management effectiveness when setting rates. Aqua insisted that it has provided extensive evidence to demonstrate that it provides high quality service and has implemented numerous programs designed to enhance the service it provides to customers and that this evidence supports an addition to the allowed ROE. Aqua M.B. at 128-37.

b. Recommended Decision

As previously noted, the ALJ recommended that the Commission reject the Company's request for an upward adjustment to its ROE for superior management performance. R.D. at 79-81.

For different reasons, however, the ALJ was not persuaded that in rejecting the Company's request, the Commission should rely on the evidence proffered by the OCA and CAUSE-PA regarding the provision of poor customer service. In particular, the OCA argued for its persuasive evidentiary value, that a customer satisfaction survey indicated that 73% of Aqua customers with recent telephone call center transactions rated satisfaction as "excellent" or "very good." R.D. at 129 (referencing OCA St. 6 at 11; OCA M.B. at 191). The OCA argued that this level of customer satisfaction is low compared to Pennsylvania electric and gas companies where over 80% of customers typically express that they are "very satisfied" with their interaction with the utility's representative. R.D. at 120-30. In considering this testimony, the ALJ agreed with Aqua

that its customer satisfaction survey indicating only 73% of customers rated their satisfaction as “excellent” or “very good” is not, in and of itself, indicative of poor customer service, particularly during the COVID-19 pandemic in which certain customer interactions have had to be limited. *Id.*

Accordingly, the ALJ recommended that in rejecting the Company’s request for a management performance adjustment the Commission should instead rely on the findings the ALJ made on pages 79-81 of her Recommended Decision, discussed, *supra*.

c. OCA Exception No. 23 and Replies

In its Exception No. 23, the OCA argues that the ALJ properly recommended that the Commission reject Aqua’s claim for an upward adjustment to its ROE for superior management performance. Nonetheless, the OCA submits that in recommending that the Commission reach this conclusion, the ALJ erred in finding that the Commission should not rely on the evidence proffered by the OCA and CAUSE-PA that demonstrates that the Company provides less than adequate customer service. The OCA points to the testimony of its witnesses Ms. Alexander and Mr. Colton that Aqua’s call center performance level in comparison to other utilities was not a good indicator regarding Aqua’s customer satisfaction. OCA Exc. at 34 (citing OCA St. 6 at 9-11; OCA St. 6SR at 5).

For purposes of ensuring that all of the evidence rebutting Aqua’s claim for a management performance adder is reviewed, in addition to the evidence adopted by the ALJ, the OCA submits that Aqua’s lower customer satisfaction level should be considered as one of many instances of Aqua’s lack of evidence to support a management performance adjustment. Therefore, the OCA argues that the Commission should consider Aqua’s poor satisfaction ratings, including the fact that Aqua’s customer survey

indicated that only 73% of customers rated their satisfaction as “excellent” or “very good” as further support for the OCA’s recommended ROE and as additional support for rejecting the management performance adder. OCA Exc. at 34-35 (citing OCA St. 6 at 8-22).

In its Replies to Exceptions, the Company refers the Commission to its prior evidence and argument in support of a management performance adder, and discussed in Section X.D.2 of this Opinion and Order, *supra*. Aqua R. Exc. at 20.

In its Replies to Exceptions, I&E explains that although it did not file any testimony regarding the Company’s customer service satisfaction levels, it does not oppose the OCA’s assertions, as set forth in OCA Exception No. 23. I&E R. Exc. at 19.

d. Disposition

As set forth in our disposition of Section X.D.2, *supra*, we have determined that Aqua has exhibited extraordinary effort in aiding and protecting Pennsylvania water and wastewater customers and the environment. Thus, we have awarded the Company a management performance adjustment of twenty-five basis points to its ROE. For this reason, we shall decline to address the additional arguments of the OCA, as set forth in its Exception No. 23, for rejecting the Company’s requested management performance adjustment. Accordingly, the OCA’s Exception No. 23 is denied.

D. Masthope Allegations of Inadequate Wastewater Service

1. Positions of the Parties

Masthope contended that the Commission should deny Aqua's requested rate increase for Masthope's water and wastewater customers because the Company has provided unreasonable service. In this regard, Masthope alleged that there have been unreasonable systematic and unresolved instances of hydraulic overload conditions affecting the Masthope Wastewater Treatment Plant (WWTP) dating back to 2018, which resulted in restrictions upon Aqua's ability to make new wastewater connections. Masthope submitted that Aqua's insufficient planning, investment, maintenance, and operation solely caused the hydraulic overload conditions and ensuing building restrictions within Masthope. Masthope contended that any additional rate increase for Masthope's customers would be unjust and unreasonable given Aqua's failure to provide reasonable service over a period of years. Masthope M.B. at 9-24.

Aqua rebutted that it has adequately planned for the capacity needs of Masthope and has taken reasonable and appropriate measures to improve the wastewater system and service facilitates in its provision of service to the Masthope community. . The Company completed an evaluation of the capacity needs at the Masthope community as part of its 2018 Chapter 94 Report. Based on the evaluation, Aqua implemented the project known as the "Treatment Train Project" to address the system's increasing capacity needs and to avoid future hydraulic exceedance. Aqua St. 9-R at 36-37. Aqua asserted that based upon its evaluation of both the capacity and connection needs of the Masthope community, the Company's "Treatment Train Project," as expanded, would address both the system's need for increased capacity to prevent future hydraulic overload, as well as connection needs of the system. The Company noted that the Treatment Train Project was subsequently expanded to a long-term capital upgrade project based on an evaluation of the remaining connection needs of the system. The

Company also asserted it has demonstrated it is taking proactive steps to reduce inflow and infiltration (I&I) in the collection system as described in its 2020 Chapter 94 Report. Aqua M.B. at 195-200; Aqua R.B. at 84-89; Aqua St. 9-R at 36-37; Aqua St. 9-R at 37.

While maintaining it has taken affirmative steps, Aqua asserted that two events beyond its control led to hydraulic overloads on the system. The Company alleged that elevated precipitation levels and shifts to more full-time use of the residences at Masthope, because of the COVID-19 pandemic, caused hydraulic overloads on the system. As a result of the overloads, Aqua explained, PADEP issued a moratorium on new connections to the system. In response to the moratorium, Aqua submitted a Corrective Action Plan to PADEP, which was designed to restore or otherwise make available connection capacity at Masthope. At that time, the Company noted that the Corrective Action Plan was approved by PADEP, and consequently, PADEP also granted a sewer connection allocation of 60 Equivalent Dwelling Units (EDUs) to Aqua, which modified the prior total moratorium on sewer connections. *See* Aqua St. 9-R at 33-36; Aqua St. 9-R at 37; Aqua Post-Hearing Exh. 1.

2. Recommended Decision

As a procedural matter, the ALJ noted that the issues presented by Masthope were in the context of a complaint *against a utility's rate increase based on the unreasonable provision of service*, rather than a complaint based on the unreasonable provision of service. As such, the ALJ noted that the question was not:

...whether Aqua's wastewater service to Masthope is adequate and reasonable given the persisting hydraulic overload conditions and resulting moratorium on new connections to the Masthope WWTP. Instead, the Commission must determine *whether Aqua's alleged failure to provide reasonable service is so pervasive that the Company should be punished for this failure by refusing to*

grant its request for increased revenue, and whether it is necessary and appropriate to direct service changes or the installation of additional facilities.

R.D. at 133 (citing Masthope R.B. at 4 (quotations omitted, emphasis added)).

The ALJ noted the steps taken by Aqua to rectify the issues related to the Masthope system, including the Company's Treatment Train project, and the Company's Corrective Action Plan submitted to PADEP. Under the Corrective Action Plan, which was recently approved by the PADEP, the ALJ noted that the Company would restore and otherwise make connection capacity available for the Masthope community.

Id. at 132.

The ALJ acknowledged "[t]he Masthope community is clearly experiencing challenges due to hydraulic overload at the WWTP." *See* R.D. at 133. However, the ALJ concluded that Aqua has taken affirmative steps to address the problem, and "[a]ppears to be working with PADEP to address the sewage planning and regulatory issues within that agency's purview."¹⁴⁹ Accordingly, the ALJ did not recommend that the Commission deny Aqua's request for a rate increase, decline to increase rates attributable to the cost of providing service to Masthope, or direct additional service changes or the installation of additional facilities. *Id.*

3. Masthope Exception No. 1 and Replies

In its Exception No. 1, Masthope challenges the grant of Aqua's requested rate increase based upon, *inter alia*, inadequate provision of service by Aqua where hydraulic overload conditions have persisted at the Masthope WWTP since at least 2018,

¹⁴⁹ R.D. at 133. The ALJ also noted that Masthope may file an appeal to the Environmental Hearing Board if it believes that PADEP's response to the sewage planning issues are inadequate. *Id.* (citing, Aqua Post-Hearing Exh. 1).

and the resulting moratorium on new connections imposed by the PADEP in 2020, notwithstanding PADEP's recent modification to allow additional connections. Masthope remains of the opinion that a rate increase under these circumstances is unwarranted. Namely, Masthope emphasizes that the Masthope community experienced a substantial rate increase in 2019. Masthope Exc. at 4 (citing Masthope M.B. at 9-19; Masthope Exc. at 4-10).

Masthope asserts that the ALJ erred by: (1) failing to conclude that Aqua has rendered inadequate and unreasonable wastewater service; (2) concluding that the Commission lacks jurisdiction over the hydraulic overload issues facing the Masthope system; (3) making an unsubstantiated finding that increased precipitation levels and shifts from part-time to full-time residencies during the COVID-19 pandemic caused hydraulic overloads; and (4) failing to consider whether to impose conditions upon any rate increase granted in this proceeding. Masthope Exc. at 5-10.

Masthope reemphasizes its position that Aqua's requested rate increase is unjust and unreasonable for Masthope ratepayers, particularly since Masthope residents experience ongoing and unresolved service issues. Masthope notes that Aqua acknowledges that it may take five years to implement the plans to fully resolve the hydraulic overload conditions at the Masthope WWTP. Masthope Exc. at 4.

Masthope asserts the Commission has jurisdiction, pursuant to its authority under Section 523 of the Code, *supra*, to consider the adequacy of Aqua's service to Masthope customers in determining just and reasonable rates. Masthope argues that the Commission should find that Aqua failed to provide its Masthope customers with adequate, efficient, safe, and reasonable service and facilities, and therefore deny all or part of Aqua's requested rate increase. Masthope Exc. at 5-7 (citing, *e.g.*, *Sutter v. Clean Treatment Sewage Company*, Docket No. C-20078197, (Order entered May 15, 2009) (*Sutter*) at 14).

Masthope notes that while the ALJ acknowledged the Company's failure to provide adequate service, she should have recommended an adjustment to Aqua's requested rate increase to reduce the impact on Masthope wastewater customers. Masthope Exc. at 6-7 (citing R.D. at 29-30, Findings of Fact Nos. 11[2]-1[4]¹⁵⁰). Masthope also argues that it was error for the ALJ to conclude that because PADEP has granted limited approval of Aqua's proposed Corrective Action Plan, the Commission lacks jurisdiction to address those matters as part of the rate proceeding. Masthope Exc. at 6 (citing R.D. at 133). Masthope asserts that the Commission has previously drawn a distinction of PADEP jurisdiction over hydraulic overloads which involve strictly environmental protection issues and the Commission's jurisdiction over adequate service in the context of rate proceedings. Masthope Exc. at 6-7 (citing *Sutter*).

Next, Masthope argues that it was error for the ALJ to acknowledge any factors "beyond Aqua's control" as mitigating Aqua's responsibility for hydraulic overload conditions. Specifically, Masthope asserts that there is no evidence of record to support the impact of the COVID-19 pandemic, including shifts from part-time to full-time residency, and elevated precipitation levels as impacting hydraulic overloads. Masthope Exc. at 8-9 (citing R.D. at 132).

¹⁵⁰ These Findings of Fact state, as follows:

112. Aqua submitted a Corrective Action Plan to Pennsylvania Department of Environmental Protection (PADEP), which is targeted at restoring or otherwise making available capacity to current and future connections at Masthope Mountain community.

113. This Corrective Action Plan was recently approved by PADEP.

114. As part of the approved Corrective Action Plan, PADEP also granted a sewer connection allocation of 60 Equivalent Dwelling Units (EDUs) to Aqua, modifying the sewer connection moratorium.

R.D. at 29-30 (citations omitted).

Finally, Masthope asserts that it was error for the ALJ to fail to impose any conditions on Aqua's proposed rate increase to assure the future provision of adequate and reasonable wastewater service for Aqua's Masthope customers, consistent with the Commission's authority to deny a rate increase *in part* where the Commission finds a public utility fails to render adequate service. Masthope Exc. at 9 (citing Masthope M.B. at 9-19; Masthope R.B. at 2-5).

Masthope requests that, if the Commission approves an increase in Masthope rates, the Commission should impose conditions and deadlines on Aqua to assure that the Company timely resolves the hydraulic overload conditions and permanently eliminates building restrictions that detrimentally affect the community. Further, Masthope argues the existence of Aqua's Corrective Action Plan in response to the PADEP does not preclude the Commission's authority to impose further such conditions. Masthope Exc. at 2, 6.

Specifically, Masthope requests that the Commission impose conditions to resolve the hydraulic overload conditions and eliminate building restrictions by directing Aqua to:

- coordinate with Masthope and local officials regarding the Corrective Action Plan;
- report to Masthope and the Commission on the status of corrective actions;
- seek additional requests or an amendment to the Corrective Action Plan to increase the number of connections to the Masthope WWTP pending completion of the Corrective Action Plan;
- assure that Aqua's "Project 15088006258 – Masthope WWTP Add Treatment Train" results in eliminating the building restrictions currently affecting the Masthope WWTP;

- timely complete Act 537 planning and related improvements to eliminate building restrictions in Masthope; and
- at a minimum, in light of PADEP's recent modifications to Aqua's Corrective Action Plan, require that Aqua meet and confer with Masthope and Lackawaxen Township officials to discuss the 60 permitted connections to determine areas of priority and maximize the benefit to the Masthope community.

Masthope Exc. at 9 (citing Masthope M.B. at 9-19; Masthope R.B. at 2-5).

Accordingly, Masthope asserts that the Commission should reject the ALJ's recommendation, grant Masthope's Exception No. 1, impose a reasonable reduction in Aqua's requested rate increase as it pertains to the Masthope community, and otherwise impose reasonable conditions upon Aqua to ensure timely resolution of the hydraulic overload conditions and elimination of building restrictions. Masthope Exc. at 10.

In its replies, Aqua asserts that the ALJ properly recommended that the Commission deny Masthope's claims of poor quality of service as a basis for challenging the Company's requested rate increase. Aqua notes that the ALJ correctly concluded that Aqua has taken affirmative steps to resolve problems facing this system, and proactively identify improvements to address "sewage planning and regulatory issues within...[PADEP's] purview." Aqua asserts that its affirmative steps taken to improve the system, which led to PADEP's lifting of the ban on new housing in Masthope, based upon Aqua's detailed Treatment Train Project, as expanded to a long-term capital upgrade project, and other steps taken by the Company to reduce I&I in the collection system, demonstrate Aqua's reasonable provision of service in the circumstances. Aqua R. Exc. at 23-25 (citing R.D. at 133; Aqua M.B. at 195-96). Aqua concludes that,

as found by the ALJ, Aqua has provided reasonable service and taken reasonable steps to address the problems facing this system. Aqua R. Exc. at 25.

Aqua further asserts that Masthope misconstrues the Commission's decision in *Sutter*, which Aqua asserts is distinguishable from the present circumstances. Specifically, Aqua claims that, unlike the utility in *Sutter*, Aqua has taken prompt and significant steps to resolve the hydraulic overloads facing the Masthope system, including the recently approved Corrective Action Plan submitted to PADEP. Aqua Exc. at 24 (citing Aqua R.B. at 85-86).

Aqua asserts that, contrary to Masthope's position, the record fully supports the ALJ's conclusion regarding the impact of circumstances beyond Aqua's control upon the occurrence of hydraulic overloads, including increased precipitation levels and shifts from part-time to full-time residencies during the COVID-19 pandemic. More specifically, Aqua notes that its witness, Mr. Duerr, testified to the steps taken by Aqua beginning in 2018 to address the system's issues, and the intervening events in 2020 that resulted in these overloads. Aqua Exc. at 24-25 (citing Aqua M.B. at 196-97).

Finally, Aqua contends that the Commission should reject Masthope's request that the Commission condition Aqua's requested rate increase. Aqua asserts that Masthope's proposed conditions relate to items identified in Aqua's Chapter 94 Reports and the Corrective Action Plan which was approved under the purview of the PADEP. Aqua Exc. at 25 (citing Aqua R.B. at 87-88).

Accordingly, Aqua asserts that the Commission should deny Masthope's Exception No. 1 and adopt the ALJ's recommendation dismissing Masthope's Complaints at Docket Nos. C-2021-3028992 and C-2021-3028996. Aqua Exc. at 25.

In its replies, I&E asserts its support for what it describes as the ALJ's well-reasoned recommendation as it pertains to Masthope. I&E R. Exc. at 24.

Finally, in its Replies, the OCA asserts that if the Commission grants Masthope's request to reduce the rate increase for Masthope customers, the remedy should not shift or impose corresponding costs on other Aqua water or wastewater customers. The OCA asserts that the revenue requirement associated with the rates set for Masthope should not be reallocated to other Aqua customers, based on Masthope's claim of inadequate service. Rather, if inadequate service is found, the OCA maintains that Aqua should bear the cost by reduction in the return on equity because the revenue requirement for Masthope would not be fully reflected in rates. OCA R. Exc. at 18 (citing OCA R.B. at 50; Masthope Exc. at 4-10).

4. Disposition

Upon review, as discussed more fully, *infra.*, we agree with the ALJ's recommendation to grant Aqua's proposed rate increase as applicable to Masthope, and we decline to impose any additional conditions upon Aqua related to the reduction of hydraulic overload conditions and elimination of building restrictions.

As a preliminary matter, we agree with the ALJ that our disposition of this issue turns on whether Aqua's alleged failure to provide reasonable service is so pervasive that the Company should be punished for this failure by refusing to grant its request for increased revenue, and whether it is necessary and appropriate to direct service changes or the installation of additional facilities.

Further, we agree with the general principles argued by Masthope that it is within the Commission's discretion pursuant to our authority under Section 523 of the Code, to consider the adequacy of Aqua's service to Masthope customers in determining

just and reasonable rates. Should we determine that Aqua's provision of service was inadequate *in the circumstances*, it is within our discretion to deny or reduce Aqua's requested rate increase, and/or impose further conditions as deemed reasonable and necessary in the circumstances. However, under the circumstances, we do not conclude that Aqua's provision of service to Masthope may be found to be unreasonable, or so inadequate as to justify a reduction in the proposed rate increase or warrant imposition of additional conditions upon Aqua's provision of service.

In the present circumstances, it is acknowledged that the Masthope community has experienced serious customer service issues regarding hydraulic overloads and the inability to meet the needs for new connections. However, in the context of a requested rate increase, our recognition of the serious allegation of issues regarding the provision of service must also include consideration of the Company's response to those issues. Where the Company's response is untimely and/or inadequate, we may be persuaded that the Company's proposed rate increase should be denied in total or reduced by some measure, and/or that certain conditions should be attached to the rate increase approval. *See Sutter, supra.*

Here, however, we conclude that the facts of the present case reflect that Aqua has taken prompt, reasonable and affirmative steps to rectify the problems associated with hydraulic overloads and the connection needs of the Masthope community. As noted by the Company, Aqua's detailed Treatment Train Project, as expanded to a long-term capital upgrade project, and other steps taken by Aqua to reduce I&I in the collection system, demonstrate Aqua's reasonable provision of service in the circumstances. Aqua R. Exc. at 23-25 (citing, R.D. at 133; Aqua M.B. at 195-96).

Further, we disagree with Masthope's argument that the Commission's prior decision in *Sutter* is applicable in the present circumstances. We note that *Sutter* is an example of the exercise of the Commission's discretion on a case-by-case basis, in the

circumstances involving a rate increase which did not establish a mandatory standard or ruling. Although *Sutter* did involve the Commission’s exercise of jurisdiction where a utility had matters pending before the PADEP, the facts in *Sutter* are distinguishable in material respect to the facts presently before us. Foremost, the utility in *Sutter* did not demonstrate the prompt and affirmative steps to rectify the service deficiencies at issue in the proceeding. *See, generally, Sutter*, at 14. . In contrast here, the record reflects Aqua’s prompt, reasonable and affirmative steps to rectify the problems and needs of the Masthope community.

Accordingly, we shall deny Masthope’s Exceptions No. 1, and adopt the ALJ’s recommendation, dismissing the Complaints at Docket Nos. C-2021-3028992 and C-2021-3028996.

E. COVID-19 Uncollectible Deferral

1. Positions of the Parties

Rather than requesting recovery of its existing COVID-19 deferral amounts in this current rate case, Aqua proposed to continue recording amounts in its COVID-19 deferral account and to seek recovery in a future rate case. In support, Aqua explained that the Commission previously authorized utilities to create regulatory assets for incremental uncollectible expenses related to COVID-19 above those already embedded in base rates. Aqua M.B. at 200 (citing Aqua St. 1 at 22-24).

Aqua noted increased levels of unpaid billings or “bad debt,” due to the service termination moratorium, citing *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019244 (Emergency Order ratified March 26, 2020) (*Emergency Order*). According to Aqua, this increased the Company’s uncollectible accounts expense above the amount currently

embedded in its base rates, which were \$2,425,823 for water and \$217,335 for wastewater base systems during the HTY. Aqua explained that it calculated these expenses by normalizing them to pre-pandemic levels, specifically the rate of bad debt expense implicitly authorized in the *Aqua 2018 Rate Case*. The Company recorded a regulatory asset of \$5,695,030 as a result of aging accounts receivable from its customers due to the termination moratorium. Aqua M.B. at 201.

Aqua argued that, although the service termination moratorium has ended, Pennsylvania continued to be impacted by the COVID-19 pandemic at the time of the Company's filing, and that it continues to incur incremental levels of uncollectible expenses beyond the end of the HTY. In response, Aqua sought continued authorization to defer (not recover) these incremental expenses realized over and above its recovery levels for review and recovery in its next base rate case. Aqua M.B. at 201-02 (citing Aqua St. 1 at 23-24).

Aqua asserted that it was not asking for "any time value of the money related to these deferrals" and that the Company and its shareholders were currently funding, and will continue to fund, the delayed cash inflow from aging accounts receivable. Thus, the Company submitted that its customers will not fund this aspect of the incremental costs Aqua has incurred to provide continuous and reliable service in the face of a global pandemic. Aqua M.B. at 203 (citing Aqua St. 1-R at 7).

Moreover, the Company asserted that it has not sought authorization to defer any incremental expenses for safety supplies, masks, hand sanitizers, social distancing signage, which were required in many facilities. According to the Company, Aqua has been and will continue to be conservative in seeking to recover incremental COVID-19 related expense. Aqua M.B. at 203-04.

I&E recommended the Company be required to track further COVID-19 related reductions to uncollectible expenses in its water and individual wastewater revenue requirements; and, that the balances be claimed in the next rate filing, which is anticipated to be filed in 2024. Further, I&E requested that Aqua: (1) be required to propose amortization of the balance at that time, amortized over a period of years, to be claimed in the next rate proceeding; and (2) be allowed to claim no interest or any time value of money component associated with the delay. Also, I&E recommended that the Company be allowed to claim no increases to COVID-19 related uncollectible expenses beyond the effective date of new rates in this proceeding, because Aqua has expressed that its motivation in delaying the amortization of the balance is to mitigate the impact on ratepayers. I&E M.B. at 58-59.

I&E added that any new increases to the COVID-19 related uncollectible expenses should not be recoverable in a future proceeding. According to I&E, the recommended delay is based on Aqua's assertion that the COVID-19 related uncollectible expenses are declining since the Company has been permitted to resume collection activities, and that the Company expects this declining trend to continue which would reduce the impact on ratepayers. I&E submitted that any new increases to the COVID-19 related uncollectible expenses should not be recoverable in a future proceeding. I&E M.B. at 57, 59.

The OCA recommended that Aqua offset any claimed costs with savings that it has recognized during the pandemic. Aqua agreed with this recommendation. However, the OCA contended that indefinite continued deferrals beyond the FPFTY would be unreasonable and should not be permitted. According to the OCA, the end of the FPFTY would be a reasonable point to cut off the Company's ability to continue recording incremental deferred uncollectible expenses related to the pandemic. OCA M.B. at 50.

2. Recommended Decision

The ALJ recommended that the Commission should continue to authorize Aqua to defer its COVID-19 related uncollectible expenses. However, the ALJ agreed with I&E that Aqua should be required to track further COVID-19 related reductions to uncollectible expenses pursuant to its water and the individual wastewater revenue requirements. The ALJ reasoned that the burden is on Aqua to demonstrate that these expenses are “prudently incurred incremental extraordinary, nonrecurring expenses related to COVID-19.” R.D. at 136 (citing Secretarial Letter issued by the Commission on May 13, 2020, at Docket No. M-2020-3019775 titled “COVID-19 Cost Tracking and Creation of Regulatory Asset” (*May 2020 Secretarial Letter*)).¹⁵¹ Agreeing with the OCA, the ALJ also stated that these expenses should be offset by any savings, upon which Aqua indicated agreement. R.D. at 136.

Additionally, the ALJ emphasized that, to date, the Commission has declined to impose a hard cutoff for the accumulation of deferred expenses related to COVID-19. The ALJ noted the provisions of the *May 2020 Secretarial Letter* have not been modified and cited to a recent decision of the Commission indicating that the effects

¹⁵¹ Subsequent to the *May 2020 Secretarial Letter*, the Commission issued the following Orders: *Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered October 13, 2020) (*October 2020 Order*); *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Order entered March 18, 2021) (*March 2021 Order*); and *Public Utility Service Termination Moratorium; COVID-19 Cost Tracking and Creation of Regulatory Asset*; Docket Nos. M-2020-3019244 and M-2020-3019775 (Order entered July 15, 2021) (*July 2021 Order*).

of the COVID-19 pandemic are still being felt by utilities.¹⁵² Therefore, the ALJ deemed it premature to establish a hard cut-off date for the accumulation of deferred expenses and savings in this base rate proceeding. Rather, the ALJ was persuaded by Aqua's argument that permitting additional time for economic conditions to stabilize will not harm ratepayers and may perhaps be to their benefit as the Company is able to offset uncollectible expenses with increased collection activities. R.D. at 136 (citing Aqua St. 1-R at 7).

The ALJ acknowledged the Company's contention that it is not seeking any time value of the money related to these deferrals, nor is it seeking authorization to defer any incremental expenses for safety supplies, masks, hand sanitizers, and social distancing signage, that were required in many facilities. The ALJ further reasoned that uncollectible expenses may be mitigated by the enhancements to Aqua's universal service program and from recent federal funding dedicated to reducing unpaid utility bills. R.D. at 136-37.

3. OCA Exception No. 7 and Replies

In its Exception No. 7, the OCA argues that the ALJ erred in accepting Aqua's proposal to continue deferring its COVID-19 uncollectible expenses indefinitely. OCA Exc. at 9-10.

The OCA begins with its agreement that the pandemic is ongoing and its continuing impacts have informed the OCA's other adjustments including those

¹⁵² See *Petition of Pennsylvania-American Water Company for Authorization to Defer, and Record as Regulatory Assets for Future Recovery: (1) Incremental Expenses Incurred Because of the Effects of the COVID-19 Emergency; (2) Revenue Reductions Attributable to the Effects of the COVID-19 Emergency; and (3) Carrying Charges on the Amounts Deferred*, Docket No. P-2020-3022426 (Order entered September 15, 2021) (*PAWC COVID-19 Deferral Order*).

regarding seasonal positions and rate case expense, citing the OCA Exception Nos. 4 and 5. Despite this, the OCA asserts it is unreasonable to continue to allow deferrals indefinitely beyond the FPFTY. OCA Exc. at 9 (citing OCA St. 1 at 63). According to the OCA, the Commission should establish a clear point in time during which Aqua must cease recording costs related to COVID-19 into the existing deferral account, in order to ensure that those costs do not accumulate to unreasonably burden consumers in later rate cases. OCA Exc. 9-10.

The OCA submits that the end of the FPFTY would be a reasonable point to end the current deferral and the Commission should impose such a cut-off for the Company. The OCA adds that if the Company finds it necessary to continue to defer COVID-19 related costs at the end of its FPFTY (*i.e.*, by March 31, 2023), it can ask the Commission to approve a new deferral mechanism at that time. *Id.* at 10.

In its reply, Aqua argues that the ALJ correctly rejected the OCA's arguments. The Company asserts that the OCA still believes it necessary to set an end-date for the calculation of COVID-19 deferrals that increase expenses but wants to capture any future decreases to the balance. Aqua submits that the OCA's approach is unbalanced and should be rejected. The Company contends that its proposal, as modified and adopted by the ALJ, is balanced because it continues to defer the determination of changes to the COVID-19 uncollectible accounts balance, whether higher or lower, until Aqua's next rate case. Aqua R. Exc. at 6.

Emphasizing the ALJ's reference to the *May 2020 Secretarial Letter* and that the Commission has declined to impose a hard cut-off for the accumulation of deferred expenses related to COVID-19, the Company argues that establishing a cut-off date only for Aqua in the context of this rate proceeding would be unfair and premature. Accordingly, Aqua contends that the OCA's Exception No. 7 should be denied. Aqua R. Exc. at 7 (citing Aqua M.B. at 200-06; Aqua R.B. at 89).

In its reply to the OCA's Exception No. 7, I&E asserts that it does not oppose the OCA's argument that the ALJ erred in accepting Aqua's proposal to continue deferring its COVID-19 uncollectible expenses indefinitely. I&E also references the ALJ's conclusion that the Commission has declined to impose a hard cut-off date for the accumulation of such deferred expenses. However, I&E recommends that, until such time as a hard cut-off date is established, the Commission in this proceeding should set the cut-off date for Aqua at the effective date of new rates. I&E R. Exc. at 14-15.

4. Disposition

Aqua seeks Commission approval of its request to continue recording amounts in its COVID-19 deferral account and to seek recovery in a future rate case. As discussed in *PAWC COVID-19 Deferral Order*, the Company must demonstrate that the expense items it requests to defer appear to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery of past expenses. Commission authorization for deferral accounting is not intended to create a factual record. As such, the burden of proof will remain with Aqua in a future proceeding to demonstrate that each expense item is: (1) extraordinary and substantial, (2) nonrecurring, (3) incremental and, (4) COVID-19 related consistent with the *May 2020 Secretarial Letter*. See *PAWC COVID-19 Deferral Order* at 6-7.

Regarding COVID-19 cost tracking and the creation of regulatory assets, the Commission directed regulated utilities in Pennsylvania:

[T]o track extraordinary, nonrecurring incremental COVID-19-related expenses and to maintain detailed accounting records of such expenses. Utilities must maintain detailed records of the incremental expenses incurred for the provisioning of utility services used to maintain the health, safety and welfare of Pennsylvania customers during the COVID-19 pandemic. With the exception of the separate

regulatory authorization afforded uncollectible expenses below, this Secretarial Letter does not grant authorization for utilities to defer any other potential COVID-19-related expenses.

May 2020 Secretarial Letter at 2.

The directives in the *May 2020 Secretarial Letter* were reaffirmed in our *July 2021 Order*, as follows:

The Commission acknowledged in its [*March 2021 Order*] that its COVID-19 related Orders may benefit customers and increase expenses for utilities. Consistent with our May 13, 2020, Secretarial letter at Docket No. M-2020-3019775, the Commission hereby confirms that utilities shall continue tracking extraordinary, nonrecurring incremental COVID-19 related expenses and shall maintain detailed accounting records of such expenses. Additionally, the Commission hereby confirms that electric, natural gas, water, wastewater, steam, and all rate base/rate of return telecommunications utilities are authorized to create a regulatory asset for any incremental expenses incurred above those embedded in rates resulting from the directives contained in this Order. To be eligible for inclusion in a utility's COVID-19 designated regulatory asset, the utility must maintain detailed records of the incremental extraordinary, nonrecurring expenses incurred as a result of compliance with the Commission's [*Emergency Order, March 2021 Order, October 2020 Order*] and this Order.

July 2021 Order at 4.

Here, there is no dispute that the incremental uncollectible expenses related to COVID-19 above those already embedded in base rates are within the scope of the type of items which are allowable as an exception to the general rule against retroactive recovery of past expenses. Aqua has elected to defer seeking recovery of these expenses

until its next base rate proceeding at which time it will have the burden of proof to demonstrate that each expense satisfies the Commission standards for recovery.

The only question in this proceeding is whether the Commission should impose a cut-off date for the accumulation of deferred expenses related to COVID-19. Aqua seeks to extend the accumulation period until its next base rate proceeding. I&E requests that the Commission stop the accumulation time period beginning with the effective date of new rates established in this proceeding. The OCA proposes a continuation of the deferral of COVID-19 related costs until the end of the Company's FPFTY in this proceeding and thus by March 31, 2023.

Consistent with our determination in *PAWC COVID-19 Deferral Order*, we shall decline to set a hard cut-off date for the accumulation of deferred expenses. It is evident that the effects of COVID-19 are still being felt by utilities and we deem it premature to conclude that the pandemic is over and that no additional related expenses will be incurred beyond the end-dates proposed by I&E and the OCA.

We also agree with the well-reasoned conclusions of the ALJ that permitting additional time for economic conditions to stabilize will not harm ratepayers but may operate to their benefit if the Company is able to offset uncollectible expenses with increased collection activities. *See* Aqua St. 1-R at 7. Further, Aqua provided testimony that it is not seeking the time value of the money related to these deferrals, nor is it seeking authorization to defer any incremental expenses for safety supplies, masks, hand sanitizers, or social distancing signage, that were required in many facilities. *Id.* Moreover, as noted by the ALJ, uncollectible expenses may be further mitigated by the enhancements to the Company's universal service program and from recent federal funding dedicated to reducing unpaid utility bills. *See* R.D. at 137.

In declining to establish a cut-off date for the accumulation of deferred expenses in this proceeding, we emphasize that consideration of the period of recovery for any regulatory asset treatment is being deferred to the subsequent base rate proceeding filed by the Company. Again, such deferred amounts that Aqua may seek to recover in a future proceeding will be subject to detailed review and investigation and the burden of proof will remain with the Company to establish the prudence and reasonableness of its incremental COVID-19 related financial impacts.

Thus, we shall deny the OCA's Exception No. 7 and adopt the recommendation of the ALJ.

F. Directed Questions of Commissioner Yanora

On September 16, 2021, Commissioner Yanora requested that the Parties address certain issues, including questions pertaining to lead service lines, cross-connections, backflow prevention devices, and lost and unaccounted for water. The Company provided responses to these questions in Aqua Exhibit TMD-4-R which were sponsored by Aqua's witness, Mr. Duerr, with his rebuttal testimony. *See* Aqua M.B. at App. D.

The specific inquiries are as follows:

- 1) The estimated number of company-owned lead service lines and the number of customer-owned lead service lines in the Aqua water distribution system;
- 2) Compliance of the Aqua tariff cross-connection control requirements with 25 Pa. Code §§ 109.709, 109.609 and any applicable provisions of the International Plumbing Code;
- 3) Compliance materials of Aqua's operation and maintenance plans required by 25 Pa. Code § 109.702 as they relate to

adequate, safe, and reasonable service for utility customers and employees;

- 4) The number of Aqua's commercial meters in the system, the number tested, and the number passed or failed for calendar year 2020;
- 5) The number of Aqua's valves exercised in calendar year 2020 and the frequency of valve maintenance;
- 6) The number of Aqua's commercial and industrial customers that have testable backflow prevention devices and the number of devices that were tested for calendar year 2020;
- 7) Aqua's tariff backflow prevention requirements regarding residential fire protection and irrigation and whether Aqua has a plan for inspection and testing of fire hydrants;
- 8) Whether Aqua has surveyed the number of fire hydrants that do not provide a minimum flow of 500 gallons per minute at 20 pounds per square inch; and
- 9) Whether Aqua's residential customers have American Society of Sanitary Engineers 1024 backflow assemblies installed at meter locations.
- 10) Whether Aqua has evaluated its lost and unaccounted water performances since 2018 and any relevant results.

Directed Questions at 1-2.

The following discussion provides a summary of the responses provided by Aqua's witness, Mr. Duerr, in addressing the Directed Questions. Aqua Exh. TMD-4-R.¹⁵³ We note that some of the areas of inquiry have already been addressed in the Quality of Service sections, *supra*.

¹⁵³ There are no page numbers within this exhibit; thus, we shall follow the Company's general citation method to the questions and responses (*i.e.*, Yanora-1, Yanora-2, *etc.*).

Regarding the first inquiry about the estimated number of lead service lines in Aqua's system, the Company responded that on September 3, 2020, Aqua filed a petition for approval of tariff changes authorizing the replacement of customer-owned lead service lines. Aqua asserted that the Commission approved the petition on July 15, 2021, pursuant to a modified settlement.¹⁵⁴ The Company submitted that since receiving approval it has reached out to customers with known lead service lines and is in the process of getting agreements in place with customers to allow replacement of their lead service line under Aqua PA's program. Yanora-1.

The Company added that, as of September 2021, Aqua had seven known Company-side lead service lines and identified 325 customer-owned lead service lines in its system based on the review of tap cards, water sampling data, meter exchange, and service call information. Aqua estimated that in total there are over 100 Company-side lead service lines and over 2,000 customer-owned lead service lines. *Id.*

¹⁵⁴ On May 28, 2021, ALJ Marta Guhl granted Aqua's modified Joint Petition for Settlement and approved the Company's Joint Settlement Replacement Plan set forth in the Settlement. *See Petition of Aqua Pennsylvania, Inc. for Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines*, Docket No. P-2020-3021766 (Recommended Decision issued May 28, 2021). No Exceptions to the Recommended Decision were filed and the Commission entered a Final Order adopting the Recommended Decision on July 15, 2021 (*Aqua LSL Order*).

As to the second inquiry concerning compliance with tariff cross-connection¹⁵⁵ control requirements, Aqua asserted that it has an established cross-connection control program operated under its Cross-Connection Control Manual (Manual). The Company attached a copy of the Manual (as Yanora-2, Attachment 1) and indicated that as of July 2021, 77% of known backflow devices in Aqua's service areas were tested in accordance with 25 Pa. Code §§ 109.709, 109.608 and applicable provisions of the International Plumbing Code. According to Aqua, all new customers of its systems are required to install backflow devices as identified in the standards and specification outlined in its Manual which meet the requirements of the codes noted above. Yanora-2.

Regarding the third inquiry, Aqua submitted that it has an operation and maintenance plan required by 25 Pa. Code §109.702 as it relates to adequate, safe, and reasonable service for utility customers and employees. The Company stated that this plan was last updated in November 2019 and will be updated again in 2022 after the Company completes its requirements to update emergency response plans required by the American Water Infrastructure Act, which the Company indicated were due on December 31, 2021, for certification of Group 3 systems. In addition to general updates,

¹⁵⁵ Cross connections are defined in the PA DEP's regulations as follows:

Cross-connection—An arrangement allowing either a direct or indirect connection through which backflow, including backsiphonage, can occur between the drinking water in a public water system and a system containing a source or potential source of contamination, or allowing treated water to be removed from any public water system, used for any purpose or routed through any device or pipes outside the public water system, and returned to the public water system. The term does not include connections to devices totally within the control of one or more public water systems and connections between water mains.

Aqua stated that the updated operation and maintenance plan will reflect acquired systems and updates related to other operating plans. Yanora-3.

Regarding the fourth inquiry concerning the number of commercial meters in the system, the number tested, and the number passed or failed for 2020, Aqua responded that at the end of 2020, the Company had 23,139 meters installed at commercial premises within the service area. Aqua added that in 2020, 801 meters installed at commercial premises were removed and tested; 458 (57%) of those meters failed their testing based on flowrates and accuracy defined by the standards of the American National Standards Institute (ANSI) and the AWWA for new meters. Yanora-4 (citing ANSI/AWWA C-700).

The fifth inquiry concerned the number of valves exercised in calendar year 2020 and the frequency of valve maintenance.¹⁵⁶ Aqua responded that it has a critical valve testing program that was reviewed during the Commission's recent Management Audit report. In this report, Aqua noted that it has been credited with developing a strong base for its valve inspection program by focusing on critical valves. Yanora-5.

Additionally, Aqua referenced the Management Audit recommendation that Aqua implement a full-scale valve inspection and exercise program designed to identify what valves have not been operated or inspected in the last ten years. Although Aqua

¹⁵⁶ Generally, the exercising of a water main valve means that each valve connected to the water main of the distribution system is tested to ensure it is working properly by operating the valve through a full cycle and returning it to its normal position (*i.e.*, turning the valve completely off, then gradually opening it and closing it, before returning it to its normal open position). *See e.g.*, Zane Satterfield, P. E., *Tech Brief – Valve Exercising*, Summer 2007, Vol. 7, Issue 2, National Environmental Services Center; <https://www.nesc.wvu.edu/files/d/1f62b334-8497-403e-bceb-f5116ac2c142/valve-exercising.pdf>.

agreed that non-critical valve inspection and exercising program is warranted, it had concerns with the suggested exercising frequency outlined in the report. As part of the implementation plan, Aqua agreed to engage a consultant to evaluate the Company's water systems and develop a non-critical valve inspection and exercising program. According to Aqua, this effort will consider such factors as standard operating procedures for inspection and exercising valves, valve operating frequency, the identification of routinely operated valves, and the resources necessary to complete these procedures. Aqua asserted that this program will ensure that non-critical valves will be inspected and exercised on a level representing good industry practice. The Company added that the exercising frequency will be included in the review by the consultant and Aqua will provide the recommended frequency in its next update report. *Id.*

In further response to the fifth inquiry, Aqua explained that all critical valves have been identified in the Aqua Geographic Information System (GIS) asset registry and will continue to be updated as as-builts are received. These valves currently have exercising schedules created and maintained in Aqua's work order management system or Maintenance Connection. The Company indicated that these schedules will be transferred to SAP Plant Maintenance in January 2022 and maintained at the asset level to ensure compliance with critical valve requirements. Aqua also asserted that all non-critical valves have been identified in the Aqua GIS asset registry. The Company conducted an analysis to ensure the exercising of these valves is completed over a 12-year period. According to Aqua, internal staff used GIS analysis techniques to identify valve proximity to major roadways to determine staffing requirements needed for traffic control measures. The Company stated that operation staff are meeting to determine which non-critical valves are scheduled per year. *Id.*

Additionally, Aqua stated that 129 isolation valves were repaired during calendar year 2020. Although the Company does not at present have a program for operating valves based on frequency, Aqua noted its operation of approximately 6,000 to

8,000 valves during its normal course of business which it estimated as ten percent of the valves in service each year. Aqua stated that the program operates critical valves at least once every four years and there are 270 valves in the program which began in 2017. The Company emphasized the ongoing nature of the program and the potential for occasional changes depending on modifications made in the distribution system. For reference, Aqua asserted that as of October 2021 there were a total of 83,547 valves in its system and provided a breakdown by region. *Id.*¹⁵⁷

In response to the sixth inquiry, Aqua provided information related to the number of commercial and industrial customers that have testable backflow prevention devices and the number of devices that were tested for calendar year 2020. The Company stated that there are 21,830 testable backflow devices installed on commercial premises, and 920 testable backflow devices installed on industrial premises. In 2020, Aqua recorded passable tests for 15,573 devices installed on commercial premises and 643 devices installed on industrial premises. Yanora-6.

The seventh inquiry pertained to tariff backflow prevention requirements regarding residential fire protection and irrigation and whether Aqua has a plan for inspection and testing of fire hydrants. In response, Aqua cited to the Manual provided in response to the second inquiry, which defines the requirements for residential fire protection and irrigation accounts. According to the Company, all new residential fire protection and irrigation services are required to install testable backflow devices and those devices are required to be tested annually. Yanora-7.

In response to the eighth inquiry – whether Aqua has surveyed the number of fire hydrants that do not provide a minimum flow of 500 gpm at 20 psi – Aqua replied

¹⁵⁷ PA-Southeastern comprised the largest number of valves at 66,033. The remainder of the regions were as follows: PA-Central – 5,374; PA-Northeastern – 6,322; and PA-Western – 5,818. Yanora-5.

that it has approximately 24,500 hydrants in service in Pennsylvania. During its normal course of business, Aqua continued, it receives requests to perform flow testing from various groups outside the Company such as fire companies, sprinkler contractors, township engineers and insurance companies. Aqua also noted it performs flow tests for its own internal purposes to review fire flow in areas of its systems, with 300-500 flow tests performed annually. According to Aqua, all tests assist in decisions in operating the system and for capital planning and tests coming back with less than 500 gpm at 20 psi residual are reviewed more thoroughly. If the hydrant is in good working order and does not need repairs, Aqua explained, the hydrant location area is passed along to the Engineering Department in order for the area to be included as a candidate within Aqua's Main Replacement program. Yanora-8.

Additionally, the Company stated that as a follow up from the last rate case, it provided information regarding all fire hydrants connected to 4-inch mains or smaller that are not capable of providing 500 gpm of water at 20 psi. *Id.*¹⁵⁸

The ninth inquiry concerns whether Aqua has determined if its residential customers have American Society of Sanitary Engineers (ASSE) 1024 backflow assemblies installed at meter locations. Aqua replied that its Rules and Regulations require all new customer connections to the Company's distribution system be equipped with backflow prevention, cross-connection-control or other special devices approved by the Company and in accordance with the Company's specifications. Further, at the Company's request, existing customers must install backflow prevention, cross-connection-control or other special devices approved by the Company to existing customer connections which must comply with the Company's specifications. Yanora-9.

¹⁵⁸ Aqua designated this information as Confidential and submitted it pursuant to the Protective Order issued in this proceeding. Yanora-8.

In support, Aqua submitted its Meter Installation Specifications, revised June 2015, indicating that it defines the requirements for all residential accounts. *See Yanora-9, Attachment 1.* The Company contended that all residential services are required to install an ASSE 1024 backflow device. Aqua asserted that these installations are monitored throughout its new business activities and the device is confirmed as installed before the meter is set. According to the Company, existing residential services are required to meet this standard when improvements are made to those properties requiring plumbing permits due to renovations and retrofits. *Yanora-9.*

In response to the tenth and final inquiry, Aqua affirmed that it has evaluated lost and unaccounted for water performance since 2018. The Company also emphasized that the Commission's Bureau of Audits recently reviewed this information in Aqua's 2020 Management Audit. *Yanora-10.*

Aqua explained that a yearly audit is conducted using the AWWA water audit tool which it described as "Version 6.0." *Id.* Aqua submitted that its performance exceeds industry medians for most key performance indexes, noting how Aqua's non-revenue water has held steady since 2018 at 20.2%, plus or minus 0.01%. The Company contended this results in a Real-Loss-Cost-Rate of only \$6.39/connection/year which is below the median 30th percentile. *Id.*

As background, Aqua described the leak survey activity conducted in Southeast Pennsylvania by its three full-time leak survey technicians with one in each operating division office. The Company stated that its leak survey technicians normally perform leak surveys fifty-two weeks a year by pipe plate, which systematically performs a survey on the entire system. According to Aqua, the survey focuses on high-risk materials such as cast iron and stove pipe cement pipe and the objective is to survey 100% of the high-risk pipe in the system over a 15-month period. Aqua further described how leak survey technicians are available at any time to assist crews having trouble

locating leak sources in the system. Additionally, Aqua noted that leak surveys are performed daily as the Company inspects hydrants, performs meter change outs, or responds to service calls. Specifically, the Company explained that the technician listens on the lines for leaks and any suspected leaks are relayed to maintenance personnel, who then respond. *Id.*

Next, the Company described its contract with Utilis, a remote-sensing data company, to conduct a pilot study survey of select distribution systems in 2019 in Southeast Pennsylvania. Aqua asserted that Utilis uses synthetic aperture radar satellite data along with their proprietary algorithm to specifically identify areas with soil moisture at a depth underground that often signifies drinking water leaks from pipes. The pilot is expected to conclude in 2022. *Id.*

For Greater Pennsylvania, Aqua proffered that it performs a water loss analysis using a form of the AWWA water audit methodology and employs a full-time leak locator who focuses primarily in the Northeastern areas. The Company also asserted that leak detection is outsourced to several contracted professionals throughout Greater Pennsylvania, as needed. Regarding other leak detection efforts, Aqua explained that its distribution field employees are equipped with acoustic leak detection equipment which is utilized each time the employee operates a fire hydrant, flushing device, distribution system valve or customer service valve. *Id.*

Referencing its direct testimony, Aqua noted its capital expenditures program for the years 2018 through 2021 has been weighted toward water main replacement. Yanora-10 (citing Aqua St. 1 at 4). The Company explained that it has approximately 5,800 miles of water main in Pennsylvania, and has been replacing, on average, over 100 miles per year for the last ten years accounting for an average investment of approximately \$100 million to \$150 million annually. As a result of this investment, the Company contended that it has experienced a reduction in the number of

main breaks in cold weather months and an overall tightening up of the system such that recent unaccounted for water levels have been trending downward. In addition, Aqua emphasized that it has acquired many small or troubled systems and made significant improvements in their unaccounted-for-water through main replacement. Specifically, Aqua asserted that it greatly improved the Phoenixville water systems. The Company added that it has also invested in GIS software, which is used to track and monitor main break history and water aesthetic issues due to aging infrastructure. Yanora-10.

In the Recommended Decision, the ALJ referenced the Directed Questions and the Company's responses to them. R.D. at 137. The ALJ also made one specific Finding of Fact pertaining to the Company's responses to the Directed Questions as follows:

111. As a matter of the normal course of operations, Aqua operates between 6,000 to 8,000 valves per year, or about 10% of its valves. [Aqua Exh. TMD-4-R]

R.D. at 29. No Party filed Exceptions regarding the Company's Responses to the Directed Questions or to the recommended Finding of Fact.

However, the Parties have developed an evidentiary record pertaining to various quality of service issues that overlap with some of the Directed Question issues, including Unaccounted-for-Water, Pressure Measurements, Isolation Valves, and Fire Hydrants. We have addressed these litigated issues in this Opinion and Order, *supra*. Moreover, we note that the Company's tariff proposal to help remediate customer-owned lead service lines was recently considered and approved in the Commission's *Aqua LSL Order* entered on July 15, 2021.

To the extent that the Directed Questions pertain to additional issues not addressed in the prior litigated issues, we find that Aqua has provided sufficient

responses and information which have assisted the Parties and the Commission in evaluating tangential matters which may impact the rate proposals at issue in this proceeding. Upon review, we determine that the Company's responses to the Directed Questions do not alter our ultimate determination herein that the proposed increases in rates, as modified by this Opinion and Order, are just and reasonable.

XIII. Conclusion

Based on our review of the record in this proceeding, we shall: (1) grant, in part, and deny, in part, the Exceptions filed by Aqua, I&E, and the OCA; (2) deny the Exceptions filed by the OSBA, CAUSE-PA, Aqua LUG, Masthope, and Mr. Osinski; and (3) approve an annual revenue increase of \$50,510,192 to the Company's *pro forma* revenue at present rates of \$510,006,687, or approximately 9.88%, for its water service and an annual revenue increase of \$18,740,978 to the Company's *pro forma* revenue at present rates of \$37,076,494, or approximately 50.55%, for its wastewater service.

THEREFORE;

IT IS ORDERED:

1. That the Exceptions filed by Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., on February 28, 2022, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions filed by the Commission's Bureau of Investigation and Enforcement on February 28, 2022, are granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That the Exceptions filed by the Office of Consumer Advocate on February 28, 2022, are granted, in part, and denied, in part, consistent with this Opinion and Order.

4. That the Exceptions filed by the Office of Small Business Advocate on February 28, 2022, are denied, consistent with this Opinion and Order.

5. That the Exceptions filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania on February 28, 2022, are denied, consistent with this Opinion and Order.

6. That the Exceptions filed by Masthope Mountain Community Association on February 28, 2022, are denied, consistent with this Opinion and Order.

7. That the Exceptions filed by the Aqua Large Users Group on February 28, 2022, are denied, consistent with this Opinion and Order.

8. That the Exceptions filed by Donald C. Osinski on February 21, 2022, are denied, consistent with this Opinion and Order.

9. That the Recommended Decision of Administrative Law Judge Mary D. Long, issued on February 18, 2022, is adopted, as modified, by this Opinion and Order.

10. That Aqua Pennsylvania, Inc., is authorized to grant discounted rates to Chemung County Industrial Development Agency, Horsham Water Authority, and the Borough of Sharpsville consistent with the water resale contracts charging discounted rates pursuant to Aqua Pennsylvania, Inc.'s tariff Rider DRS – Demand Based Resale

Service. The total upward adjustment to Aqua Pennsylvania, Inc.'s revenues as a result of water contract revenue as set forth in Table II – Water shall be \$1,136,086.

11. That the corrections and modifications directed by this Opinion and Order reflected in Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., Docket Nos. R-2021-3027385 and R-2021-3027386 (Commission Tables Calculating Allowed Revenue Increase), attached hereto, are adopted as being in the public interest.

12. That Aqua Pennsylvania, Inc., shall not place into effect the rates, rules, and regulations contained in proposed Tariff Water - Pa. P.U.C. No. 3, as filed.

13. That Aqua Pennsylvania Wastewater, Inc., shall not place into effect the rates, rules, and regulations contained in proposed Aqua Original Tariff Sewer - Pa. P.U.C. No. 3, as filed.

14. That Aqua Pennsylvania, Inc., is authorized to file tariffs, tariff supplements and/or tariff revisions, on at least one day's notice, and pursuant to the provisions of 52 Pa. Code §§ 53.1, *et seq.*, and 53.101, designed to produce an annual operating revenue of approximately \$561,658,784, representing an annual revenue increase of approximately \$50,510,192, to become effective for service rendered on and after May 19, 2022.

15. That Aqua Pennsylvania Wastewater, Inc., is authorized to file tariffs, tariff supplements and/or tariff revisions, on at least one day's notice, and pursuant to the provisions of 52 Pa. Code §§ 53.1, *et seq.*, and 53.101, designed to produce an annual operating revenue of approximately \$55,817,471, representing an annual revenue increase of approximately \$18,740,978, to become effective for service rendered on and after May 19, 2022.

16. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall file detailed calculations with its tariff filings, which shall demonstrate to the Commission's satisfaction that the filed tariff adjustments comply with the provisions of this final Opinion and Order.

17. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall allocate the authorized increase in operating revenue to each service, rate schedule, and customer class, and rate schedule within each rate customer class, in the manner prescribed in this Opinion and Order.

18. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall file with the Commission's Secretary's Bureau at these dockets and provide the Commission's Bureaus of Technical Utility Services and Investigation and Enforcement with updates to schedule G-2 of Aqua Exhibits 1-A, 1-B, 1- C, 1-D, 1-E, 1-F, and 1-G, no later than July 1, 2022, which should include actual capital expenditures, plant additions, and retirements for the 12 months ending March 31, 2022, and, an additional update for actuals for the 12 months ending March 31, 2023, no later than July 1, 2023.

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

20. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall begin monitoring and reviewing the appropriate customer billing data for purposes of determining, in its next base rate proceeding, if, and to what extent, any offset to its low-income program cost recovery is necessary to avoid any double recovery Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., may receive through actual collections after the implementation of its customer assistance programs. Aqua

Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall consult with the Office of Consumer Advocate and the Commission's Bureau of Investigation and Enforcement to determine the necessary data that is needed to accomplish this directive.

21. That Aqua Pennsylvania, Inc., shall develop an isolation valve inspection and exercise program, to be implemented no later than one-hundred and eighty (180) days from the effective date of rates resulting from this base rate proceeding, which establishes a defined schedule for Aqua Pennsylvania, Inc., to inspect and exercise each of its non-critical valves within a set inspection cycle and to maintain records of its attempts to exercise its isolation valves and note whether the operation was successful.

22. That Aqua Pennsylvania, Inc., shall appropriately mark any public fire hydrants in Aqua Pennsylvania, Inc.'s system that cannot provide the minimum fire flow of 500 gallons per minute at 20 pounds per square inch within thirty (30) days of entry of this Opinion and Order.

23. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall require income documentation from an interested customer to certify income eligibility for participation in its customer assistance program and upon recertification in a manner similar to that of the Peoples Companies. Within sixty (60) days of the entry date of this Opinion and Order, Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall file a written plan with the Commission's Secretary's Bureau at the Dockets in this proceeding, with a copy to be served on the Bureau of Consumer Services, describing the process it will use for certification and recertification of income eligibility for participation in its customer assistance program.

24. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall implement its application process proposed in this proceeding to transition Helping Hand customers who qualify for the new customer assistance program, subject to

the modification that Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall require income documentation for certification purposes rather than permitting potential program participants to confirm their income through self-attestation.

25. That within six (6) months of the entry date of this Opinion and Order, Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall file its Community Education and Outreach Plan with the Commission's Secretary's Bureau at these Dockets with copies to be served on the Commission's Bureaus of Consumer Services and Office of Communications. Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall also file an annual update of its Community Education and Outreach Plan, after the filing of its first Community Education and Outreach Plan at these Dockets until either the filing of its next base rate proceeding or another proceeding addressing its universal service programs.

26. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall consult with the Office of Consumer Advocate and the Commission's Bureau of Investigation and Enforcement regarding the root cause analysis of customer complaint data and cooperatively discuss how this data will be developed to reflect meaningful trends in customer complaint data and potentially reduce contested issues in future proceedings.

27. That the request of Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., to continue to record COVID-19 uncollectible expenses in their COVID-19 deferral accounts and to seek recovery in the next rate case proceeding filed by Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., is granted. Any deferred amounts that Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., seek to recover in their next rate case proceeding shall be subject to detailed review and investigation and the burden of proof will remain with Aqua Pennsylvania, Inc., and

Aqua Pennsylvania Wastewater, Inc., to establish the prudence and reasonableness of their incremental COVID-19 related financial impacts.

28. That the Formal Complaints filed by the Office of the Consumer Advocate at Docket Nos. C-2021-3028466 and C-2021-3028467 are sustained, in part, and dismissed, in part, and shall be marked closed.

29. That the Formal Complaints filed by the Office of Small Business Advocate at Docket Nos. C-2021-3028509 and C-2021-3028511 are dismissed and shall be marked closed.

30. That the Formal Complaints of the Masthope Mount Community Association at Docket Nos. C-2021-3028992 and C-2021-3028996 are dismissed and shall be marked closed.

31. That the Formal Complaint of the Aqua Large Users Group, at Docket No. C-2021-3029089 is dismissed and shall be marked closed.

32. That the following Formal Complaints against Aqua Pennsylvania, Inc., are dismissed and shall be marked closed:

Martha Bronson at Docket No. C-2021-3028132

Neil Kugelman at Docket No. C-2021-3028139

Geoffrey Rhine at Docket No. C-2021-3028170

Theodore Voltolina at Docket No. C-2021-3028194

Aaron Brown at Docket No. C-2021-3028279

Darren Distasio at Docket No. C-2021-3028285

Deena Denesowicz at Docket No. C-2021-3028288

Vivian George at Docket No. C-2021-3028310

Nick Panaccio at Docket No. C-2021-3028331
Richard Regnier at Docket No. C-2021-3028332
Gerald DiNunzio Jr. at Docket No. C-2021-3028362
Nancy Reedman at Docket No. C-2021-3028405
Michael McCall at Docket No. C-2021-3028413
Raymond Cavalieri at Docket No. C-2021-3028448
Byron Goldstein at Docket No. C-2021-3028463
John Grassie at Docket No. C-2021-3028663
Kyle Brophy at Docket No. C-2021-3028712
Daniel Savino at Docket No. C-2021-3028758
Michael Roberts at Docket No. C-2021-3028869
Treasure Lake Property Owners Association Inc. at
Docket No. C-2021-3029004
Gerardo Giannattasio at Docket No. C-2021-3029066
Erik McElwain at Docket No. C-2021-3029135
Judy Burton at Docket No. C-2021-3029152
Brian Edwards at Docket No. C-2021-3029159
Richard Gage at Docket No. C-2021-3029393
Joanne Smyth at Docket No. C-2021-3029411 and
Jane O'Donovan at Docket No. C-2021-3029532.

33. That the following Formal Complaints against Aqua Pennsylvania Wastewater, Inc., are dismissed and shall be marked closed:

Camp Stead Property Owners Association at
Docket No. C-2021-3028928
Dale Markowitz at Docket No. C-2021-3028280
Keith Anthony at Docket No. C-2021-3028444
Stephanie Boris at Docket No. C-2021-3028443

Jennifer Buckley at Docket No. C-2021-3028160
Carl Martinson at Docket No. C-2021-3028312
Elizabeth O'Neill at Docket No. C-2021-3028333
Erik and Ilisha Smith at Docket No. C-2021-3028334
Curtis and Michele Tabor at Docket No. C-2021-3028335
Gregory Valerio at Docket No. C-2021-3028336
Jerome Perch at Docket No. C-2021-3028356
Michael Brull at Docket No. C-2021-3028361
James Blessing at Docket No. C-2021-3028402
Elizabeth Yost at Docket No. C-2021-3028407
Timothy Nicholl at Docket No. C-2021-3028471
Alyssa Reinhart at Docket No. C-2021-3028493
James Kolb at Docket No. C-2021-3028497
Ronald Schneck at Docket No. C-2021-3028547
Matthew Cicalese at Docket No. C-2021-3028566
Ronald and Lora Roebuck at Docket No. C-2021-3028568
Kelly Frich at Docket No. C-2021-3028665
Adam Anders at Docket No. C-2021-3028670
Charleen Falsone at Docket No. C-2021-3028760
Stephen Grugeon at Docket No. C-2021-3028892
Lynne Germscheid at Docket No. C-2021-3028860
Deborah and James Popson at Docket No. C-2021-3028868
Masthope Mountain Community Association at
Docket No. C-2021-3028996
Treasure Lake Property Owners Association Inc.at
Docket No. C-2021-3029006
East Norriton Township at Docket No. C-2021-3029019
Kevin Amerman at Docket No. C-2021-3029063
James Wharton Jr. at Docket No. C-2021-3029065

Peter and Kim Ginopolas at Docket No. C-2021-3029096
Yefim Shnayder at Docket No. C-2021-3029134
Andrea and Matthew Rivera at Docket No. C-2021-3029154
Judy Burton at Docket No. C-2021-3029139
Brian Edwards at Docket No. C-2021-3029161
Edward Coccia at Docket No. C-2021-3028870
John Day at Docket No. C-2021-3028734
Robert Dolan at Docket No. C-2021-3028798
Anthony Giovannone at Docket Nos. C-2021-3028794,
C-2021-3028803, C-2021-3028802
Sheila Gutzait at Docket No. C-2021-3028634
Rudolph Hofbauer at Docket No. C-2021-3028666
Ronald and Alexis Koenig at Docket No. C-2021-3028483
Joan Lipski at Docket No. C-2021-3028475
William and Ana Loftus at Docket No. C-2021-3028617
Stephen and Teresa Mason at Docket No. C-2021-3028576
David Monroe at Docket No. C-2021-3028567
Lisa Rampone at Docket No. C-2021-3028804
Lorraine Rocci at Docket No. C-2021-3028499
David Ross at Docket No. C-2021-3028479
Carolyn Sica at Docket No. C-2021-3028446
Dean Swink at Docket No. C-2021-3028604
Francine Weiner at Docket No. C-2021-3028639
Tom Woodward at Docket No. C-2021-3028927
Joseph Torello at Docket No. C-2021-3029180
Donald Osinski at Docket No. C-2021-3029413
Lake Associates LLC at Docket Nos. C-2021-3029425
C-2021-3029422, C-2021-3029419
29 Estates LLC at Docket No. C-2021-3029417

David Bowers at Docket No. C-2021-3029466 and
Joanne Smyth at Docket No. C-2021-3029411.

34. That a copy of this Opinion and Order be served on the Bureau of Consumer Services, Division of Policy; the Bureau of Investigation and Enforcement; and the Bureau of Technical Utility Services, Finance/Tariff Division for monitoring and compliance.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 12, 2022

ORDER ENTERED: May 16, 2022

LIST OF ABBREVIATIONS

ADIT	Accumulated Deferred Income Tax
ALJ	Administrative Law Judge
ANSI	American National Standards Institute
Aqua	Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.
Aqua LUG	Aqua Large Users Group
ASSE	American Society of Sanitary Engineers
AWWA	American Water Works Association
BCS	Bureau of Consumer Services
CAC	customer advances for construction
CAP	Customer Assistance Program
CAPM	capital asset pricing model
CAUSE-PA	Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
CE	comparable earnings
CEOP	Community Education and Outreach Plan
CIAC	contributions in aid of construction
CIS	customer information system
COSS	cost of service study
CPI	Consumer Price Index
CRR	Competitive Rate Rider
CSIC	Collection System Improvement Charge
CWC	Cash Working Capital
DCF	discounted cash flow
DCNR	Department of Conservation and Natural Resources
DRS	Demand Based Resale Service
DSIC	Distribution System Improvement Charge
ECA	Energy Cost Adjustment
ECAM	Energy Cost Adjustment Mechanism
EDC	Electric Distribution Company
EDU	Equivalent Dwelling Unit
FERC	Federal Energy Regulatory Commission
FMV	Fair Market Value
FPFTY	fully projected future test year
FPL	Federal Poverty Level
FTAS	Federal Tax Adjustment Surcharge
FTY	future test year
FY	Fiscal Year
GDP	gross domestic product

GIS	Geographic Information System
gpm	gallons per minute
HTY	historical test year
I&E	Bureau of Investigation and Enforcement
I&I	inflow and infiltration
IRS	Internal Revenue Service
IVR	Interactive Voice Response
LEP	Limited English proficient/proficiency
M&S	Materials and Supplies
Masthope	Masthope Mountain Community Association
NFG	National Fuel Gas Distribution Corporation
NGDC	Natural Gas Distribution Company
NOPR	Notice of Proposed Rulemaking
O&M	Operating and Maintenance
OCA	Office of Consumer Advocate
OSBA	Office of Small Business Advocate
PADEP	Pennsylvania Department of Environmental Protection
PAWC	Pennsylvania-American Water Company
PFAS	per and poly-fluoro alkyl substances
PGC	Purchased Gas Cost
PIP	Percentage of Income Payment Plan
psi	per square inch
PWA	Purchased Water Adjustment
PWAC	Purchased Water Adjustment Clause
PWSA	Pittsburgh Water and Sewer Authority
RCA	Root Cause Analysis
Rf	risk-free rate of return
ROE	return on equity
RP	risk premium
RROR	Relative Rate of Return
SEPA	Southeast Pennsylvania
SERP	Supplemental Executive Retirement Plan
STAS	State Tax Adjustment Surcharge
TCJA	Tax Cuts and Jobs Act of 2017
TUS	Bureau of Technical Utility Services
UFW	Unaccounted For Water
UPAA	utility plant acquisition adjustments
US OMB	United States Office of Management and Budget
USECP	Universal Service Energy and Conservation Plan

USP	Universal Service Program
USPS	United States Postal Service
USR	Universal Service Rider
WWTP	Wastewater Treatment Plant

Pennsylvania Public Utility Commission

v.

**Aqua Pennsylvania, Inc.
Aqua Pennsylvania Wastewater, Inc
Docket Nos. R-2021-3027385
R-2021-2027386**

Commission Tables Calculating Allowed Revenue Increase

**Table Act 11 Act 11 Water and Wastewater Revenue
Requirement Summary**

Table RevSum Water and Wastewater Revenue Summary

Water Tables

**Table I Income Summary
Table IA Rate of Return
Table IB Revenue Factor
Table II Adjustments
Table III Interest Synchronization
Table IV Cash Working Capital: Interest and Dividends
Table V Cash Working Capital: Taxes
Table VI Cash Working Capital: O&M Expense**

Wastewater-Base Tables

Table I	Income Summary
Table IA	Rate of Return
Table IB	Revenue Factor
Table II	Adjustments
Table III	Interest Synchronization
Table IV	Cash Working Capital: Interest and Dividends
Table V	Cash Working Capital: Taxes
Table VI	Cash Working Capital: O&M Expense

Wastewater-Limerick Tables

Table I	Income Summary
Table IA	Rate of Return
Table IB	Revenue Factor
Table II	Adjustments
Table III	Interest Synchronization
Table IV	Cash Working Capital: Interest and Dividends
Table V	Cash Working Capital: Taxes
Table VI	Cash Working Capital: O&M Expense

Wastewater-East Bradford Tables

Table I	Income Summary
Table IA	Rate of Return
Table IB	Revenue Factor
Table II	Adjustments
Table III	Interest Synchronization
Table IV	Cash Working Capital: Interest and Dividends
Table V	Cash Working Capital: Taxes
Table VI	Cash Working Capital: O&M Expense

Wastewater-Cheltenham Tables

Table I	Income Summary
Table IA	Rate of Return
Table IB	Revenue Factor
Table II	Adjustments
Table III	Interest Synchronization
Table IV	Cash Working Capital: Interest and Dividends
Table V	Cash Working Capital: Taxes
Table VI	Cash Working Capital: O&M Expense

Wastewater-East Norriton Tables

Table I	Income Summary
Table IA	Rate of Return
Table IB	Revenue Factor
Table II	Adjustments
Table III	Interest Synchronization
Table IV	Cash Working Capital: Interest and Dividends
Table V	Cash Working Capital: Taxes
Table VI	Cash Working Capital: O&M Expense

Wastewater-New Garden Tables

Table I	Income Summary
Table IA	Rate of Return
Table IB	Revenue Factor
Table II	Adjustments
Table III	Interest Synchronization
Table IV	Cash Working Capital: Interest and Dividends
Table V	Cash Working Capital: Taxes
Table VI	Cash Working Capital: O&M Expense

Commission Final Allowance
AQUA PENNSYLVANIA, INC.

TABLE ACT 11 - WATER AND WASTEWATER REVENUE REQUIREMENT - SUMMARY

Line No.	Description	Total Company (a)	Water Operations (b)	Wastewater Base Operations (c)	Wastewater Limerick (d)	Wastewater East Bradford (e)	Wastewater Cheltenham (f)	Wastewater East Norriton (g)	Wastewater New Garden (h)
1	Present Rate Revenues	\$ 548,225,086	\$ 511,148,592	\$ 19,011,761	\$ 3,978,573	\$ 1,014,569	\$ 1,258,740	\$ 2,323,770	\$ 2,883,080
2	Additional Revenues Requirement	69,328,876	39,323,400	15,616,886	5,581,376	777,094	2,752,339	2,733,266	2,538,455
3	Act 11 Allocation, Gross, Unadjusted ⁽¹⁾	(0)	11,264,498	(8,773,582)	(2,310,744)	(128,024)	2,033,271	(1,080,283)	(399,136)
4	Revenues Factor ⁽²⁾	-	70.27%	63.78%	63.78%	63.78%	63.78%	63.78%	63.78%
5	Net Income Available for Return ⁽³⁾	54,601	7,315,126	(6,126,516)	(1,612,470)	(83,337)	1,410,845	(753,837)	(697,211)
6	Act 11 Allocation Adjustment, Gross ⁽⁴⁾	(77,706)	(77,706)	-	-	-	-	-	-
7	Act 11 Allocation, Gross, Adjusted ⁽⁵⁾	(77,706)	11,186,792	(8,773,582)	(2,310,744)	(128,024)	2,033,271	(1,080,283)	(399,136)
8	Proposed Revenues ⁽⁶⁾	<u>\$ 617,476,255</u>	<u>\$ 561,658,784</u>	<u>\$ 25,849,065</u>	<u>\$ 7,249,205</u>	<u>\$ 1,663,639</u>	<u>\$ 12,044,410</u>	<u>\$ 4,582,752</u>	<u>\$ 4,428,339</u>
9	Rate Increase/(Decrease) - \$	\$ 69,251,169	\$ 50,510,192	\$ 6,837,304	\$ 3,270,632	\$ 649,070	\$ 4,785,671	\$ 1,658,983	\$ 1,539,319
10	Rate Increase/(Decrease) - %	12.63%	9.88%	35.96%	82.21%	63.97%	65.93%	56.74%	53.28%
11	Total Rate Increase/(Decrease) - \$ For Wastewater Operations			\$ 18,740,978					
12	Total Rate Increase/(Decrease) - % For Wastewater Operations			50.55%					

Notes to accompany Table Act 11 – Water and Wastewater Revenue Requirement – Summary

- ⁽¹⁾ The allocation between wastewater and water operations is achieved by the proposed consolidation of water and wastewater revenue requirements to derive the water and wastewater rates in this case.
- ⁽²⁾ See the revenue factors in Table IB for each rate group to determine the gross, unadjusted Act 11 Allocation.
- ⁽³⁾ Line No. 3 x Line No. 4.
- ⁽⁴⁾ Reduce the gross water revenue requirement resulting from the Act 11 Allocation by dividing Line No. 5, Column (a) by Line No. 4, Column (b) and assigning this adjustment to water. This provides the Company the same net income from water customers as if the revenue requirement were charged to wastewater customers, since water customers have a lower uncollectible account rate.
- ⁽⁵⁾ Line No. 3 + Line No. 6.
- ⁽⁶⁾ Line No. 1 + Line No. 2 + Line No. 7.

Commission Final Allowance
AQUA PENNSYLVANIA, INC.

TABLE REVSUM - WATER AND WASTEWATER REVENUE SUMMARY

Line No.	Description	Total Company (a)	Water Operations (b)	Wastewater Basic Operations (c)	Wastewater Limerick (d)	Wastewater East Bradford (e)	Wastewater Cheltenham (f)	Wastewater East Norriton (g)	Wastewater New Garden (h)
1	Current General Service Revenues ^(M)	\$ 546,693,727	\$ 509,695,526	\$ 19,388,325	\$ 3,369,765	\$ 1,013,716	\$ 7,238,362	\$ 2,316,335	\$ 2,871,698
2	Proposed General Service Revenues	\$ 615,829,068	\$ 560,132,914	\$ 25,817,242	\$ 7,233,172	\$ 1,662,240	\$ 12,010,539	\$ 4,571,144	\$ 4,401,756
3	Rate Increase/(Decrease) - \$	\$ 69,135,342	\$ 50,437,388	\$ 6,828,917	\$ 3,263,407	\$ 648,524	\$ 4,772,237	\$ 1,654,809	\$ 1,530,058
4	Rate Increase/(Decrease) - %	12.65%	9.90%	35.36%	82.21%	63.97%	65.93%	56.74%	53.28%
5	Current Forfeited Discount Revenues ^(N)	\$ 813,762	\$ 735,710	\$ 23,317	\$ 8,788	\$ 853	\$ 20,377	\$ 7,355	\$ 17,362
6	Proposed Forfeited Discount Revenues	\$ 329,610	\$ 808,513	\$ 31,703	\$ 16,012	\$ 1,389	\$ 33,812	\$ 11,528	\$ 26,643
7	Rate Increase/(Decrease) - \$	\$ 115,828	\$ 72,803	\$ 8,386	\$ 7,224	\$ 546	\$ 13,435	\$ 4,173	\$ 3,261
8	Rate Increase/(Decrease) - %	12.65%	9.90%	35.36%	82.21%	63.97%	65.93%	56.74%	53.28%
9	Current Miscellaneous Revenues ^{(O)(P)}	\$ 717,577	\$ 717,357	\$ 120	\$ 20	\$ -	\$ -	\$ 80	\$ -
10	Proposed Miscellaneous Revenues	\$ 717,577	\$ 717,357	\$ 120	\$ 20	\$ -	\$ -	\$ 80	\$ -
11	Rate Increase/(Decrease) - \$	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	Rate Increase/(Decrease) - %	0.00%	0.00%	0.00%	0.00%			0.00%	
13	Total Operating Revenues ^(R)	\$ 617,476,255	\$ 561,658,784	\$ 25,849,065	\$ 7,249,205	\$ 1,663,639	\$ 12,044,410	\$ 4,582,752	\$ 4,428,399
14	Proposed Revenues ^(R)	\$ 617,476,255	\$ 561,658,784	\$ 25,849,065	\$ 7,249,205	\$ 1,663,639	\$ 12,044,410	\$ 4,582,752	\$ 4,428,399
15	Difference, Lines 14 and 13	-	-	-	-	-	-	-	-

Notes and Sources to Accompany Table RevSum

The Company will need to increase General Service and Forfeited Discount revenues by the same percentage to achieve the total indicated operating revenues, as evidenced by a proof of revenue.

- ⁽¹⁾ See Aqua Exhibits 1-A to 1-F(f) at Schedule B-1, Line "Total Sales to General Customers". Water general service revenues are adjusted for imputed revenues. *See* Table II - Water, Notes 2 and 6.
- ⁽²⁾ See Aqua Exhibits 1-A to 1-F(f) at Schedule B-1, Line "Forfeited Discounts". For water, Aqua indicated that \$735,710 was attributable to forfeited discount revenue in the historic test year. *See* Aqua St. 2-R at 29.
- ⁽³⁾ For Wastewater - East Bradford, General Service revenues are increased by \$15,525 and Miscellaneous revenues are decreased by the same amount. This amount represents charges for General Service described as "Contract Sales for Resale - Unmetered - Single Family - Birmingham Twp.". *See* Aqua's rate filing at Schedule EB-4, Page 1 and Exhibit 1-D(d), Schedule B-1, Line No. 9.
- ⁽⁴⁾ See Aqua Exhibits 1-A to 1-F(f) at Schedule B-1, Lines "Other WW Revenues" and "Miscellaneous WW Service Revenues". Unlike Forfeited Discount revenues, Miscellaneous revenues aren't expected to increase proportionately with General Service revenues. For water, miscellaneous revenues are reduced by forfeited discount revenues. *See* Note 2.
- ⁽⁵⁾ Sum of Line Nos. 2, 6, and 10.
- ⁽⁶⁾ *See* Table Act 11, Line No. 8.

Commission Final Allowance

TABLE I - Water
Aqua Pennsylvania, Inc.
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments ⁽¹⁾⁽²⁾	Pro Forma Present Rates (Revised) ⁽¹⁾⁽²⁾	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽³⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 510,006,687	\$ -	\$ 510,006,687	\$ 1,141,906	\$ 511,148,592	\$ 39,323,400	\$ 550,471,992
Expenses:							
O & M Expense	116,459,234	-	116,459,234	(1,895,043)	114,564,192	201,431	114,765,623
Depreciation	122,166,578	-	122,166,578	(121,865)	122,044,713	-	122,044,713
Taxes, Other	12,450,066	-	12,450,066	7,669	12,457,734	264,080	12,721,814
Income Taxes:							
State	5,345,514	11,184	5,356,698	318,777	5,675,475	3,881,903	9,557,378
Federal	7,677,005	21,161	7,698,166	603,160	8,301,326	7,344,957	15,646,283
Total Expenses	264,098,397	32,345	264,130,742	(1,087,302)	263,043,440	11,692,371	274,735,811
Net Inc. Available for Return	245,908,290	\$ (32,345)	\$ 245,875,945	\$ 2,229,207	\$ 248,105,152	\$ 27,631,028	\$ 275,736,181
Rate Base	3,818,456,012	(6,077,218)	3,812,378,794	(2,161,832)	3,810,216,962		3,810,216,962
Rate of Return	6.44%		6.45%		6.51%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Company Main Brief Section III.E.2 & AP Stmt. 8-R

⁽³⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%):

7.69%

Commission Final Allowance
TABLE I(A) - Water
Aqua Pennsylvania, Inc.
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		<u>1.84%</u>
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	10.00%	<u>5.39459700%</u>	0.711079	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u>		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

Commission Final Allowance
Aqua Pennsylvania, Inc.
TABLE I(B) - Water
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ^(*)	0.00512242
PUC, OCA, OSBA, DPC Assessment Factors ^(*)	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98816198
State Income Tax Rate ^(*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09871738</u>
Factor After Local and State Taxes	0.88944460
Federal Income Tax Rate ^(*)	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18678337</u>
Revenue Factor (100% - Effective Tax Rates)	<u>0.70266123</u>

^(*) Company Main Brief

Commission Final Adjustments
TABLE II - Water
SUMMARY OF ADJUSTMENTS
R-2021-3027385, R-2021-3027386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenue</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
C/W/C:							
Int. & Div. (Table IV)	4,950						
Taxes (Table V)	431,345						
O & M (Table VI)	(161,422)						
Acquis. Adj. - Phoenixville ⁽¹⁾	(2,437,305)						
REVENUES:							
Water Contract Revenues ⁽¹⁾⁽¹⁾⁽¹⁾		1,136,086	5,820		7,630	192,151	212,202
Negotiated Water Contracts ⁽¹⁾		0	0		0	0	0
Concomitant Forfeited Discounts ⁽¹⁾⁽¹⁾		5,820	30		33	574	1,087
EXPENSES:							
Supp. Exec. Rates Program ⁽¹⁾			(635,612)			0	0
General Inflation ⁽¹⁾			(864,335)			63,432	131,485
Gen. Liab. Insurance ⁽¹⁾			(340,345)			86,347	163,377
			0			34,060	64,446
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
Amort. Phoenixville Acquis. Adj. ⁽¹⁾⁽¹⁾				(121,865)		12,174	23,035
TAXES:						0	0
Interest Synchronization (Table III)				0		0	0
						3,979	7,528
TOTALS	<u>(2,161,832)</u>	<u>1,141,906</u>	<u>(1,835,043)</u>	<u>(121,865)</u>	<u>7,663</u>	<u>318,777</u>	<u>603,960</u>

Notes to Accompany Table II - Water

- (1) Remove Phoenixville acquisition adjustment and associated amortization expense.
- (2) Add imputed general service revenue for Rider DRS contracts for New Wilmington [\$348,904] and Masury [\$787,182]. [$\$348,904 + \$787,182 = \$1,136,086$]. See I&E Exh. 4-SR, Sch. 1. However, as we are granting Aqua's Exception No. 3, in part, imputed general service revenue for Rider DRS contracts associated with Chemung, Horsham, and Sharpsville are not added back.
- (3) Remove Supplemental Executive Retirement Program expenses.
- (4) Remove general inflation adjustment.
- (5) Adopt I&E's position regarding general liability insurance expense.
- (6) Grant Aqua's Exception No. 4, which removes the ALJ's recommended upward adjustment
- (7) Revenues increased by the sum of one plus the uncollectible accounts factor in Table IB Water to include additional imputed forfeited discount revenue. Expenses includes additional bad debt expense as the product of additional revenues times the uncollectible accounts factor in Table IB Water. Taxes-Other includes additional assessment expenses as the product of additional revenues times the assessment factor in Table IB Water. Expenses and Taxes-Other are deducted from revenue when determining State and Federal Income Taxes.
- (8) Cash working capital is not adjusted for non-cash expenses (*i.e.*, incremental bad debt expense and amortization expense).

Commission Final Allowance
TABLE III - Water
Aqua Pennsylvania, Inc.
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	3,812,378,794
Commission Rate Base Adjustments (From Table II)	<u>(2,161,832)</u>
Commission Rate Base (Line 1 - Line 2)	3,810,216,962
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	70,190,331
Company Claim ⁽¹⁾	<u>70,342,109</u>
Total Commission Adjustment (Line 6 - Line 5)	151,778
Company Adjustment ⁽¹⁾⁽²⁾	<u>111,952</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	39,826
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>3,979</u>
Net Commission Interest Adjustment (Line 9)	39,826
State Income Tax Adjustment (Line 11)	<u>3,979</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	35,847
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u><u>7,528</u></u>

⁽¹⁾ Company Main Brief

⁽²⁾ Rate Base Company Adjustment times weighted cost of debt

Commission Final Allowance
TABLE IV - Water
Aqua Pennsylvania, Inc.
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest		Preferred Stock Dividends		
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$3,812,378,794	\$3,812,378,794	Company Rate Base Claim	\$3,812,378,794
Commission Rate Base Adjustments	<u>(\$2,161,832)</u>	<u>(\$2,161,832)</u>	Commission Rate Base Adjustments	<u>(\$2,161,832)</u>
Commission Rate Base	\$3,810,216,962	\$3,810,216,962	Commission Rate Base	\$3,810,216,962
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.00000000%</u>
Commission Annual Interest Exp.	<u>\$70,190,331</u>	<u>\$0</u>	Commission Preferred Dividends	<u>\$0</u>
Average Revenue Lag Days	45.1	45.1	Average Revenue Lag Days	45.1
Average Expense Lag Days	<u>30.3</u>	<u>30.3</u>	Average Expense Lag Days	<u>30.3</u>
Net Lag Days	<u>-45.2</u>	<u>-45.2</u>	Net Lag Days	<u>-45.2</u>
Working Capital Adjustment				
Commission Daily Interest Exp.	\$192,302	\$0	Commission Daily Dividends	\$0
Net Lag Days	<u>-45.2</u>	<u>-45.2</u>	Net Lag Days	<u>-45.2</u>
Commission Working Capital	(\$8,692,050)	\$0		\$0
Company Claim ⁽¹⁾⁽²⁾	<u>(\$8,697,000)</u>	<u>\$0</u>	Company Claim ⁽¹⁾⁽²⁾	<u>\$0</u>
Commission Adjustment	<u>\$4,350</u>	<u>\$0</u>		<u>\$0</u>
Total Interest & Dividend Adj.	<u>\$4,350</u>			

⁽¹⁾ Company Main Brief.

⁽²⁾ Company claim rounded to nearest thousandth

Commission Final Allowance
TABLE V - Water
Aqua Pennsylvania, Inc.
CASH WORKING CAPITAL - TAXES
R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days ⁽²⁾	Accrued Tax Adjustment
Assessments ⁽²⁾	\$3,425,001	\$7,669	\$3,432,670	\$264,080	\$3,696,750	\$10,128.08	-197.50	(\$2,000,296)
Public Utility Realty	\$4,800,000	\$0	\$4,800,000		\$4,800,000	\$13,150.68	-11.30	(\$148,603)
Capital Stock Tax	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
Local property taxes & misc.	\$1,073,227		\$1,073,227		\$1,073,227	\$2,940.35	-167.00	(\$491,038)
FICA Taxes - Hourly	\$2,470,719		\$2,470,719		\$2,470,719	\$6,769.09	8.50	\$57,537
FICA Taxes - Executive & Exempt	\$1,729,006		\$1,729,006		\$1,729,006	\$4,737.00	12.00	\$56,844
Federal Unemployment Tax	\$26,883		\$26,883		\$26,883	\$73.65	75.00	\$5,524
PA Unemployment Tax	\$276,017		\$276,017		\$276,017	\$756.21	75.00	\$56,716
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
State Income Tax	\$5,783,096	\$318,777	\$6,101,873	\$3,881,903	\$9,983,776	\$27,352.81	45.20	\$1,236,347
Federal Income Tax	\$13,101,742	\$603,160	\$13,704,902	\$7,344,957	\$21,049,859	\$57,670.85	33.40	\$1,926,206
	<u>\$32,685,691</u>	<u>\$929,606</u>	<u>\$33,615,296</u>	<u>\$11,490,940</u>	<u>\$45,106,236</u>	<u>\$123,578.72</u>	<u>5.66</u>	<u>\$699,237</u>

⁽¹⁾ Company Main Brief

⁽²⁾ See Table II - Water, Note 2.

Average Lag Days in Receipt of Revenues	45.1
Average Lag in Payment of Taxes	<u>5.7</u>
Net Lag	<u>39</u>
Average Daily Tax Expense	123,579
Commission Cash Working Capital for Taxes	4,873,945
Less Company Claim ⁽¹⁾	<u>4,442,000</u>
Commission Adjustment	<u>431,945</u>

Commission Final Allowance
TABLE VI - Water
Aqua Pennsylvania, Inc.
CASH WORKING CAPITAL -- O & M EXPENSE
R-2021-3027385, R-2021-3027386

Description	Company Pro forma F.T.Y. Expense	Commission	Commission Pro forma Expenses	Lag Days	Lag Dollars
Hourly Labor	\$21,691,942	\$0	\$21,691,942	7.50	\$162,689,568
Non-Union Labor	\$14,922,316	\$0	\$14,922,316	11.00	\$164,145,477
Management Fee ⁽¹⁾	\$18,159,655	(\$695,612)	\$17,464,043	16.00	\$279,424,681
Electric Power	\$8,264,721	\$0	\$8,264,721	20.73	\$171,297,822
Water Purchased	\$4,148,773	\$0	\$4,148,773	32.55	\$135,036,763
Employee Group Insurance	\$5,966,463	\$0	\$5,966,463	16.00	\$95,463,405
Liability Insurance ⁽¹⁾	\$7,021,825	(\$340,945)	\$6,680,880	-1.37	(\$9,151,630)
SFI Postage	\$1,344,879	\$0	\$1,344,879	-7.96	(\$10,706,644)
Pension	\$3,990,000	\$0	\$3,990,000	300.60	\$1,199,377,034
SFAS106	\$27,361	\$0	\$27,361	365.67	\$10,005,097
All Other Expenses	\$27,451,796	\$0	\$27,451,796	25.50	\$700,020,787
General Inflation ⁽¹⁾	\$0	(\$864,335)	(\$864,335)	25.90	(\$22,386,273)
	\$0		\$0	0.00	\$0
	\$0		\$0	0.00	\$0
	\$0		\$0	0.00	\$0
	\$0		\$0	0.00	\$0
	\$0		\$0	0.00	\$0
	<u>\$112,989,731</u>	<u>(\$1,900,892)</u>	<u>\$111,088,839</u>	<u>25.90</u>	<u>\$2,875,216,087</u>
Commission Average Revenue Lag	45.1				
Less: Commission Avg. Expense Lag	<u>25.9</u>				
Net Difference	19.2	Days			
Commission Pro forma O & M Expense per Day	<u>\$304,353</u>				
Commission CVC for O & M	\$5,843,578				
Less: Company Claim ⁽¹⁾⁽²⁾	<u>\$6,005,000</u>				
Commission Adjustment	<u>(\$161,422)</u>				

Notes and Sources to Accompany Table VI – Water

⁽¹⁾ Company Main Brief

⁽²⁾ Company claim rounded to nearest thousandth

⁽³⁾ See Table II- Water, Note 3. Most SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.

⁽⁴⁾ See Table II - Water, Note 4. We reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.

⁽⁵⁾ See Table II - Water, Note 5.

Commission Final Allowance
TABLE I - Wastewater - Base
Aqua Pennsylvania Wastewater, Inc. - Base
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments ⁽¹⁾	Pro Forma Present Rates (Revised) ⁽¹⁾	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽²⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 19,011,761	\$ -	\$ 19,011,761	\$ -	\$ 19,011,761	\$ 15,616,886	\$ 34,628,647
Expenses:							
O & M Expense	9,830,816	-	9,830,816	(150,101)	9,680,715	186,452	9,867,167
Depreciation	7,780,016	-	7,780,016	-	7,780,016	-	7,780,016
Taxes, Other	303,529	-	303,529	-	303,529	104,877	408,406
Income Taxes:							
State	(1,181,921)	-	(1,181,921)	14,597	(1,167,324)	1,531,023	363,699
Federal	(1,086,251)	-	(1,086,251)	27,620	(1,058,631)	2,896,852	1,838,221
Total Expenses	15,646,188	-	15,646,188	(107,884)	15,538,304	4,719,204	20,257,508
Net Inc. Available for Return	3,365,573	\$ -	\$ 3,365,573	\$ 107,884	\$ 3,473,458	\$ 10,897,682	\$ 14,371,140
Rate Base	198,368,990	-	198,368,990	216,340	198,585,330		198,585,330
Rate of Return	1.70%		1.70%		1.75%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%): 82.14%

Commission Final Allowance
TABLE I(A) - Wastewater - Base
Aqua Pennsylvania Wastewater, Inc. - Base
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		1.84%
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	<u>10.00%</u>	<u>5.39459700%</u>	<u>0.711079</u>	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u>		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

Commission Final Allowance
Aqua Pennsylvania Wastewater, Inc. - Base
TABLE I(B) - Wastewater - Base
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ^(*)	0.01193911
PUC, OCA, OSBA, DPC Assessment Factors ^(*)	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98134529
State Income Tax Rate ^(*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09803639</u>
Factor After Local and State Taxes	0.88330890
Federal Income Tax Rate ^(*)	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18549487</u>
Revenue Factor (100% - Effective Tax Rates)	<u><u>0.69781403</u></u>

^(*) Company Main Brief

Commission Final Adjustments
TABLE II - Wastewater - Base
SUMMARY OF ADJUSTMENTS
R-2021-3027385, R-2021-3027386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
CVC:							
Int. & Div. (Table IV)	(945)						
Taxes (Table V)	226,646						
O & M (Table VI)	(9,361)						
REVENUES:							
					0	0	0
EXPENSES:							
						0	0
Supp. Exec. Retire. Program ^{1M}			(23,373)			2,335	4,418
General Inflation ^{1M}			(145,368)			14,522	27,478
Gen. Liab. Insurance ^{1M}			18,640			(1,862)	(3,523)
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
TAXES:							
						0	0
Interest Synchronization (Table III)						(398)	(753)
TOTALS	<u>216,340</u>	<u>0</u>	<u>(150,101)</u>	<u>0</u>	<u>0</u>	<u>14,597</u>	<u>27,620</u>

Notes to Accompany Table II – Wastewater - Base

- (1) Remove SERP Expenses. The OCA's \$57,050 adjustment is allocated to each wastewater rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Schedule C-1. Since Wastewater - Base is assigned \$714,262 of \$1,743,416 in total management fees, this adjustment is calculated as follows:
[$-\$57,050 \times (\$714,262 / \$1,743,416) = -\$23,373$].
- (2) Remove general inflation adjustment.
- (3) Adopt I&E's position regarding general liability insurance expense.

Commission Final Allowance
TABLE III - Wastewater - Base
Aqua Pennsylvania Wastewater, Inc. - Base
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	198,368,990
Commission Rate Base Adjustments (From Table II)	<u>216,340</u>
Commission Rate Base (Line 1 - Line 2)	198,585,330
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	3,658,261
Company Claim ⁽¹⁾	<u>3,654,276</u>
Total Commission Adjustment (Line 6 - Line 5)	(3,985)
Company Adjustment ⁽¹⁾	<u>0</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	(3,985)
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>(398)</u>
Net Commission Interest Adjustment (Line 9)	(3,985)
State Income Tax Adjustment (Line 11)	<u>(398)</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	(3,587)
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u><u>(753)</u></u>

⁽¹⁾ Company Main Brief

Commission Final Allowance
TABLE IV - Wastewater - Base
Aqua Pennsylvania Wastewater, Inc. - Base
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest			Preferred Stock Dividends	
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$198,368,990	\$198,368,990	Company Rate Base Claim	\$198,368,990
Commission Rate Base Adjustments	<u>\$216,340</u>	<u>\$216,340</u>	Commission Rate Base Adjustmer	<u>\$216,340</u>
Commission Rate Base	\$198,585,330	\$198,585,330	Commission Rate Base	\$198,585,330
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.00000000%</u>
Commission Annual Interest Exp.	<u>\$3,658,261</u>	<u>\$0</u>	Commission Preferred Dividends	<u>\$0</u>
Average Revenue Lag Days	50.2	50.2	Average Revenue Lag Days	50.2
Average Expense Lag Days	<u>91.3</u>	<u>91.3</u>	Average Expense Lag Days	<u>91.3</u>
Net Lag Days	<u>-41.1</u>	<u>-41.1</u>	Net Lag Days	<u>-41.1</u>
Working Capital Adjustment				
Commission Daily Interest Exp.	\$10,023	\$0	Commission Daily Dividends	\$0
Net Lag Days	<u>-41.1</u>	<u>-41.1</u>	Net Lag Days	<u>-41.1</u>
Commission Working Capital	(\$411,945)	\$0		\$0
Company Claim ⁽¹⁾	<u>(\$411,000)</u>	<u>\$0</u>	Company Claim ⁽¹⁾	<u>\$0</u>
Commission Adjustment	<u>(\$945)</u>	<u>\$0</u>		<u>\$0</u>
Total Interest & Dividend Adj.	<u>(\$945)</u>			

⁽¹⁾ Company Main Brief.

Commission Final Allowance
TABLE V - Wastewater - Base
Aqua Pennsylvania Wastewater, Inc. - Base
CASH WORKING CAPITAL - TAXES
R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
Assessments	\$127,675	\$0	\$127,675	\$104,877	\$232,552	\$637.13	-197.50	(\$125,833)
Local, County, School, & Municipal Tax	\$175,853	\$0	\$175,853		\$175,853	\$481.79	-167.00	(\$80,459)
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
State Income Tax	(\$1,178,637)	\$14,597	(\$1,164,040)	\$1,531,023	\$366,383	\$1,005.43	45.20	\$45,445
Federal Income Tax	(\$2,225,857)	\$27,620	(\$2,198,237)	\$2,896,852	\$698,615	\$1,914.01	33.40	\$63,328
	<u>(\$3,100,965)</u>	<u>\$42,217</u>	<u>(\$3,058,748)</u>	<u>\$4,532,752</u>	<u>\$1,474,004</u>	<u>\$4,038.36</u>	<u>(24.00)</u>	<u>(\$96,919)</u>

⁽¹⁾ Company Main Brief

Average Lag Days in Receipt of Revenues	50.2
Average Lag in Payment of Taxes	<u>(24.0)</u>
Net Lag	<u>74</u>
Average Daily Tax Expense	4,038
Commission Cash Working Capital for Taxes	299,646
Less Company Claim ⁽¹⁾	<u>73,000</u>
Commission Adjustment	<u>226,646</u>

Aqua Pennsylvania Wastewater, Inc. - Base
CASH WORKING CAPITAL -- O & M EXPENSE
R-2021-3027385, R-2021-3027386

29

Notes and Sources to Accompany Table VI – Wastewater - Base

- ⁽¹⁾ Company Main Brief
- ⁽²⁾ See Table II - Wastewater - Base, Note 2. We reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.
- ⁽³⁾ See Table II - Wastewater - Base, Note 1. SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.
- ⁽⁴⁾ See Table II Wastewater - Base, Note 3.

Commission Final Allowance
TABLE I - Wastewater - Limerick
Aqua Pennsylvania Wastewater, Inc. - Limerick
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments ⁽¹⁾	Pro Forma Present Rates (Revised) ⁽¹⁾	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽²⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 3,978,573	\$ -	\$ 3,978,573	\$ -	\$ 3,978,573	\$ 5,581,376	\$ 9,559,949
Expenses:							
O & M Expense	2,041,053	-	2,041,053	(27,778)	2,013,275	66,637	2,079,912
Depreciation	1,998,881	-	1,998,881	-	1,998,881	-	1,998,881
Taxes, Other	26,719	-	26,719	-	26,719	37,482	64,201
Income Taxes:							
State	(146,426)	-	(146,426)	2,634	(143,792)	547,178	403,386
Federal	(211,135)	-	(211,135)	4,984	(206,151)	1,035,317	829,166
Total Expenses	3,709,091	-	3,709,091	(20,160)	3,688,931	1,686,614	5,375,545
Net Inc. Available for Return	269,482	\$ -	\$ 269,482	\$ 20,160	\$ 289,642	\$ 3,894,762	\$ 4,184,405
Rate Base	57,744,861	-	57,744,861	76,673	57,821,534		57,821,534
Rate of Return	0.47%		0.47%		0.50%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%): 140.29%

Commission Final Allowance
TABLE I(A) - Wastewater - Limerick
Aqua Pennsylvania Wastewater, Inc. - Limerick
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		1.84%
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	<u>10.00%</u>	<u>5.39459700%</u>	<u>0.711079</u>	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u> ⁽¹⁾		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

⁽¹⁾ The Company rounded the Total After-Tax Weighted Cost to 4 decimals places. The formula in the original presentation did not round the Total After-Tax Weighted Cost.

Commission Final Allowance
Aqua Pennsylvania Wastewater, Inc. - Limerick
TABLE I(B) - Wastewater - Limerick
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ^(*)	0.01193911
PUC, OCA, OSBA, DPC Assessment Factors ^(*)	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98134529
State Income Tax Rate ^(*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09803639</u>
Factor After Local and State Taxes	0.88330890
Federal Income Tax Rate ^(*)	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18549487</u>
Revenue Factor (100% - Effective Tax Rates)	<u><u>0.69781403</u></u>

^(*) Company Main Brief

Commission Final Adjustments

TABLE II - Wastewater - Limerick
SUMMARY OF ADJUSTMENTS
R-2021-3027385, R-2021-3027386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
CVC:							
Int. & Div. (Table IV)	(389)						
Taxes (Table V)	78,550						
O & M (Table VI)	(1,488)						
REVENUES:							
					0	0	0
EXPENSES:							
						0	0
Supp. Exec. Retire. Program ^{1M}			(8,035)			803	1,519
General Inflation ^{1M}			(23,275)			2,325	4,400
Gen. Liab. Insurance ^{1M}			3,533			(353)	(668)
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
TAXES:							
Interest Synchronization (Table III)						0 (141)	0 (267)
TOTALS	<u>76,673</u>	<u>0</u>	<u>(27,778)</u>	<u>0</u>	<u>0</u>	<u>2,634</u>	<u>4,984</u>

Notes to Accompany Table II -Wastewater - Limerick

- (1) Remove SERP Expenses. The OCA's \$57,050 adjustment is allocated to each wastewater rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Schedule C-1. Since Limerick is assigned \$245,560 of \$1,743,416 in total management fees, this adjustment is calculated as follows:
$$[-\$57,050 \times (\$245,560 / \$1,743,416) = -\$8,035].$$
- (2) Remove general inflation adjustment.
- (3) Adopt I&E's position regarding general liability insurance expense.

Commission Final Allowance
TABLE III - Wastewater - Limerick
Aqua Pennsylvania Wastewater, Inc. - Limerick
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	57,744,861
Commission Rate Base Adjustments (From Table II)	<u>76,673</u>
Commission Rate Base (Line 1 - Line 2)	57,821,534
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	1,065,166
Company Claim ⁽¹⁾	<u>1,063,753</u>
Total Commission Adjustment (Line 6 - Line 5)	(1,412)
Company Adjustment ⁽¹⁾	<u>0</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	(1,412)
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>(141)</u>
Net Commission Interest Adjustment (Line 9)	(1,412)
State Income Tax Adjustment (Line 11)	<u>(141)</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	(1,271)
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u><u>(267)</u></u>

⁽¹⁾ Company Main Brief

Commission Final Allowance
TABLE IV - Wastewater - Limerick
Aqua Pennsylvania Wastewater, Inc. - Limerick
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest			Preferred Stock Dividends	
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$57,744,861	\$57,744,861	Company Rate Base Claim	\$57,744,861
Commission Rate Base Adjustments	<u>\$76,673</u>	<u>\$76,673</u>	Commission Rate Base Adjustments	<u>\$76,673</u>
Commission Rate Base	\$57,821,534	\$57,821,534	Commission Rate Base	\$57,821,534
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.00000000%</u>
Commission Annual Interest Exp.	<u>\$1,065,166</u>	<u>\$0</u>	Commission Preferred Dividends	<u>\$0</u>
Average Revenue Lag Days	43.7	43.7	Average Revenue Lag Days	43.7
Average Expense Lag Days	<u>31.3</u>	<u>31.3</u>	Average Expense Lag Days	<u>31.3</u>
Net Lag Days	<u>-41.6</u>	<u>-41.6</u>	Net Lag Days	<u>-41.6</u>
Working Capital Adjustment				
Commission Daily Interest Exp.	\$2,318	\$0	Commission Daily Dividends	\$0
Net Lag Days	<u>-41.6</u>	<u>-41.6</u>	Net Lag Days	<u>-41.6</u>
Commission Working Capital	(\$121,389)	\$0		\$0
Company Claim ^{1H}	<u>(\$121,000)</u>	<u>\$0</u>	Company Claim ^{1H}	<u>\$0</u>
Commission Adjustment	<u>(\$389)</u>	<u>\$0</u>		<u>\$0</u>
Total Interest & Dividend Adj.	<u><u>(\$389)</u></u>			

^{1H} Company Main Brief.

Commission Final Allowance
TABLE V - Wastewater -Limerick
Aqua Pennsylvania Wastewater, Inc. - Limerick
CASH WORKING CAPITAL - TAXES
R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
Assessments	\$26,719	\$0	\$26,719	\$37,482	\$64,201	\$175.89	-197.5	(\$34,738)
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.0	\$0
State Income Tax	(\$146,426)	\$2,634	(\$143,792)	\$547,178	\$403,386	\$1,105.17	45.2	\$49,954
Federal Income Tax	(\$277,054)	\$4,984	(\$272,070)	\$1,035,317	\$763,247	\$2,091.09	33.4	\$69,842
	<u>(\$396,762)</u>	<u>\$7,618</u>	<u>(\$389,144)</u>	<u>\$1,619,977</u>	<u>\$1,230,833</u>	<u>\$3,372.15</u>	<u>25.22</u>	<u>\$85,058</u>

⁽¹⁾ Company Main Brief

Average Lag Days in Receipt of Revenues	49.7
Average Lag in Payment of Taxes	<u>25.2</u>
Net Lag	<u>24.5</u>
Average Daily Tax Expense	3,372
Commission Cash Working Capital for Taxes	82,550
Less Company Claim ⁽¹⁾	<u>4,000</u>
Commission Adjustment	<u>78,550</u>

Commission Final Allowance
TABLE VI - Wastewater - Limerick
Aqua Pennsylvania Wastewater, Inc. - Limerick
CASH WORKING CAPITAL -- O & M EXPENSE
R-2021-3027385, R-2021-3027386

[illegible]

Notes and Sources to Accompany Table VI – Wastewater - Limerick

- ⁽¹⁾ Company Main Brief
- ⁽²⁾ See Table II - Wastewater - Limerick, Note 2. We reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.
- ⁽³⁾ See Table II - Wastewater - Limerick, Note 1. SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.
- ⁽⁴⁾ See Table II - Wastewater - Limerick, Note 3.

Commission Final Allowance
TABLE I - Wastewater - East Bradford
Aqua Pennsylvania Wastewater, Inc. - East Bradford
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments ⁽¹⁾	Pro Forma Present Rates (Revised) ⁽¹⁾	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽²⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 1,014,569	\$ -	\$ 1,014,569	\$ -	\$ 1,014,569	\$ 777,094	\$ 1,791,663
Expenses:							
O & M Expense	1,113,197	-	1,113,197	(7,802)	1,105,395	9,278	1,114,673
Depreciation	158,552	-	158,552	-	158,552	-	158,552
Taxes, Other	11,413	-	11,413	-	11,413	5,219	16,632
Income Taxes:							
State	(42,221)	-	(42,221)	761	(41,460)	76,183	34,723
Federal	(68,340)	-	(68,340)	1,441	(66,899)	144,147	77,248
Total Expenses	1,172,601	-	1,172,601	(5,600)	1,167,001	234,827	1,401,828
Net Inc. Available for Return	(158,032)	\$ -	\$ (158,032)	\$ 5,600	\$ (152,432)	\$ 542,267	\$ 389,835
Rate Base	5,377,205	-	5,377,205	9,669	5,386,874		5,386,874
Rate of Return	-2.94%		-2.94%		-2.83%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%): 76.59%

Commission Final Allowance
TABLE I(A) - Wastewater - East Bradford
Aqua Pennsylvania Wastewater, Inc. - East Bradford
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		<u>1.84%</u>
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	<u>10.00%</u>	<u>5.39459700%</u>	<u>0.711079</u>	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u>		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

Commission Final Allowance
Aqua Pennsylvania Wastewater, Inc. - East Bradford
TABLE I(B) - Wastewater - East Bradford
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ^(*)	0.01193911
PUC, OCA, OSBA, DPC Assessment Factors ^(*)	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98134529
State Income Tax Rate ^(*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09803639</u>
Factor After Local and State Taxes	0.88330890
Federal Income Tax Rate ^(*)	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18549487</u>
Revenue Factor (100% - Effective Tax Rates)	<u>0.69781403</u>

^(*) Company Main Brief

Commission Final Adjustments
TABLE II - Wastewater - East Bradford
SUMMARY OF ADJUSTMENTS
R-2021-302T385, R-2021-302T386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
CWC:							
Int. & Div. (Table IV)	250						
Taxes (Table V)	3,723						
O & M (Table VI)	(310)						
REVENUES:							
					0	0	0
EXPENSES:							
						0	0
Supp. Exec. Retire. Program ⁽¹⁾			(1,763)			176	333
General Inflation ⁽²⁾			(6,828)			682	1,231
Gen. Liab. Insurance ⁽³⁾			783			(73)	(143)
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
TAXES:							
						0	0
Interest Synchronization (Table III)						(18)	(34)
TOTALS	<u>3,663</u>	<u>0</u>	<u>(7,802)</u>	<u>0</u>	<u>0</u>	<u>761</u>	<u>1,441</u>

Notes and Sources to Accompany Table II – Wastewater – East Bradford

- (1) Remove SERP Expenses. The OCA's \$57,050 adjustment is allocated to each wastewater rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Schedule C-2. Since East Bradford is assigned \$53,881 of \$1,743,416 in total management fees, this adjustment is calculated as follows:
$$[-\$57,050 \times (\$53,881 / \$1,743,416) = -\$1,763].$$
- (2) Remove general inflation adjustment.
- (3) Adopt I&E's position regarding general liability insurance expense.

Commission Final Allowance
TABLE III - Wastewater -East Bradford
Aqua Pennsylvania Wastewater, Inc. - East Bradford
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	5,377,205
Commission Rate Base Adjustments (From Table II)	<u>9,669</u>
Commission Rate Base (Line 1 - Line 2)	5,386,874
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	99,235
Company Claim ⁽¹⁾	<u>99,057</u>
Total Commission Adjustment (Line 6 - Line 5)	(178)
Company Adjustment ⁽¹⁾	<u>0</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	(178)
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>(18)</u>
Net Commission Interest Adjustment (Line 9)	(178)
State Income Tax Adjustment (Line 11)	<u>(18)</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	(160)
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u><u>(34)</u></u>

⁽¹⁾ Company Main Brief

Commission Final Allowance
TABLE IV - Wastewater - East Bradford
Aqua Pennsylvania Wastewater, Inc. - East Bradford
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest			Preferred Stock Dividends	
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$5,377,205	\$5,377,205	Company Rate Base Claim	\$5,377,205
Commission Rate Base Adjustments	<u>\$9,669</u>	<u>\$9,669</u>	Commission Rate Base Adjustments	<u>\$9,669</u>
Commission Rate Base	\$5,386,874	\$5,386,874	Commission Rate Base	\$5,386,874
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.000000000%</u>
Commission Annual Interest Exp.	<u><u>\$99,235</u></u>	<u><u>\$0</u></u>	Commission Preferred Dividends	<u><u>\$0</u></u>
Average Revenue Lag Days	48.1	48.1	Average Revenue Lag Days	48.1
Average Expense Lag Days	<u>91.3</u>	<u>91.3</u>	Average Expense Lag Days	<u>91.3</u>
Net Lag Days	<u><u>-43.2</u></u>	<u><u>-43.2</u></u>	Net Lag Days	<u><u>-43.2</u></u>
Working Capital Adjustment				
Commission Daily Interest Exp.	\$272	\$0	Commission Daily Dividends	\$0
Net Lag Days	<u>-43.2</u>	<u>-43.2</u>	Net Lag Days	<u>-43.2</u>
Commission Working Capital	(\$11,750)	\$0		\$0
Company Claim ¹⁹¹	<u>(\$12,000)</u>	<u>\$0</u>	Company Claim ¹⁹¹	<u>\$0</u>
Commission Adjustment	<u><u>\$250</u></u>	<u><u>\$0</u></u>		<u><u>\$0</u></u>
Total Interest & Dividend Adj.	<u><u>\$250</u></u>			

¹⁹¹ Company Main Brief.

Commission Final Allowance
TABLE V - Wastewater - East Bradford
Aqua Pennsylvania Wastewater, Inc. - East Bradford
CASH WORKING CAPITAL - TAXES
R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
PA PUC - General Assessments	\$6,813	\$0	\$6,813	\$5,219	\$12,032	\$32.97	-197.50	(\$6,512)
Local, County, School, & Municipal Tax	\$4,600	\$0	\$4,600		\$4,600	\$12.60	-167.00	(\$2,104)
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
State Income Tax	(\$42,221)	\$761	(\$41,460)	\$76,193	\$34,723	\$95.13	45.20	\$4,300
Federal Income Tax	(\$79,886)	\$1,441	(\$78,445)	\$144,347	\$65,702	\$180.00	33.40	\$6,012
	<u>(\$110,694)</u>	<u>\$2,202</u>	<u>(\$108,492)</u>	<u>\$225,549</u>	<u>\$117,057</u>	<u>\$320.70</u>	<u>5.29</u>	<u>\$1,696</u>

⁽¹⁾ Company Main Brief

Average Lag Days in Receipt of Revenues	48
Average Lag in Payment of Taxes	5.3
Net Lag	<u>42.8</u>
Average Daily Tax Expense	321
Commission Cash Working Capital for Taxes	13,729
Less Company Claim ⁽¹⁾	<u>4,000</u>
Commission Adjustment	<u>9,729</u>

Commission Final Allowance
TABLE VI - Wastewater - East Bradford
Aqua Pennsylvania Wastewater, Inc. - East Bradford
CASH WORKING CAPITAL -- Q & M EXPENSE
R-2021-3027385, R-2021-3027386

[illegible]

Notes and Sources to Accompany Table VI – Wastewater – East Bradford

- ⁽¹⁾ Company Main Brief
- ⁽²⁾ See Table II - Wastewater - East Bradford, Note 2. We reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.
- ⁽³⁾ See Table II - Wastewater East Bradford, Note 1. SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.
- ⁽⁴⁾ See Table II - Wastewater E Bradford, Note 3.

Commission Final Allowance
TABLE I - Wastewater - Cheltenham
Aqua Pennsylvania Wastewater, Inc. - Cheltenham
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments ⁽¹⁾	Pro Forma Present Rates (Revised) ⁽¹⁾	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽²⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 7,258,740	\$ -	\$ 7,258,740	\$ -	\$ 7,258,740	\$ 2,752,399	\$ 10,011,139
Expenses:							
O & M Expense	4,552,450	-	4,552,450	(16,469)	4,535,981	32,861	4,568,842
Depreciation	1,011,770	-	1,011,770	-	1,011,770	-	1,011,770
Taxes, Other	48,747	-	48,747	-	48,747	18,484	67,231
Income Taxes:							
State	(10,260)	-	(10,260)	1,545	(8,715)	269,835	261,120
Federal	164,955	-	164,955	2,924	167,879	510,556	678,435
Total Expenses	5,767,661	-	5,767,661	(12,000)	5,755,662	831,736	6,587,398
Net Inc. Available for Return	1,491,079	\$ -	\$ 1,491,079	\$ 12,000	\$ 1,503,078	\$ 1,920,663	\$ 3,423,741
Rate Base	47,256,177	-	47,256,177	54,249	47,310,426		47,310,426
Rate of Return	3.16%		3.16%		3.18%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%): 37.92%

Commission Final Allowance
TABLE I(A) - Wastewater - Cheltenham
Aqua Pennsylvania Wastewater, Inc. - Cheltenham
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		<u>1.84%</u>
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	10.00%	<u>5.39459700%</u>	0.711079	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u>		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

Commission Final Allowance
Aqua Pennsylvania Wastewater, Inc. - Cheltenham
TABLE I(B) - Wastewater - Cheltenham
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ^(*)	0.01193911
PUC, OCA, OSBA, DPC Assessment Factors ^(*)	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98134529
State Income Tax Rate ^(*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09803639</u>
Factor After Local and State Taxes	0.88330890
Federal Income Tax Rate ^(*)	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18549487</u>
Revenue Factor (100% - Effective Tax Rates)	<u>0.69781403</u>

^(*) Company Main Brief

Commission Final Adjustments
TABLE II - Wastewater - Cheltenham
SUMMARY OF ADJUSTMENTS
R-2021-3027385, R-2021-3027386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
CWC:							
Int. & Div. (Table IV)	(431)						
Taxes (Table V)	56,325						
O & M (Table VI)	(1,645)						
REVENUES:							
					0	0	0
EXPENSES:							
						0	0
Supp. Exec. Retire. Program ⁽¹⁾			(14,043)			1,403	2,656
General Inflation ⁽²⁾			(8,719)			871	1,648
Gen. Liab. Insurance ⁽³⁾			6,233			(623)	(1,131)
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
TAXES:							
						0	0
Interest Synchronization (Table III)						(900)	(189)
TOTALS	<u>54,249</u>	<u>0</u>	<u>(16,469)</u>	<u>0</u>	<u>0</u>	<u>1,545</u>	<u>2,324</u>

Notes and Sources to Accompany Table II – Wastewater - Cheltenham

- (1) Remove SERP Expenses. The OCA's \$57,050 adjustment is allocated to each wastewater rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Schedule C-1. Since Cheltenham is assigned \$429,319 of \$1,743,416 in total management fees, this adjustment is calculated as follows:
$$[-\$57,050 \times (\$429,319 / \$1,743,416) = -\$14,049].$$
- (2) Remove general inflation adjustment.
- (3) Adopt I&E's position regarding general liability insurance expense.

Commission Final Allowance
TABLE III - Wastewater -Cheltenham
Aqua Pennsylvania Wastewater, Inc. - Cheltenham
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	47,256,177
Commission Rate Base Adjustments (From Table II)	<u>54,249</u>
Commission Rate Base (Line 1 - Line 2)	47,310,426
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	871,534
Company Claim ⁽¹⁾	<u>870,535</u>
Total Commission Adjustment (Line 6 - Line 5)	(999)
Company Adjustment ⁽¹⁾	<u>0</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	(999)
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>(100)</u>
Net Commission Interest Adjustment (Line 9)	(999)
State Income Tax Adjustment (Line 11)	<u>(100)</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	(899)
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u>(189)</u>

⁽¹⁾ Company Main Brief

Commission Final Allowance
TABLE IV - Wastewater - Cheltenham
Aqua Pennsylvania Wastewater, Inc. - Cheltenham
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest		Preferred Stock Dividends		
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$47,256,177	\$47,256,177	Company Rate Base Claim	\$47,256,177
Commission Rate Base Adjustments	<u>\$54,249</u>	<u>\$54,249</u>	Commission Rate Base Adjustments	<u>\$54,249</u>
Commission Rate Base	\$47,310,426	\$47,310,426	Commission Rate Base	\$47,310,426
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.00000000%</u>
Commission Annual Interest Exp.	<u>\$871,534</u>	<u>\$0</u>	Commission Preferred Dividends	<u>\$0</u>
Average Revenue Lag Days	57.2	57.2	Average Revenue Lag Days	57.2
Average Expense Lag Days	<u>91.3</u>	<u>91.3</u>	Average Expense Lag Days	<u>91.3</u>
Net Lag Days	<u>-34.1</u>	<u>-34.1</u>	Net Lag Days	<u>-34.1</u>
Working Capital Adjustment				
Commission Daily Interest Exp.	\$2,388	\$0	Commission Daily Dividends	\$0
Net Lag Days	<u>-34.1</u>	<u>-34.1</u>	Net Lag Days	<u>-34.1</u>
Commission Working Capital	(\$81,431)	\$0		\$0
Company Claim ⁽¹⁾	<u>(\$81,000)</u>	<u>\$0</u>	Company Claim ⁽¹⁾	<u>\$0</u>
Commission Adjustment	<u>(\$431)</u>	<u>\$0</u>		<u>\$0</u>
Total Interest & Dividend Adj.	<u>(\$431)</u>			

⁽¹⁾ Company Main Brief.

Commission Final Allowance
TABLE V - Wastewater -Cheltenham
 Aqua Pennsylvania Wastewater, Inc. - Cheltenham
 CASH WORKING CAPITAL - TAXES
 R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
PAPUC - General Assessments	\$48,747	\$0	\$48,747	\$18,484	\$67,231	\$184.19	-197.50	(\$36,378)
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
	\$0	\$0	\$0		\$0	\$0.00	0.00	\$0
State Income Tax	(\$10,260)	\$1,545	(\$8,715)	\$269,835	\$261,120	\$715.40	45.20	\$32,336
Federal Income Tax	(\$19,413)	\$2,324	(\$16,489)	\$510,556	\$494,067	\$1,353.61	33.40	\$45,211
	<u>\$19,073</u>	<u>\$4,469</u>	<u>\$23,542</u>	<u>\$798,875</u>	<u>\$822,417</u>	<u>\$2,253.20</u>	<u>18.00</u>	<u>\$41,169</u>

⁽¹⁾ Company Main Brief

Average Lag Days in Receipt of Revenues	57.2
Average Lag in Payment of Taxes	18.0
Net Lag	39.2
Average Daily Tax Expense	2,253
Commission Cash Working Capital for Taxes	88,325
Less Company Claim ⁽¹⁾	32,000
Commission Adjustment	56,325

[illegible]

Notes and Sources to Accompany Table VI – Wastewater – Cheltenham

- ⁽¹⁾ Company Main Brief
- ⁽²⁾ See Table II - Wastewater Cheltenham, Note 2. We reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.
- ⁽³⁾ See Table II - Wastewater Cheltenham, Note 1. SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.
- ⁽⁴⁾ See Table II - Wastewater Cheltenham, Note 3.

Commission Final Allowance
TABLE I - Wastewater - East Norriton
Aqua Pennsylvania Wastewater, Inc. - East Norriton
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments ⁽²⁾	Pro Forma Present Rates (Revised) ⁽¹⁾	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽²⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 2,923,770	\$ -	\$ 2,923,770	\$ -	\$ 2,923,770	\$ 2,739,266	\$ 5,663,036
Expenses:							
O & M Expense	2,271,778	-	2,271,778	(14,318)	2,257,460	32,704	2,290,164
Depreciation	952,641	-	952,641	-	952,641	-	952,641
Taxes, Other	19,635	-	19,635	-	19,635	18,396	38,031
Income Taxes:							
State	(84,197)	-	(84,197)	1,386	(82,811)	268,548	185,737
Federal	(147,480)	-	(147,480)	2,621	(144,859)	508,120	363,261
Total Expenses	3,012,378	-	3,012,378	(10,311)	3,002,066	827,768	3,829,834
Net Inc. Available for Return	\$ (88,608)	\$ -	\$ (88,608)	\$ 10,311	\$ (78,297)	\$ 1,911,498	\$ 1,833,202
Rate Base	25,307,104	-	25,307,104	24,706	25,331,810		25,331,810
Rate of Return	-0.35%		-0.35%		-0.31%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%): 93.69%

Commission Final Allowance
TABLE I(A) - Wastewater - East Norriton
Aqua Pennsylvania Wastewater, Inc. - East Norriton
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		1.84%
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	10.00%	<u>5.39459700%</u>	0.711079	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u>		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

Commission Final Allowance
Aqua Pennsylvania Wastewater, Inc. - East Norriton
TABLE I(B) - Wastewater - East Norriton
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ^(*)	0.01193911
PUC, OCA, OSBA, DPC Assessment Factors ^(*)	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98134529
State Income Tax Rate ^(*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09803639</u>
Factor After Local and State Taxes	0.88330890
Federal Income Tax Rate ^(*)	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18549487</u>
Revenue Factor (100% - Effective Tax Rates)	<u>0.69781403</u>

^(*) Company Main Brief

Commission Final Adjustments

TABLE II - Wastewater - East Norriton

SUMMARY OF ADJUSTMENTS

R-2021-3027385, R-2021-3027386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
CVC:							
Int. & Div. (Table IV)	(369)						
Taxes (Table V)	25,827						
O & M (Table VI)	(752)						
REVENUES:							
					0	0	0
EXPENSES:							
						0	0
Supp. Exec. Retire. Program ^(M)			(7,036)			703	1,330
General Inflation ^(M)			(8,665)			866	1,638
Gen. Liab. Insurance ^(M)			1,382			(138)	(261)
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
TAXES:							
						0	0
Interest Synchronization (Table III)						(45)	(86)
TOTALS	<u>24,706</u>	<u>0</u>	<u>(14,318)</u>	<u>0</u>	<u>0</u>	<u>1,386</u>	<u>2,621</u>

Notes and Sources to Accompany Table II – Wastewater – East Norriton

- (1) Remove SERP Expenses. The OCA's \$57,050 adjustment is allocated to each wastewater rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Schedule C-1. Since East Norriton is assigned \$215,006 of \$1,743,416 in total management fees, this adjustment is calculated as follows:
$$[-\$57,050 \times (\$215,006 / \$1,743,416) = -\$7,036].$$
- (2) Remove general inflation adjustment.
- (3) Adopt I&E's position regarding general liability insurance expense.

Commission Final Allowance
TABLE III - Wastewater -East Norriton
Aqua Pennsylvania Wastewater, Inc. - East Norriton
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	25,307,104
Commission Rate Base Adjustments (From Table II)	<u>24,706</u>
Commission Rate Base (Line 1 - Line 2)	25,331,810
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	466,653
Company Claim ⁽¹⁾	<u>466,198</u>
Total Commission Adjustment (Line 6 - Line 5)	(455)
Company Adjustment ⁽¹⁾	<u>0</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	(455)
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>(45)</u>
Net Commission Interest Adjustment (Line 9)	(455)
State Income Tax Adjustment (Line 11)	<u>(45)</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	(410)
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u><u>(86)</u></u>

⁽¹⁾ Company Main Brief

Commission Final Allowance
TABLE IV - Wastewater - East Norriton
Aqua Pennsylvania Wastewater, Inc. - East Norriton
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest	Preferred Stock Dividends	
	Long-Term Debt	Short-Term Debt
Company Rate Base Claim	\$25,307,104	\$25,307,104
Commission Rate Base Adjustments	<u>\$24,706</u>	<u>\$24,706</u>
Commission Rate Base	\$25,331,810	\$25,331,810
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>
Commission Annual Interest Exp.	<u><u>\$466,653</u></u>	<u><u>\$0</u></u>
Average Revenue Lag Days	44.1	44.1
Average Expense Lag Days	<u>31.3</u>	<u>31.3</u>
Net Lag Days	<u><u>-47.2</u></u>	<u><u>-47.2</u></u>
Working Capital Adjustment		
Commission Daily Interest Exp.	\$1,279	\$0
Net Lag Days	<u>-47.2</u>	<u>-47.2</u>
Commission Working Capital	(\$60,369)	\$0
Company Claim ⁽¹⁾	<u>(\$60,000)</u>	<u>\$0</u>
Commission Adjustment	<u><u>(\$369)</u></u>	<u><u>\$0</u></u>
Total Interest & Dividend Adj.	<u><u>(\$369)</u></u>	

⁽¹⁾ Company Main Brief.

Commission Final Allowance
TABLE V - Wastewater - East Norriton
Aqua Pennsylvania Wastewater, Inc. - East Norriton
CASH WORKING CAPITAL - TAXES
R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
PAPUC - General Assessments	\$19,635	\$0	\$19,635	\$18,396	\$38,031	\$104	-197.50	(\$20,578)
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
State Income Tax	(\$84,197)	\$1,386	(\$82,811)	\$268,548	\$185,737	\$509	45.20	\$23,001
Federal Income Tax	(\$159,309)	\$2,621	(\$156,688)	\$508,120	\$351,432	\$963	33.40	\$32,159
	<u>(\$223,871)</u>	<u>\$4,007</u>	<u>(\$219,864)</u>	<u>\$795,064</u>	<u>\$575,200</u>	<u>\$1,576</u>	<u>21.94</u>	<u>\$34,582</u>

⁽¹⁾ Company Main Brief

Average Lag Days in Receipt of Revenues	44.1
Average Lag in Payment of Taxes	<u>22.0</u>
Net Lag	22.1
Average Daily Tax Expense	1,576
Commission Cash Working Capital for Taxes	34,827
Less Company Claim ⁽¹⁾	<u>3,000</u>
Commission Adjustment	<u>25,827</u>

Notes and Sources to Accompany Table VI – Wastewater – East Norriton

- (1) Company Main Brief
- (2) See Table II Wastewater - East Norriton, Note 2. Reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.
- (3) See Table II Wastewater - East Norriton, Note 1. SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.
- (4) See Table II Wastewater East Norriton, Note 3.

Commission Final Allowance
TABLE I - Wastewater - New Garden
Aqua Pennsylvania Wastewater, Inc. - New Garden
INCOME SUMMARY
R-2021-3027385, R-2021-3027386

	Pro Forma Present Rates ⁽¹⁾	Company Adjustments (1)	Pro Forma Present Rates (Revised) (1)	Commission Adjustments	Commission Pro Forma Present Rates	Commission Revenue Increase ⁽²⁾	Total Allowable Revenues
	\$	\$	\$	\$	\$	\$	\$
Operating Revenue	\$ 2,889,080	\$ -	\$ 2,889,080	\$ -	\$ 2,889,080	\$ 2,538,455	\$ 5,427,536
Expenses:							
O & M Expense	1,845,024	-	1,845,024	(16,175)	1,828,849	30,307	1,859,156
Depreciation	735,834	-	735,834	-	735,834	-	735,834
Taxes, Other	19,402	-	19,402	-	19,402	17,047	36,449
Income Taxes:							
State	(75,351)	-	(75,351)	1,651	(73,700)	248,861	175,161
Federal	(40,533)	-	(40,533)	3,124	(37,409)	470,870	433,461
Total Expenses	2,484,377	-	2,484,377	(11,400)	2,472,977	767,085	3,240,062
Net Inc. Available for Return	\$ 404,704	\$ -	\$ 404,704	\$ 11,400	\$ 416,104	\$ 1,771,370	\$ 2,187,473
Rate Base	30,246,226	-	30,246,226	(18,970)	30,227,256		30,227,256
Rate of Return	1.34%		1.34%		1.38%		7.23675800%

⁽¹⁾ Company Main Brief

⁽²⁾ Revenue increases before Section 1311(c) allocation from water to wastewater

Pre-Act 11 Allocation Revenue Change (%): 87.86%

Commission Final Allowance
TABLE I(A) - Wastewater - New Garden
Aqua Pennsylvania Wastewater, Inc. - New Garden
RATE OF RETURN
R-2021-3027385, R-2021-3027386

	<u>Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt			1.84216100%		<u>1.84%</u>
Long-term Debt	46.05%	4.00%	1.84216100%		1.84%
Short-term Debt	0.00%	0.00%	0.00000000%		0.00%
Preferred Stock	0.00%	0.00%	0.00000000%	0.711079	0.00%
Common Equity	<u>53.95%</u>	10.00%	<u>5.39459700%</u>	0.711079	<u>7.59%</u>
	<u>100.00%</u>		<u>7.23675800%</u>		<u>9.43%</u>
Pre-Tax Interest Coverage	5.12				
After-Tax Interest Coverage	3.93				
Tax Rate Complement (1-(21%+(9.99% X (1-21%)))	71.10790%				

Commission Final Allowance
Aqua Pennsylvania Wastewater, Inc. - New Garden
TABLE I(B) - Wastewater - New Garden
REVENUE FACTOR
R-2021-3027385, R-2021-3027386

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor ⁽⁷⁾	0.01193911
PUC, OCA, OSBA, DPC Assessment Factors ⁽⁷⁾	0.00671560
Gross Receipts Tax	0.00000000
Other Tax Factors	<u>0.00000000</u>
	0.98134529
State Income Tax Rate ⁽⁷⁾	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09803639</u>
Factor After Local and State Taxes	0.88330890
Federal Income Tax Rate ⁽⁷⁾	<u>0.21000000</u>
Effective Federal Income Tax Rate	<u>0.18549487</u>
Revenue Factor (100% - Effective Tax Rates)	<u>0.69781403</u>

⁽⁷⁾ Company Main Brief

Commission Final Adjustments

TABLE II - Wastewater - New Garden
SUMMARY OF ADJUSTMENTS
R-2021-3027385, R-2021-3027386

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
	\$	\$	\$	\$	\$	\$	\$
RATE BASE:							
CVC:							
Int. & Div. (Table IV)	(378)						
Taxes (Table V)	(18,230)						
O & M (Table VI)	(362)						
REVENUES:							
					0	0	0
EXPENSES:							
						0	0
Supp. Exec. Retire. Program ⁽¹⁾			(2,794)			279	528
General Inflation ⁽²⁾			(12,705)			1,269	2,402
Gen. Liab. Insurance ⁽³⁾			(676)			68	128
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
TAXES:							
						0	0
Interest Synchronization (Table III)						35	66
TOTALS	<u>(18,970)</u>	<u>0</u>	<u>(16,175)</u>	<u>0</u>	<u>0</u>	<u>1,651</u>	<u>3,124</u>

Notes and Sources to Accompany Table II – Wastewater – New Garden

- (1) Remove SERP Expenses. The OCA's \$57,050 adjustment is allocated to each wastewater rate zone based on the relative percentage of management fees assigned to each rate zone per Aqua Exhibits 1-B to 1-G at Schedule C-1. Since New Garden is assigned \$85,388 of \$1,743,416 in total management fees, this adjustment is calculated as follows:
$$[-\$57,050 \times (\$85,388 / \$1,743,416) = -\$2,794].$$
- (2) Remove general inflation adjustment.
- (3) Adopt I&E's position regarding general liability insurance expense.

Commission Final Allowance
TABLE III - Wastewater -New Garden
Aqua Pennsylvania Wastewater, Inc. - New Garden
INTEREST SYNCHRONIZATION
R-2021-3027385, R-2021-3027386

	Amount \$
Company Rate Base Claim ⁽¹⁾	30,246,226
Commission Rate Base Adjustments (From Table II)	<u>(18,970)</u>
Commission Rate Base (Line 1 - Line 2)	30,227,256
Weighted Cost of Debt (From Table IA)	<u>1.84216100%</u>
Commission Interest Expense (Line 3 x Line 4)	556,835
Company Claim ⁽¹⁾	<u>557,184</u>
Total Commission Adjustment (Line 6 - Line 5)	349
Company Adjustment ⁽¹⁾	<u>0</u>
Net Commission Interest Adjustment (Line 7 - Line 8)	349
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment (Line 9 x Line 10) (Flow to Table II)	<u>35</u>
Net Commission Interest Adjustment (Line 9)	349
State Income Tax Adjustment (Line 11)	<u>35</u>
Net Commission Adjustment for F.I.T. (Line 9 - Line 11)	314
Federal Income Tax Rate	<u>21.00%</u>
Federal Income Tax Adjustment (Line 12 x Line 13) (Flow to Table II)	<u><u>66</u></u>

⁽¹⁾ Company Main Brief

Commission Final Allowance
TABLE IV - Wastewater - New Garden
Aqua Pennsylvania Wastewater, Inc. - New Garden
CASH WORKING CAPITAL - Interest and Dividends
R-2021-3027385, R-2021-3027386

Accrued Interest			Preferred Stock Dividends	
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$30,246,226	\$30,246,226	Company Rate Base Claim	\$30,246,226
Commission Rate Base Adjustments	<u>(\$18,970)</u>	<u>(\$18,970)</u>	Commission Rate Base Adjustme	<u>(\$18,970)</u>
Commission Rate Base	\$30,227,256	\$30,227,256	Commission Rate Base	\$30,227,256
Weighted Cost of Debt	<u>1.84216100%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.00000000%</u>
Commission Annual Interest Exp.	<u>\$556,835</u>	<u>\$0</u>	Commission Preferred Dividends	<u>\$0</u>
Average Revenue Lag Days	22.9	22.9	Average Revenue Lag Days	22.9
Average Expense Lag Days	<u>91.3</u>	<u>91.3</u>	Average Expense Lag Days	<u>91.3</u>
Net Lag Days	<u>-68.4</u>	<u>-68.4</u>	Net Lag Days	<u>-68.4</u>
Working Capital Adjustment				
Commission Daily Interest Exp.	\$1,526	\$0	Commission Daily Dividends	\$0
Net Lag Days	<u>-68.4</u>	<u>-68.4</u>	Net Lag Days	<u>-68.4</u>
Commission Working Capital	(\$104,378)	\$0		\$0
Company Claim ^{1H}	<u>(\$104,000)</u>	<u>\$0</u>	Company Claim ^{1H}	<u>\$0</u>
Commission Adjustment	<u>(\$378)</u>	<u>\$0</u>		<u>\$0</u>
Total Interest & Dividend Adj.	<u>(\$378)</u>			

^{1H} Company Main Brief.

Commission Final Allowance
TABLE V - Wastewater-New Garden
 Aqua Pennsylvania Wastewater, Inc. - New Garden
 CASH WORKING CAPITAL - TAXES
 R-2021-3027385, R-2021-3027386

Description	Company Proforma Tax Expense Present Rates	Commission Adjustments	Commission Pro forma Tax Expense Present Rates	Commission Allowance	Commission Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
PA PUC - General Assessments	\$19,402	\$0	\$19,402	\$17,047	\$36,449	\$100	-197.50	(\$19,722)
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
	\$0	\$0	\$0		\$0	\$0	0.00	\$0
State Income Tax	(\$75,351)	\$1,651	(\$73,700)	\$248,861	\$175,161	\$480	45.20	\$21,691
Federal Income Tax	(\$142,571)	\$3,124	(\$139,447)	\$470,870	\$331,423	\$908	33.40	\$30,328
	<u>(\$138,520)</u>	<u>\$4,775</u>	<u>(\$133,745)</u>	<u>\$736,778</u>	<u>\$543,033</u>	<u>\$1,488</u>	<u>21.71</u>	<u>\$32,237</u>

¹⁶ Company Miss Brief

Average Lag Days in Receipt of Revenues	22.8
Average Lag in Payment of Taxes	<u>21.7</u>
Net Lag	1.2
Average Daily Tax Expense	1,488
Commission Cash Working Capital for Taxes	1,770
Less Company Claim ¹⁶	<u>20,000</u>
Commission Adjustment	<u><u>(18,230)</u></u>

Commission Final Allowance
TABLE VI - Wastewater - New Garden
Aqua Pennsylvania Wastewater, Inc. - New Garden
CASH WORKING CAPITAL -- O & M EXPENSE
R-2021-3027385, R-2021-3027386

[illegible]

Notes and Sources to Accompany Table VI – Wastewater – New Garden

- ⁽¹⁾ Company Main Brief
- ⁽²⁾ See Table II - Wastewater - New Garden, Note 2. Reject increases Aqua made to all expense accounts included in its general inflation claim. Since Exhibits 1-A to 1-G at Schedules C-4.1 and G-5.2 use different item descriptions, the number of lag days used for this adjustment is equal to the weighted average O & M Expense lag days for this rate zone after all other adjustments are applied.
- ⁽³⁾ See Table II - Wastewater - New Garden, Note 1. SERP expenses are under the management fee account. OCA Exhibit LA-3 at Page 63.
- ⁽⁴⁾ See Table II - Wastewater -New Garden, Note 3.

APPENDIX C

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

***Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.***

To complete this form, please type or print legibly in ink.

1. **Customer (Complainant) Information**

Provide your name, mailing address, county, telephone number(s), email address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name **William Ferguson** _____

Street/P.O. Box **313 Hyde Park Road** _____

City **Landenberg** _____ State **PA** _____ Zip **19350** _____

County **Chester** _____

Telephone Number(s) Where We Can Contact You During the Day (required):

(610) 268-5731 _____ (home) (_____) **Not used** _____ (mobile)

Email Address (required): **zzzferg@gmail.com** _____

Utility Account Number (from your bill) **002644533 1498090** _____

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name **Does Not Apply** _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. **Methods of Communication by the Commission**

You have three options on how you would like to receive all communication from the Commission about your Complaint. By selecting one of the following three options, you are agreeing to receive all hearing notices, orders, and related documents about your Complaint in the manner selected.

Select one of the following options for receiving all communications from the Commission:

- a. **eFiling**: You agree to open and use an eFiling account – free of charge through the Commission's website. By selecting this method you will be eServed. (This is the best way to receive, file, and submit documents).

Initial here if you are selecting eFiling: **WEF** _____

(And create an eFiling account at <http://www.puc.pa.gov/efiling/default.aspx>)

- b. **Email:** You agree to receive all documents by email (using the email you provided on page 1). Please note that you will only be able to receive documents from the Commission by email and will not be able to file documents by Email or Fax. To submit documents to the Commission you must create an eFiling account accessed at <http://www.puc.pa.gov/efiling/default.aspx> or mail your submissions.

Initial here if you are selecting Email service: _____

- c. **First Class Mail:** You agree to be served only by First Class Mail (at the address on page 1 of this form).

Initial here if you are selecting First Class Mail service: _____

***If you do not select one of the three options above, the Commission will serve all documents to you by First Class Mail at the address listed on page 1 of this form.**

3. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Aqua Pennsylvania Wastewater Inc _____

4. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ☐ Electric ☐ Gas ☐ Water ☒ Wastewater/Sewer ☐ Storm Water
☐ Steam Heat ☐ Motor Carrier (taxi, moving co., limo)
☐ Telephone/Telecommunications (local, long distance)

5. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- ☐ The utility is threatening to shut off my service or has already shut off my service.
☐ I would like a payment agreement.
☐ Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
☐ I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
☒ Other (explain).

This complaint is about irregularities in how Aqua set New Garden wastewater tariffs in its last rate case. Extensive documentation is attached supporting this issue.

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia

County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

6. **Requested Relief**

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

Specific actions are documented in the attachment.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

7. **Protection From Abuse (PFA)/ Domestic Violence**

Has a court granted you a “Protection From Abuse” order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a “Protection From Abuse” order or any other order for your personal safety or welfare?

YES ☐ NO X

If your answer to the above question is “yes,” attach a copy of the current Protection From Abuse order to this Formal Complaint form.

8. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC’s Bureau of Consumer Services (BCS)?

YES ☐ NO X

Note: If you answered yes, move to Section 9. No further contact with the utility or company is required. If you answered no, answer the question in Section 8 b. and answer the question in Section 8 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

☐

NO

X

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

This complaint is about a regulatory issue, not a billing or service issue. Aqua's Customer Service is not able to address this issue.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

9. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and email address, (all required contact information). Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name **None** _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

10. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

Verification:

I William Ferguson hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to

prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

William Ferguson _____ 18-September-2023 _____
(Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

11 **How to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, priority mail, or overnight delivery to this address and retain the tracking information as proof of submission:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

If you are appealing a BCS decision: follow the directions in the cover letter you received from the Secretary's Bureau with the formal complaint form. **ONLY** Formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. **All other formal complaints MUST be efiled or mailed.**

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records. Please know that your complaint form and the utility's answer will not be published to the PUC's website. Once your complaint case moves to the Office of Administrative Law Judge, any filings you make should be marked confidential if you do not want them published to the website.

Page 13 of the PUC's complaint procedures guidelines states that it is appropriate to request that any hearing be conducted over the telephone. Telephonic hearings is definitely my preference.

The balance of this document is my detailed complaint along with its supporting documentation.

Thank you for your attention to this issue.

Bill Ferguson

Summary

On 16-May-2022 the Pennsylvania Public Utilities Commission (PUC) authorized a rate increase for Aqua Pennsylvania Wastewater Inc. (Aqua). This was the PUC's docket case R-2021-3027386. One part of that case granted Aqua the right to prepare a tariff that would collect \$4,428,399/yr from New Garden ratepayers¹. Aqua subsequently filed its revised tariff schedule on 23-May-2022.

This complaint focuses on the parameters Aqua used to set its tariff for New Garden ratepayers. Aqua is required to show that its tariff is in compliance with the revenue permitted by the PUC. Aqua has not met that standard. This is caused by two factors:

1. The compliance data Aqua used to set rates does not reflect actual use by New Garden customers. This complaint will show that the volume data presented by Aqua for residential customers is unrealistic. For two cases of commercial customers the volume usage data is actually mathematically impossible to achieve. It cannot be possible to correctly set rates and show compliance using Aqua's data.
2. Aqua's compliance volume is significantly less than what New Garden Township reported during the last four quarters it operated the system. Volume and revenue are directly related, so this larger volume could significantly increase Aqua's revenue above the permitted amount.

As a result, Aqua is likely to collect more revenue from customers than the \$4,428,399/yr permitted by the PUC.

I am requesting that the PUC require Aqua to:

1. Provide actual use data for its compliance calculations.
2. Revise its tariff for New Garden based on that actual data.
3. Based on the new tariff, recalculate all bills since the rate increase went into effect.
4. Refund all overcharges paid thus far.

¹ 16-May-2022 PUC Opinion & Order - <https://www.puc.pa.gov/pcdocs/1744354.pdf> - PDF pages 64 and 43

Complaint Details

This complaint focuses on the compliance data Aqua used to set its tariff for New Garden. Aqua used a set of consumption volumes to calculate their tariff and show that it complies with the revenue permitted by the PUC. Those volumes are either mathematically impossible or require unrealistic conditions to achieve. Invalid volumes cannot demonstrate compliance. This complaint shows in detail the issues with Aqua's compliance data.

Exhibit A is a copy of Aqua's compliance data and calculations. They are from Aqua's 23-May-2022 sewer tariff filing². They were also a part of Aqua's rate case filing on 25-Aug-2021³. The key volumes and billing data are highlighted in yellow. Exhibit B consolidates Aqua's data into the following key parameters (Exhibit B, page 4):

<u>Combined Consumption and Billing Adjustments</u>		
	# Bills	Annual Gallons
Residential		
Monthly Fixed	22,992	
0 - 1667		9,580,000
1667 - 5,000		17,826,100
Over 5,000		58,758,600
Totals	22,992	86,164,700
Commerical #1		
Monthly Fixed	2,052	
0 - 1667		855,000
1667 - 5,000		13,149,400
Over 5,000		0
Totals	2,052	14,004,400
Commerical #2		
Monthly Fixed	332	
0 - 1667		95,000
1667 - 5,000		1,977,000
Over 5,000		1,752,400
Totals	332	3,824,400
Grand Total	25,376	103,993,500

Those nine volumes in yellow and three billing numbers in pink are the basis for Aqua's tariff setting and compliance calculations.

² 23-May-2022 sewer tariff filing - <https://www.puc.pa.gov/pcdocs/1745354.pdf> - Exhibit 5-B Compliance p 87 – 92 or PDF pages 157 – 162; Exhibit A copies the relevant pages for user convenience

³ Aqua's 25-Aug-2021 rate filing - <https://www.puc.pa.gov/pcdocs/1716839.pdf> - Schedule NG-3 & Schedule NG-4

Exhibit C validates the combined billing and volume numbers. The two tables apply tariff rates to the consolidated volume and billing data and compares the resulting revenue with Aqua's revenue numbers. Exhibit C, page 1 is revenue without a rate increase. Exhibit C, page 2 is revenue at Aqua's increased rates. The far right column on each table shows the difference to be trivial rounding error in every case. Out of the 24 data points, the least accurate number is in 99.9989% agreement with Aqua's total. Clearly, the table on Exhibit B page 4 represents Aqua's compliance data in just twelve numbers.

The specific issues that follow detail why this data in no way represents actual usage by New Garden customers.

Major Issue #1 – Residential Volume

The following table reproduces Aqua's residential volume data in Exhibit B, page 4.

	# Bills	Annual Gallons
Residential		
Monthly Fixed	22,992	
0 - 1667		9,580,000
1667 - 5,000		17,826,100
Over 5,000		58,758,600
Totals	22,992	86,164,700

The 22,992 bills represent 1,916 customers [= 22,992/12]. Aqua cites this 1,916 number in many other places in its filings.

The issue is that Aqua's use volumes require at least 1,303 customers to have zero consumption. That is over 67% of their customers not using any water. That is not realistic. The 1,303 figure is based on the most favorable assumptions. The least favorable assumptions result in 1,437 customers having zero consumption.

These 1,303 zero consumption customers result because the volumes in all three rate bands have to be consistent. Exhibit D is a detailed analysis showing how the rate bands are filled and why 1,303 customers must have zero consumption to achieve consistency.

Confirming the fact that over 1,303 ratepayers do not have zero consumption, New Garden has provided data for their final year of owning the system – See Exhibit E.

Their data shows only 119 customers using zero volume – a much more reasonable figure.

Aqua's compliance volumes do not reflect actual residential use in New Garden. Since, this was the data used to set rates, how can those rates be set correctly?

Major Issue #2 – Commercial 1 Volume

This issue is simple. The following table from Exhibit B, page 4, is a summary of Aqua's data.

	# Bills	Annual Gallons
Commerical #1		
Monthly Fixed	2,052	
0 - 1667		855,000
1667 - 5,000		13,149,400
Over 5,000		0
Totals	2,052	14,004,400

The 2,052 bills represent 171 customers [= 2,052/12].

It is mathematically impossible for 171 customers to consume 13,149,400 gallons in the "1667 - 5,000" rate band. That volume would require 329 customers consuming the full 5,000 gallons in that rate band [= 13,149,400/12/3333]. And, those 329 customers would have to consume 6,581,316 gallons in the "0 – 1667" rate band [= 329 x 1667 x 12]. That is 7.5X Aqua's stated consumption for that rate band.

Clearly this is an impossible set of compliance volumes. How is it possible to correctly set rates from such data?

Major Issue #3 – Commercial 2 Volume

This is also a simple issue similar to the Commercial 1 case. The following table is a summary of Aqua's Commercial 2 data, taken from Exhibit B, page 4.

	# Bills	Annual Gallons
Commerical #2		
Monthly Fixed	332	
0 - 1667		95,000
1667 - 5,000		1,977,000
Over 5,000		1,752,400
Totals	332	3,824,400

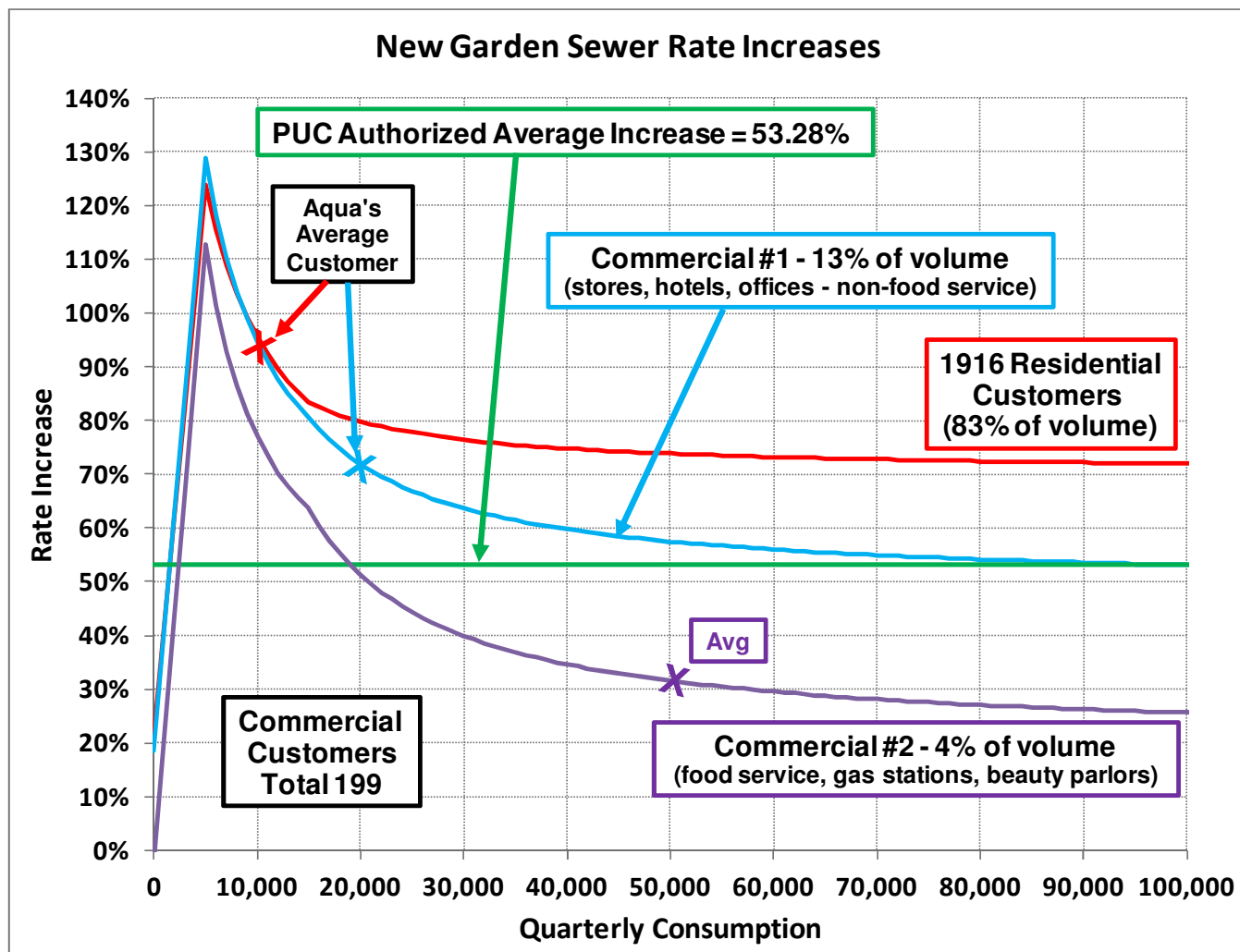
The 332 bills represent 27.7 customers [= 332/12].

Again, it is mathematically impossible for 27.7 customers to consume 1,977,000 gallons in the "1667 - 5,000" rate band. It would require 49 customers consuming the full 5,000 gallons in that rate band [= 1,977,000/12/3333]. And, those 49 customers would have to consume 980,196 gallons in the "0 – 1667" rate band [= 49 x 12 x 1667]. That is over 10X Aqua's stated consumption for that band.

This is a second impossible situation showing that Aqua's compliance data bears no relationship to actual use.

Major Issue #4 – The Percentage Rate Increases

Aqua claims its New Garden increase is 53.5%⁴. The following chart plots the range of percentage increases customers are actually seeing on their individual bills. This chart simply calculates the cost for each billing volume at the old and new rates. The percentage increase is then calculated.



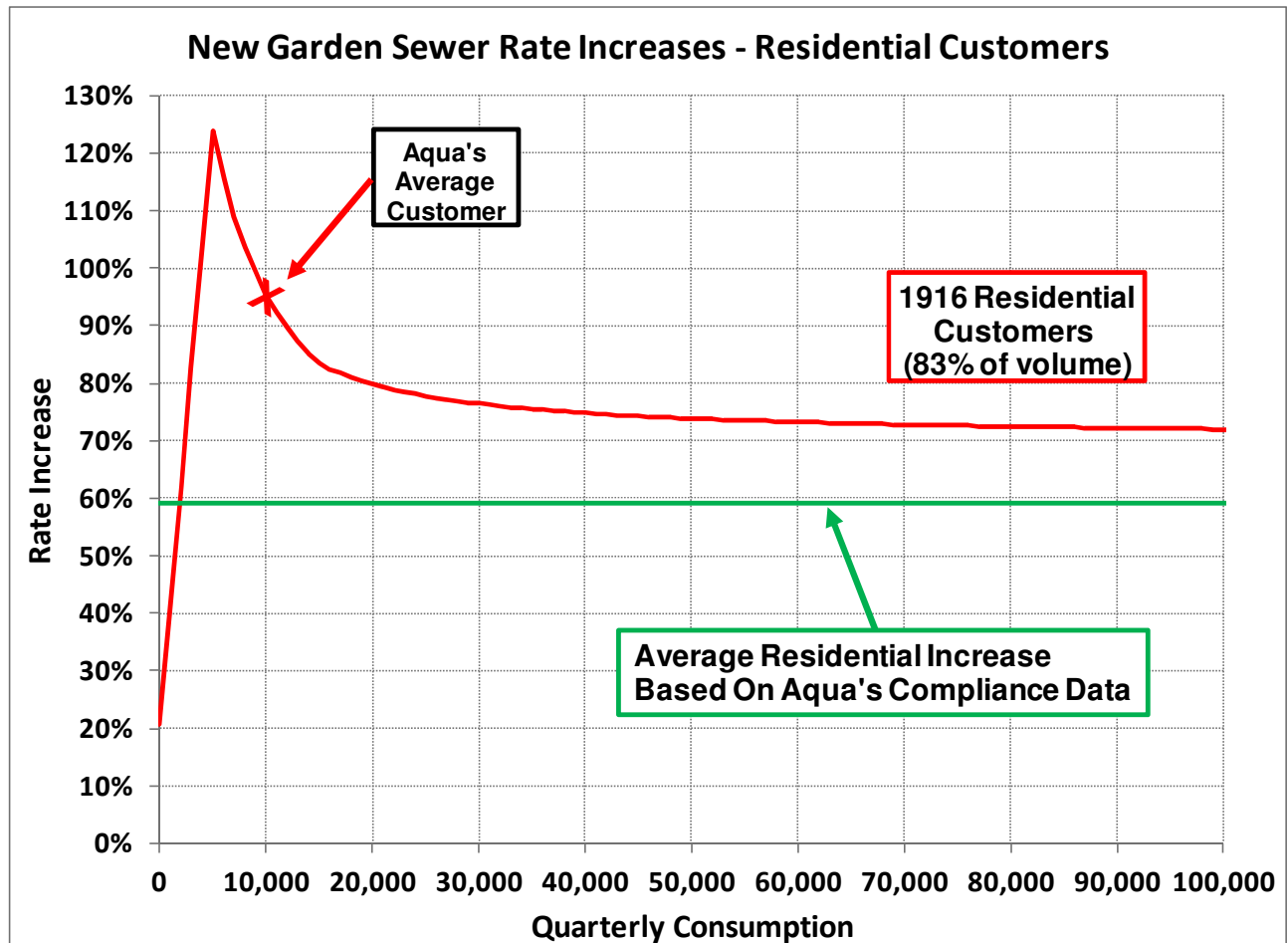
Aqua's data in Exhibit I states an average use for each customer category. The "X's" on the above chart marks those averages. It is visually obvious that a large majority of bills will be much larger than the 53.28% permitted increase. This is a strong indicator that Aqua is collecting substantially more than the amount permitted by the PUC.

The next three charts look at the customer categories individually.

⁴ Aqua's sewer tariff filing 23-May-2022, pdf page 155; filing page Exhibit 5-B Compliance, Page 85

Major Issue #4 – The Percentage Rate Increases- continued

This chart is for residential customers.

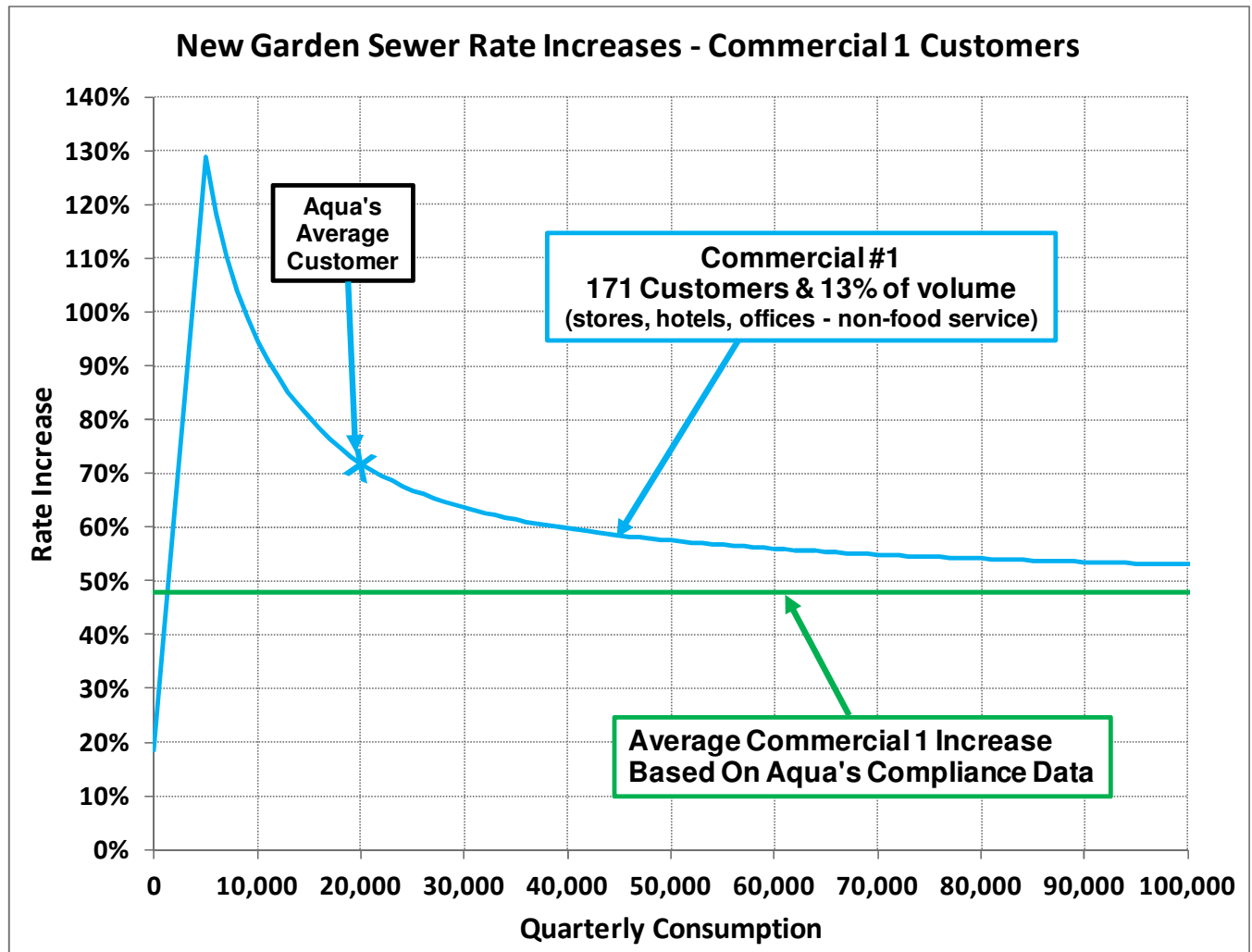


There are two data points on the red line that are below the average increase (green line). One is at zero consumption and the other is 1,000 gallons/quarter. It is visually obvious that the residential rate increase far exceeds the average calculated from Aqua's compliance data. And, at 83% of total volume, it represents the largest share of the rate increase.

It is also visually obvious why Aqua's compliance volumes requires 1,303 customers to use zero volume. The customer at zero volume only sees about a 20% rate increase. That is the only way to mathematically achieve Aqua's average increase for residential customers. 1,303 zero use residential ratepayers is not realistic, but is mathematically demanded to make Aqua's numbers balance. Clearly, the residential increase is much greater than claimed by Aqua.

Major Issue #4 – The Percentage Rate Increases- continued

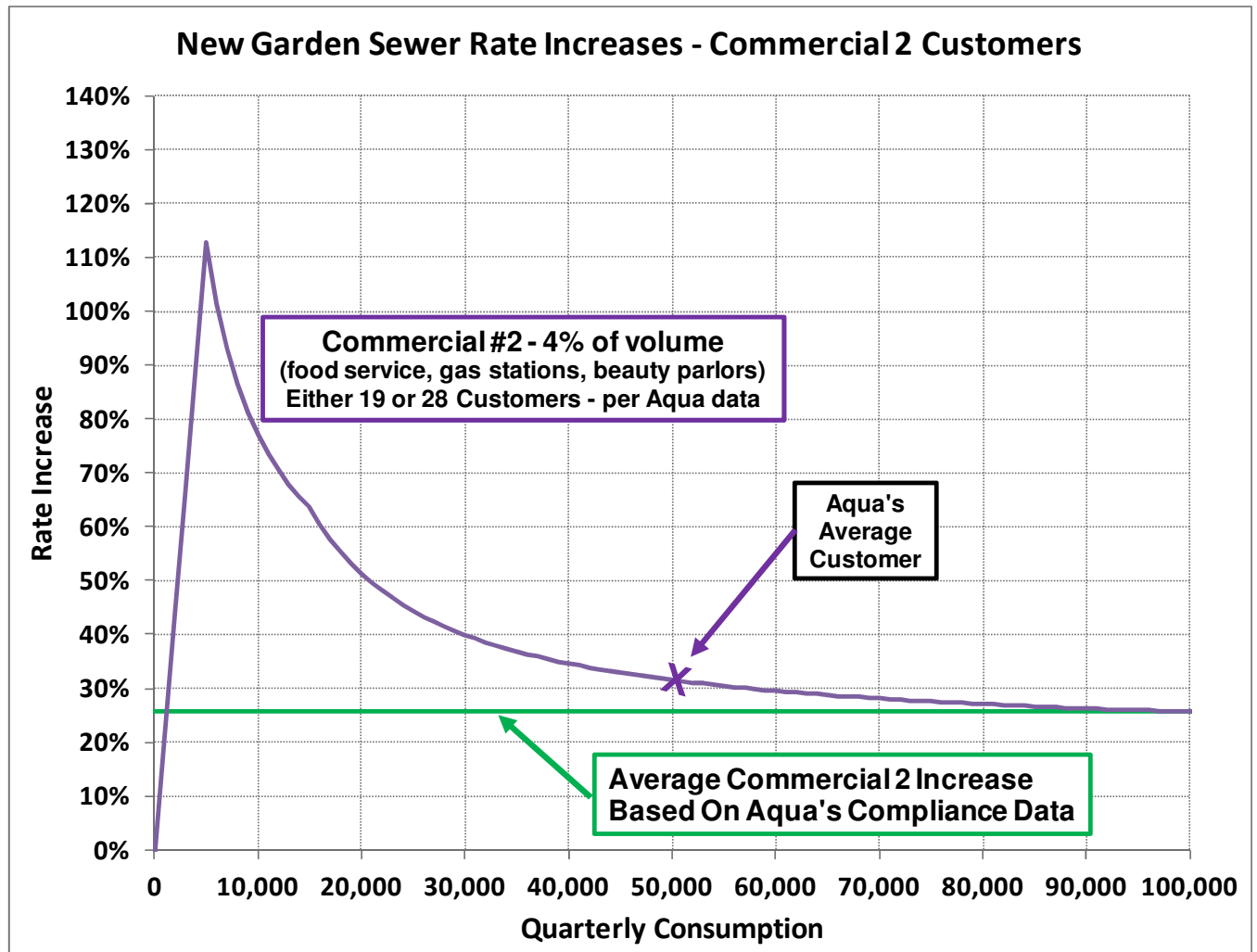
This chart is for Commercial 1 customers.



Like the residential chart on the previous page, there are only two data points on the blue line that are below the average increase (green line). One is at zero consumption and the other is 1,000 gallons/quarter. It is visually obvious that the Commercial 1 rate increase far exceeds the average calculated from Aqua's compliance data.

Major Issue #4 – The Percentage Rate Increases- continued

This chart is for Commercial 2 customers.



Like the two previous pages, there are only two data points on the left hand side of the chart that are below the average increase (green line). One is at zero consumption and the other is 1,000 gallons/quarter. However, once the volume exceeds 98,000 gallons/quarter, the increase is slightly below the average. It is still visually obvious that the Commercial 2 rate increase far exceeds the average calculated from Aqua's compliance data.

Major Issue #4 – The Percentage Rate Increases- continued

As the above four charts have shown it is visually obvious that Aqua's rate increase exceeds that permitted by the PUC. The real increase is probably over 78%.

The following table is a more quantitative estimate of the rate increases:

<u>Customer Category</u>	<u>Aqua's Data</u>	<u>Estimated</u>
Residential	59.2%	84%
Commercial 1	47.7%	57%
Commercial 2	25.7%	28%
Total New Garden	53.5%	>78%

The column labeled "Aqua's Data" is taken directly from the table on Exhibit B, page 3. It is literally Aqua's data broken down by the three customer categories. The 53.5% for total New Garden is also noted in Aqua's tariff filing⁵.

The estimated 84% increase for Residential customers is based on actual New Garden billing data. The calculation of this number is detailed in Exhibit G. The Commercial 1 & 2 estimates are based on the asymptotes from the chart at the start of this Major Issue #4. The average commercial increases are not going to be less than those seen by large customers on the right hand side of the chart. These two estimates likely understate the actual increase.

The 78% "Total New Garden" figure is arrived at by taking a weighed average of the three categories based on Aqua's volume data. Exhibit J has the details.

Aqua's collecting \$4,428,399/yr from New Garden customers is based on an average increase of 53.5%. An actual increase of over 78% is another indicator that Aqua will be collecting revenue substantially in excess of that permitted by the PUC.

⁵ 23-May-2022 tariff filing - <https://www.puc.pa.gov/pcdocs/1745354.pdf> - PDF page 155

Major Issue #5 – Aqua’s Compliance Volumes Predate the Acquisition

Exhibit I is from a 21-Feb-2020 filing for Aqua’s acquisition of New Garden’s sewer system⁶. It is a Petition For Approval Of Settlement for Aqua’s acquisition of New Garden’s sewer. The table is PDF page 38 of the filing and is part of Aqua’s William Packer explaining the impact of the acquisition on rates.

The usage volumes highlighted in this table are identical to Aqua’s compliance volumes summarized by Exhibit B, page 4. As previously note, these volumes derive from Aqua’s rate filings on 25-Aug-2021 23-May-2022 (links previously cited). But, this table predates the acquisition by 10 months. How was Aqua able to accurately determine usage 10 months before even owning the system?

Aqua did have actual use data from New Garden per the following email:

From: Spencer Address, AICP <thinker@gsi-cpl.com>
Sent: Wednesday, August 14, 2019 12:06 PM EDT
To: Packer, Jr., William C <WCPackerJr@aquaamerica.com>; Rafferty, Thomas F <TFRafferty@aquaamerica.com>
CC: Stahl, Alexander R <AStahl@aquaamerica.com>; Vince Pompo <vpompo@lambmcerlane.com>; Tony Schelvert <tschelvert@newgarden.org>
Subject: RE: Information from Spence
Attachment(s): "New Garden Sewer User Profile.pdf"

Bill,

Attached is my analysis of the revenue stream based on the old rates versus the revenue stream for each of the current/next (2019/2020/2021) three years based on the ordinance adopted last November. The data is from the second quarter 2018. I have not updated it recently but the information has not changed much and the difference would be inconsequential.

There is a lot of information but I think it is formatted in a way that makes it easy to interpret and understand. The sheet showing the accounts does NOT include all accounts but is the summary page for each type of account.

Let me know if you have any questions. Please acknowledge receipt.

Spence

Attached to the above email was the Exhibit E graph and four other tables of use data.

The compliance volumes impact our sewer rates and should be based on actual customer use. When Aqua’s rate case was filed, they had owned the New Garden system about eight months. Between that, New Garden’s data and their other customer experience Aqua should have been able to accurately estimate usage volumes. Instead, they used data that predated the acquisition and does not reflect actual customer use. This should not be acceptable to the PUC.

⁶ PUC docket case No. A-2016-2580061 - 21-Feb-2020 settlement filing
<https://www.puc.pa.gov/pcdocs/1655518.pdf>

Major Issue #6 – The Total Volume Used By New Garden Customers

Data provided by New Garden Township (Exhibit H) shows that 126,464,000 gallons were billed during the last four quarters that New Garden owned the system. Aqua's compliance data in Exhibit B, page 3, shows their total annual volume as 103,993,500 gallons. That is 22,470,500 gallons less than actual New Garden experience. At the lowest billing rate, that difference could mean Aqua collecting over \$500,000/year additional revenue. At the highest rate, it would be over \$1,100,000/year.

What is the actual annual billed volume? This is a critical issue in determining Aqua's revenue.

Other Issues related to compliance volumes

1. Aqua's compliance volumes have several coincidences:
 - a. Aqua states that its residential customers use 9,580,000 gallons annually in the 0 - 1667 rate band (see Exhibit B, page 4). That is exactly 5,000 gallons/yr for each of the 1,916 residential customers.
 - b. Aqua also states that its Commercial 1 customers use 855,000 gallons annually in the 0 - 1667 rate band (see Exhibit B, page 4). Again, that is exactly 5,000 gallons/yr for each of the 171 Commercial 1 customers.
 - c. The same 5,000 gallons/yr holds true for that rate band in the Commercial 2 category. This is based on Mr. Packer's table in Exhibit I where he notes that there are 19 customers in that rate band ($95,000/19 = 5,000$).
 - d. It is very seldom that actual data would average exactly 5,000 gallons. Three different and independent categories averaging the same exact number is significantly less likely.
2. Aqua's Commercial 1 data shows zero consumption in the "Over 5,000" gallon rate band. This is highly unlikely. In fact, Exhibit F shows one bill of 27,000 gallons for a Commercial 1 customer. The timing of that bill was before the rate filing in August-2021. Clearly, that rate band is not zero.

Mr. Packer's data in Exhibit I also states a zero consumption for the over 5,000 gallon rate band. His very next line then states that the average Commercial 1 consumption is 6,820 gallons/month. How is possible to average 6,820 gallons/month when not a single customer is using over 5,000 gallons/month?

All these things taken together are additional evidence questioning the accuracy of Aqua's compliance data. It supports that it was not based on actual use data.

Conclusions

In its compliance filing for New Garden, Aqua presents a "Consumption Analysis" and "Billing Adjustments" that they claim shows compliance of their tariff filing with the PUC's allowed revenues. The accuracy of this data is critical to correctly setting rates. If those numbers accurately represented actual New Garden volumes, Aqua would have indeed showed compliance with the revenues allowed by the PUC.

As this complaint has shown in detail, those consumption volumes bear no relationship to actual sewer use by New Garden customers. It does not appear possible that Aqua could demonstrate the necessary compliance.

Recommendations

- #1 The first issue to be resolved is the accuracy of Aqua's compliance data. This could be resolved easily by requiring Aqua to report to the PUC actual billing and volume use data. Aqua has owned the system long enough to have two full twelve month use periods. For both periods they should provide the PUC the data highlighted in the following table:

<u>Reconciliation Data Table</u>				
		Annual Billed		
	# EDU Bills	Gallons	Tariff Rate	Revenue
Residential				
Fixed charge			\$136.380	\$0
0 - 15,000			\$23.259	\$0
Over 15,000			\$33.435	\$0
Totals		0		\$0
Commerical #1				
Fixed charge			\$187.560	\$0
0 - 15,000			\$34.850	\$0
Over 15,000			\$44.868	\$0
Totals		0		\$0
Commerical #2				
Fixed charge			\$187.560	\$0
0 - 15,000			\$44.580	\$0
Over 15,000			\$50.000	\$0
Totals		0		\$0
Grand Total				\$0

- #2 Applying tariff rates to Aqua's data in the above table will enable the PUC to determine whether Aqua is exceeding its allowed revenue.
- #3 Aqua should be required to revise its tariff schedule for New Garden. It should conform to an allowed revenue of \$4,428,399/yr based on actual use volumes.
- #4 From the start of the May-2022 rate increase, the PUC should require Aqua to recalculate all ratepayer bills based on the revised tariffs. All overcharges should be refunded to customers.

These actions are needed to fulfill the PUC's responsibility to ratepayers.

Exhibit A – page 1

For the convenience of the user, this section reproduces the six pages of Aqua's compliance data for New Garden customers (23-May-2022, link previously cited). It is Exhibit 5-B Compliance, pages 87 – 92. In the pdf file it is pages 157 – 162.

Exhibit 5-B Compliance
Page 87

AQUA PENNSYLVANIA, INC. WASTEWATER - RATE ZONE 11 NEW GARDEN DIVISION APPLICATION OF PRESENT AND PROPOSED RATES TO CONSUMPTION ANALYSIS FOR THE TWELVE MONTHS ENDED MARCH 31, 2021						
Rate Block, 100 Gallons	Number of Bills	Consumption, 100 Gallons	Present Rate	Present Revenue	Proposed Rate	Proposed Revenue
(1)	(2)	(3)	(4)	(5)	(6)	(7)
<u>Residential - Monthly</u>						
Customer Charge						
5/8	6,080	-	\$ 37.64	\$ 228,826	\$ 45.46	\$ 276,391
Subtotal	6,080	-		228,826		276,391
Allowance (1,667 Gallons)		95,055	-	\$ -	2.3259	\$ 221,088
1st block (up to 5,000 gallons)		121,041	1.5170	183,618	2.3259	281,528
2nd block (Over 5,000 gallons)	-	44,054	1.9650	86,567	3.3435	147,295
Subtotal	-	260,150		270,185		649,911
Total Metered	6,080	260,150		\$ 499,011		\$ 926,302
<u>Commercial 1 - Monthly</u>						
Customer Charge						
5/8	1,177	-	\$ 52.71	\$ 62,041	\$ 62.52	\$ 73,592
Subtotal	1,177	-		62,041		73,592
Allowance (1,667 Gallons)		18,230	-	\$ -	3.4850	\$ 63,533
1st block (up to 5,000 gallons)		16,023	2.3500	37,655	3.4850	55,842
2nd block (Over 5,000 gallons)	-	8,647	3.0150	26,070	4.4868	38,796
Subtotal	-	42,901		63,725		158,171
Total Metered	1,177	42,901		\$ 125,766		\$ 231,763
<u>Commercial 2 - Monthly</u>						
Customer Charge						
5/8	90	-	\$ 64.31	\$ 5,800	\$ 62.52	\$ 5,639
Subtotal	90	-		5,800		5,639
Allowance (1,667 Gallons)		1,450	-	\$ -	4.4580	\$ 6,464
1st block (up to 5,000 gallons)		2,420	3.3020	7,991	4.4580	10,788
2nd block (Over 5,000 gallons)	-	3,400	4.1670	14,168	5.0000	17,000
Subtotal	-	7,270		22,159		34,252
Total Metered	90	7,270		\$ 27,959		\$ 39,891
Total Commercial	1,267	50,171		\$ 153,725		\$ 271,654

Exhibit A – page 2

Exhibit 5-B Compliance
Page 05

AQUA PENNSYLVANIA, INC.
WASTEWATER - RATE ZONE 11
NEW GARDEN DIVISION
APPLICATION OF PRESENT AND PROPOSED RATES TO CONSUMPTION ANALYSIS
FOR THE TWELVE MONTHS ENDED MARCH 31, 2021

Rate Block, 100 Gallons (1)	Number of Bills (2)	Consumption, 100 Gallons (3)	Present Rate (4)	Present Revenue (5)	Proposed Rate (6)	Proposed Revenue (7)
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	3	-	\$ 218.32	\$ 655	\$ 311.55	\$ 935
Subtotal	3	-		655		935
Allowance (1,667 Gallons)		250	-	\$ -	3.4850	\$ 871
1st block (up to 5,000 gallons)		48	2.3500	113	3.4850	167
2nd block (Over 5,000 gallons)	-	-	3.0150	-	4.4868	-
Subtotal	-	298		113		1,038
Total Metered	3	298		\$ 768		\$ 1,973
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	10	-	\$ 180.69	\$ 1,873	\$ 257.85	\$ 2,673
Subtotal	10	-		1,873		2,673
Allowance (1,667 Gallons)		35	-	\$ -	3.4850	\$ 124
1st block (up to 5,000 gallons)		-	2.3500	-	3.4850	-
2nd block (Over 5,000 gallons)	-	-	3.0150	-	4.4868	-
Subtotal	-	35		-		124
Total Metered	10	35		\$ 1,873		\$ 2,797
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	3	-	\$ 165.62	\$ 497	\$ 238.34	\$ 709
Subtotal	3	-		497		709
Allowance (1,667 Gallons)		200	-	\$ -	3.4850	\$ 697
1st block (up to 5,000 gallons)		247	2.3500	580	3.4850	861
2nd block (Over 5,000 gallons)	-	-	3.0150	-	4.4868	-
Subtotal	-	447		580		1,558
Total Metered	3	447		\$ 1,077		\$ 2,267
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	3	-	\$ 143.05	\$ 429	\$ 204.14	\$ 612
Subtotal	3	-		429		612
Allowance (1,667 Gallons)		150	-	\$ -	3.4850	\$ 523
1st block (up to 5,000 gallons)		10	2.3500	24	3.4850	35
2nd block (Over 5,000 gallons)	-	-	3.0150	-	4.4868	-
Subtotal	-	160		24		558
Total Metered	3	160		\$ 453		\$ 1,170

Exhibit A – page 3

Exhibit 5-B Compliance
Page 10

AQUA PENNSYLVANIA, INC.
WASTEWATER - RATE ZONE 11
NEW GARDEN DIVISION
APPLICATION OF PRESENT AND PROPOSED RATES TO CONSUMPTION ANALYSIS
FOR THE TWELVE MONTHS ENDED MARCH 31, 2021

Rate Block, 100 Gallons (1)	Number of Bills (2)	Consumption, 100 Gallons (3)	Present Rate (4)	Present Revenue (5)	Proposed Rate (6)	Proposed Revenue (7)
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	6	-	\$ 127.98	\$ 768	\$ 182.63	\$ 1,096
Subtotal	6	-		768		1,096
Allowance (1,667 Gallons)		100	-	\$ -	3.4850	\$ 349
1st block (up to 5,000 gallons)		-	2.3500	-	3.4850	-
2nd block (Over 5,000 gallons)	-	-	3.0150	-	4.4868	-
Subtotal	-	100		-		349
Total Metered	6	100		\$ 768		\$ 1,445
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	12	-	\$ 90.34	\$ 1,084	\$ 128.92	\$ 1,547
Subtotal	12	-		1,084		1,547
Allowance (1,667 Gallons)		350	-	\$ -	3.4850	\$ 1,220
1st block (up to 5,000 gallons)		260	2.3500	611	3.4850	906
2nd block (Over 5,000 gallons)	-	170	3.0150	513	4.4868	763
Subtotal	-	780		1,124		2,889
Total Metered	12	780		\$ 2,208		\$ 4,436
Total Combined Residential & Commercial	37	1,820		\$ 7,147		\$ 14,088
Total Commercial & Combined	1,305	51,991		\$ 160,872		\$ 285,742
<u>Public - Monthly</u>						
Customer Charge						
5/8	4	-	\$ 52.71	\$ 198	\$ 62.52	\$ 234
Subtotal	4	-		198		234
Allowance (1,667 Gallons)		61	-	\$ -	2.2849	\$ 140
1st block (up to 5,000 gallons)		82	1.5170	125	2.2849	188
2nd block (Over 5,000 gallons)	-	97	1.9650	190	3.2847	318
Subtotal	-	240		315		646
Total Metered	4	240		\$ 513		\$ 880
Total New Garden Division	7,388	312,381		\$ 660,396		\$ 1,212,924

Exhibit A – page 4

Exhibit 5-B Compliance
Page 90

AQUA PENNSYLVANIA, INC.
WASTEWATER - RATE ZONE 11
NEW GARDEN DIVISION
APPLICATION OF PRESENT AND PROPOSED RATES TO BILLING ADJUSTMENTS
FOR THE TWELVE MONTHS ENDED MARCH 31, 2021

Rate Block, 100 Gallons (1)	Number of Bills (2)	Consumption, 100 Gallons (3)	Present Rate (4)	Present Revenue (5)	Proposed Rate (6)	Proposed Revenue (7)
Residential - Monthly						
Customer Charge						
5/8	16,912	-	\$ 37.64	\$ 636,516	\$ 45.46	\$ 768,826
Subtotal	16,912	-		636,516		768,826
Allowance (1,667 Gallons)		745	-	\$ -	2.3259	\$ 1,733
1st block (up to 5,000 gallons)		57,220	1.5170	86,803	2.3259	133,089
2nd block (Over 5,000 gallons)	-	543,532	1.9650	1,068,040	3.3435	1,817,299
Subtotal	-	601,498		1,154,843		1,952,121
Total Metered	16,912	601,498		\$ 1,791,359		\$ 2,720,947
Commercial 1 - Monthly						
Customer Charge						
5/8	875	-	\$ 52.71	\$ 46,113	\$ 62.52	\$ 54,699
Subtotal	875	-		46,113		54,699
Allowance (1,667 Gallons)		(9,680)	-	\$ -	3.4850	\$ (33,736)
1st block (up to 5,000 gallons)		115,471	2.3500	271,356	3.4850	402,416
2nd block (Over 5,000 gallons)	-	(8,647)	3.0150	(26,070)	4.4868	(38,796)
Subtotal	-	97,144		245,286		329,884
Total Metered	875	97,144		\$ 291,399		\$ 384,583
Commercial 2 - Monthly						
Customer Charge						
5/8	242	-	\$ 64.31	\$ 15,585	\$ 62.52	\$ 15,152
Subtotal	242	-		15,585		15,152
Allowance (1,667 Gallons)		(500)	-	\$ -	4.4580	\$ (2,229)
1st block (up to 5,000 gallons)		17,350	3.3020	57,290	4.4580	77,347
2nd block (Over 5,000 gallons)	-	14,124	4.1670	58,854	5.0000	70,619
Subtotal	-	30,974		116,144		145,737
Total Metered	242	30,974		\$ 131,729		\$ 160,889
Total Commercial	1,117	128,118		\$ 423,128		\$ 545,472

Exhibit A – page 5

Exhibit A-B Compliance
Page 11

AQUA PENNSYLVANIA, INC.
WASTEWATER - RATE ZONE 11
NEW GARDEN DIVISION
APPLICATION OF PRESENT AND PROPOSED RATES TO BILLING ADJUSTMENTS
FOR THE TWELVE MONTHS ENDED MARCH 31, 2021

Rate Block, 100 Gallons (1)	Number of Bills (2)	Consumption, 100 Gallons (3)	Present Rate (4)	Present Revenue (5)	Proposed Rate (6)	Proposed Revenue (7)
Combined Residential & Commercial - Monthly						
Customer Charge						
5/8	(3)	-	\$ 218.32	\$ (655)	\$ 311.55	\$ (935)
Subtotal	(3)	-		(655)		(935)
Allowance (1,667 Gallons)		(250)	-	\$ -	3.4850	\$ (871)
1st block (up to 5,000 gallons)		(48)	2.3500	(113)	3.4850	(187)
2nd block (Over 5,000 gallons)		-	3.0150	-	4.4888	-
Subtotal	-	(298)		(113)		(1,038)
Total Metered	(3)	(298)		\$ (768)		\$ (1,973)
Combined Residential & Commercial - Monthly						
Customer Charge						
5/8	(10)	-	\$ 180.69	\$ (1,873)	\$ 257.85	\$ (2,673)
Subtotal	(10)	-		(1,873)		(2,673)
Allowance (1,667 Gallons)		(35)	-	\$ -	3.4850	\$ (124)
1st block (up to 5,000 gallons)		-	2.3500	-	3.4850	-
2nd block (Over 5,000 gallons)		-	3.0150	-	4.4888	-
Subtotal	-	(35)		-		(124)
Total Metered	(10)	(35)		\$ (1,873)		\$ (2,797)
Combined Residential & Commercial - Monthly						
Customer Charge						
5/8	(3)	-	\$ 165.62	\$ (497)	\$ 236.34	\$ (709)
Subtotal	(3)	-		(497)		(709)
Allowance (1,667 Gallons)		(200)	-	\$ -	3.4850	\$ (697)
1st block (up to 5,000 gallons)		(247)	2.3500	(580)	3.4850	(861)
2nd block (Over 5,000 gallons)		-	3.0150	-	4.4888	-
Subtotal	-	(447)		(580)		(1,558)
Total Metered	(3)	(447)		\$ (1,077)		\$ (2,267)
Combined Residential & Commercial - Monthly						
Customer Charge						
5/8	(3)	-	\$ 143.05	\$ (429)	\$ 204.14	\$ (612)
Subtotal	(3)	-		(429)		(612)
Allowance (1,667 Gallons)		(150)	-	\$ -	3.4850	\$ (523)
1st block (up to 5,000 gallons)		(10)	2.3500	(24)	3.4850	(35)
2nd block (Over 5,000 gallons)		-	3.0150	-	4.4888	-
Subtotal	-	(160)		(24)		(558)
Total Metered	(3)	(160)		\$ (453)		\$ (1,170)
Combined Residential & Commercial - Monthly						
Customer Charge						
5/8	(6)	-	\$ 127.98	\$ (768)	\$ 182.63	\$ (1,068)
Subtotal	(6)	-		(768)		(1,068)
Allowance (1,667 Gallons)		(100)	-	\$ -	3.4850	\$ (349)
1st block (up to 5,000 gallons)		-	2.3500	-	3.4850	-
2nd block (Over 5,000 gallons)		-	3.0150	-	4.4888	-
Subtotal	-	(100)		-		(349)
Total Metered	(6)	(100)		\$ (768)		\$ (1,417)

Exhibit A – page 6

Exhibit S-B Compliance
Page 92

AQUA PENNSYLVANIA, INC.
WASTEWATER - RATE ZONE 11
NEW GARDEN DIVISION
APPLICATION OF PRESENT AND PROPOSED RATES TO BILLING ADJUSTMENTS
FOR THE TWELVE MONTHS ENDED MARCH 31, 2021

Rate Block, 100 Gallons (1)	Number of Bills (2)	Consumption, 100 Gallons (3)	Present Rate (4)	Present Revenue (5)	Proposed Rate (6)	Proposed Revenue (7)
<u>Combined Residential & Commercial - Monthly</u>						
Customer Charge						
5/8	(12)	-	\$ 90.34	\$ (1,084)	\$ 128.92	\$ (1,547)
Subtotal	(12)	-		(1,084)		(1,547)
Allowance (1,667 Gallons)		(350)	-	\$ -	3.4850	\$ (1,220)
1st block (up to 5,000 gallons)		(260)	2.3500	(611)	3.4850	(906)
2nd block (Over 5,000 gallons)	-	(170)	3.0150	(513)	4.4868	(763)
Subtotal	-	(780)		(1,124)		(2,889)
Total Metered	(12)	(780)		\$ (2,208)		\$ (4,436)
Total Combined Residential & Commercial	(37)	(1,820)		\$ (7,147)		\$ (14,088)
Total Commercial & Combined	1,080	126,297		\$ 415,981		\$ 531,384
<u>Public - Monthly</u>						
Customer Charge						
5/8	(4)	-	\$ 52.71	\$ (198)	\$ 62.52	\$ (234)
Subtotal	(4)	-		(198)		(234)
Allowance (1,667 Gallons)		(61)	-	\$ -	2.2849	\$ (140)
1st block (up to 5,000 gallons)		(82)	1.5170	(125)	2.2849	(188)
2nd block (Over 5,000 gallons)	-	(97)	1.9650	(190)	3.2847	(318)
Subtotal	-	(240)		(315)		(646)
Total Metered	(4)	(240)		\$ (513)		\$ (880)
Total New Garden Division	17,988	727,555		\$ 2,206,827		\$ 3,251,451

Exhibit B – page 1

Aqua's Compliance Data Consolidated

The following three pages consolidates Aqua's compliance data (Exhibit A) into the table shown by Exhibit B – page 4. The process for this consolidation is as follows:

1. Aqua's compliance data is divided into two parts: "Consumption Analysis" and "Billing Adjustments". Exhibit B, page 2, compiles Aqua's data on one page. The numbers highlighted in yellow bear a one to one relationship with Aqua's compliance data in Exhibit A.
2. This data is then further consolidated by adding the "Consumption Analysis" and "Billing Adjustments" to produce the table on Exhibit B, page 3. For each category of service this table is a complete summary of the number of bills plus the volumes and revenues for each rate band.
3. Finally, dropping the revenue numbers and data that are all zeroes produces the table shown by Exhibit B, page 4. Those nine volumes in yellow and three billing numbers in pink are the basis for Aqua's tariff setting and compliance calculations.

Exhibit B – page 2

Consumption Analysis					Billing Adjustments								
Bold Italic Numbers are data from Aqua's tariff filing					Bold Italic Numbers are data from Aqua's tariff filing								
	# Bills	Gallons	Present Revenue	Proposed Revenue	Increase		# Bills	Gallons	Present Revenue	Proposed Revenue	Increase		
Page 157	Residential		\$228,826	\$276,391	20.8%	Page 160	Residential		\$636,516	\$768,826	20.8%		
	Monthly Fixed		\$0	\$21,088	117.4%		Monthly Fixed	16,912		\$0	\$17,333	21.1%	
	0 - 1667	9,505,500	\$183,618	\$281,528	53.3%		0 - 1667		74,500	\$0	\$133,089	53.3%	
	up to 5,000	12,104,100	\$86,567	\$147,295	70.2%		up to 5,000		5,722,000	\$1,068,040	\$1,817,299	70.2%	
	Over 5,000	4,405,400	\$499,011	\$926,302	85.6%		Over 5,000		54,353,200				
Totals	6,080	26,015,000				Totals	16,912	60,149,700	\$1,791,359	\$2,720,947	51.9%		
Page 158	Commercial #1		\$62,041	\$73,592	18.6%	Page 161	Commercial #1						
	Monthly Fixed	1,177		\$0	\$63,533		121.0%	Monthly Fixed	875		\$46,113	\$54,699	18.6%
	0 - 1667		1,823,000	\$37,655	\$55,842		48.3%	0 - 1667		-988,000	\$0	-\$33,736	-54.5%
	up to 5,000		1,602,300	\$26,070	\$38,796		48.8%	up to 5,000		11,547,100	\$271,356	\$402,416	48.3%
	Over 5,000		864,700	\$125,766	\$231,763		84.3%	Over 5,000		-864,700	-\$26,070	-\$38,796	-48.8%
Totals	1,177	4,290,000				Totals	875	9,714,400	\$291,399	\$384,563	32.0%		
Page 159	Commercial #2		\$5,800	\$5,639	-2.8%	Page 162	Commercial #2						
	Monthly Fixed	90		\$0	\$6,464		108.7%	Monthly Fixed	242		\$15,585	\$15,152	-2.8%
	0 - 1667		145,000	\$7,991	\$10,798		35.0%	0 - 1667		-50,000	\$0	-\$2,229	-17.1%
	up to 5,000		242,000	\$14,168	\$17,000		20.0%	up to 5,000		1,735,000	\$57,290	\$77,347	35.0%
	Over 5,000		340,000	\$27,959	\$39,891		42.7%	Over 5,000		1,412,400	\$58,854	\$70,619	20.0%
Totals	90	727,000				Totals	242	3,097,400	\$131,729	\$160,889	22.1%		
Total commercial					1,267	5,017,000	\$153,725	\$271,654	76.7%				
P157 Totals					7,347	31,032,000	\$652,736	\$1,197,956	83.5%				
#'s 1 - 6 all are combined residential and commercial													
#'s 1 - 6 all are combined residential and commercial	Pages 158 & 159												
	#1 p.158	3	29,800	\$768	\$1,973	156.9%	#1 p.161	-3	-29,800	-\$768	-\$1,973	156.9%	
	#2 p.158	10	3,500	\$1,873	\$2,797	49.3%	#2 p.161	-10	-3,500	-\$1,873	-\$2,797	49.3%	
	#3 p.158	3	44,700	\$1,077	\$2,267	110.5%	#3 p.161	-3	-44,700	-1077	-2267		
	#4 p.158	3	16,000	\$453	\$1,170	158.3%	#4 p.161	-3	-16,000	-\$453	-\$1,170	158.3%	
	#5 p.158	6	10,000	\$768	\$1,446	88.2%	#5 p.161	-6	-10,000	-\$768	-\$1,445	88.2%	
	#6 p.159	12	78,000	\$2,208	\$4,435	100.9%	#6 p.162	-12	-78,000	-\$2,208	-\$4,436	100.9%	
	Public p.159	4	24,000	\$513	\$980	71.5%	Public p.162	-4	-24,000	-\$513	-\$980	71.5%	
	totals	41	206,000	\$7,660	\$14,968	95.4%	Page 159 totals	-41	-206,000	-\$7,660	-\$14,968	95.4%	
Three page subtotal					7,388	31,238,000	\$660,396	\$1,212,924					
Aqua's New Garden totals					7,388	31,238,100	\$660,396	\$1,212,924					
Difference Vs aqua					0	-100	\$0	\$0					
Difference Vs aqua					0	0	\$0	\$0					

Exhibit B – page 3

<u>Combined Consumption and Billing Adjustments</u>					
		Annual	Present	Proposed	
	# Bills	Gallons	Revenue	Revenue	Increase
Residential					
Monthly Fixed	22,992	0	\$865,342	\$1,045,217	20.8%
0 - 1667		9,580,000	\$0	\$222,821	
1667 - 5,000		17,826,100	\$270,421	\$414,617	53.3%
Over 5,000		58,758,600	\$1,154,607	\$1,964,594	70.2%
Totals	22,992	86,164,700	\$2,290,370	\$3,647,249	59.2%
Commerical #1					
Monthly Fixed	2,052	0	\$108,154	\$128,291	18.6%
0 - 1667		855,000	\$0	\$29,797	46.2%
1667 - 5,000		13,149,400	\$309,011	\$458,258	48.3%
Over 5,000		0	\$0	\$0	#DIV/0!
Totals	2,052	14,004,400	\$417,165	\$616,346	47.7%
Commerical #2					
Monthly Fixed	332	0	\$21,385	\$20,791	-2.8%
0 - 1667		95,000	\$0	\$4,235	17.0%
1667 - 5,000		1,977,000	\$65,281	\$88,135	35.0%
Over 5,000		1,752,400	\$73,022	\$87,619	20.0%
Totals	332	3,824,400	\$159,688	\$200,780	25.7%
Grand Total		103,993,500			
Total commercial	2,384	17,828,800	\$576,853	\$817,126	41.7%
Total of combined residential and commercial					
#1	0	0	\$0	\$0	
#2	0	0	\$0	\$0	
#3	0	0	\$0	\$0	
#4	0	0	\$0	\$0	
#5	0	0	\$0	\$0	
#6	0	0	\$0	\$0	
Public	0	0	\$0	\$0	
Total	0	0	\$0	\$0	
Discount to Residential			\$0	-\$64,378	
Other operating revenues			\$17,382	\$26,643	
Grand total	25,376	103,993,500	\$2,884,605	\$4,426,640	53.5%
PUC Authorized for New Garden			\$2,889,080	\$4,428,399	
Difference			-\$4,475	-\$1,759	
			-0.15%	-0.04%	

The data in this table is Aqua's claim that they have demonstrated compliance with the revenue permitted by the PUC. Given the volumes and tariff rates, the math does calculate to the PUC allowed revenue.

Exhibit B – page 4

The critical data from the Combined Consumption and Billing Adjustments is the volume and billing data. That is reproduced in the table below and is the basis for discussion in the major issues section.

<u>Combined Consumption and Billing Adjustments</u>		
		Annual Gallons
	# Bills	
Residential		
Monthly Fixed	22,992	
0 - 1667		9,580,000
1667 - 5,000		17,826,100
Over 5,000		58,758,600
Totals	22,992	86,164,700
Commerical #1		
Monthly Fixed	2,052	
0 - 1667		855,000
1667 - 5,000		13,149,400
Over 5,000		0
Totals	2,052	14,004,400
Commerical #2		
Monthly Fixed	332	
0 - 1667		95,000
1667 - 5,000		1,977,000
Over 5,000		1,752,400
Totals	332	3,824,400
Grand Total	25,376	103,993,500

The nine volume numbers highlighted in yellow and the three billing numbers highlighted in pink are Aqua's compliance data condensed into one table.

Exhibit C – page 1

This section validates the billing and volume data from the table on Exhibit B page 4.

The two tables that follow take the summarized volume and billing data and applies tariff rates to it. A revenue is calculated for each of the twelve data points. That revenue is then compared to Aqua's total revenue for consumption and billing adjustments. In each and every category the difference is rounding error.

This first chart compares revenue without a rate increase. As the green box shows, there is less than a one dollar difference out of almost three million dollars total revenue.

Validation Of The Consumption Volumes Without A Rate Increase							
Revenue Based On Total Compliance Volume					Aqua's Compliance Data		
	Previous Tariff	Annual # Bills (Monthly Basis)	Annual Gallons	Calculated Revenue	Consumption Analysis Revenue	Billing Adjustment Revenue	Total Aqua Revenue
Residential							
Quarterly Fixed	\$112.91	22,992		\$865,342	\$228,826	\$636,516	\$865,342
0 - 5000	\$0.00		9,580,000	\$0	\$0	\$0	\$0
5000 - 15,000	\$15.17		17,826,100	\$270,422	\$183,618	\$86,803	\$270,421
Over 15,000	\$19.65		58,758,600	\$1,154,606	\$86,567	\$1,068,040	\$1,154,607
Totals			86,164,700	\$2,290,371	\$499,011	\$1,791,359	\$2,290,370
Commerical #1							
Quarterly Fixed	\$158.12	2,052		\$108,154	\$62,041	\$46,113	\$108,154
0 - 5000	\$0.00		855,000	\$0	\$0	\$0	\$0
5000 - 15,000	\$23.50		13,149,400	\$309,011	\$37,655	\$271,356	\$309,011
Over 15,000	\$30.15		0	\$0	\$26,070	-\$26,070	\$0
Totals			14,004,400	\$417,165	\$125,766	\$291,399	\$417,165
Commerical #2							
Quarterly Fixed	\$192.92	332.55		\$21,385	\$5,800	\$15,585	\$21,385
0 - 5000	\$0.00		95,000	\$0	\$0	\$0	\$0
5000 - 15,000	\$33.02		1,977,000	\$65,281	\$7,991	\$57,290	\$65,281
Over 15,000	\$41.67		1,752,400	\$73,023	\$14,168	\$58,854	\$73,022
Totals			3,824,400	\$159,688	\$27,959	\$131,729	\$159,688
Grand Total				\$2,867,224	\$652,736	\$2,214,487	\$2,867,223
					Aqua's Comm #2 implied Tariff Rate		
					\$193.333 \$193.202		
					Neither of which = the tariff rate = \$192.92		
					The numbers balance if the number of		
					Annual Commercial #2 bills = 332.549		
					90.19	242.35	332.55

Exhibit C – page 2

The following table does the same comparison calculation for Aqua's rate increase. As before, the green box shows only trivial differences between Aqua's data and the composite billing and volume data from the table in Exhibit B page 4.

Validation Of The Consumption Volumes With Aqua's Rate Increase								
Revenue Based On Total Compliance Volume					Aqua's Compliance Data			
	New Tariff	Annual # Bills (Monthly Basis)	Annual Gallons	Calculated Revenue	Consumption Analysis Revenue	Billing Adjustment Revenue	Total Aqua Revenue	Revenue Agreement
Residential								
Quarterly Fixed	\$136.38	22,992		\$1,045,216	\$276,391	\$768,826	\$1,045,217	99.9999%
0 - 5000	\$23.26		9,580,000	\$222,821	\$221,088	\$1,733	\$222,821	
5000 - 15,000	\$23.26		17,826,100	\$414,617	\$281,528	\$133,089	\$414,617	99.9999%
Over 15,000	\$33.44		58,758,600	\$1,964,594	\$147,295	\$1,817,299	\$1,964,594	100.0000%
Totals			86,164,700	\$3,647,249	\$926,302	\$2,720,947	\$3,647,249	100.0000%
Commerical #1								
Quarterly Fixed	\$187.56	2,052		\$128,291	\$73,592	\$54,699	\$128,291	100.0000%
0 - 5000	\$34.85		855,000	\$29,797	\$63,533	-\$33,736	\$29,797	
5000 - 15,000	\$34.85		13,149,400	\$458,257	\$55,842	\$402,416	\$458,258	99.9997%
Over 15,000	\$44.87		0	\$0	\$38,796	-\$38,796	\$0	
Totals			14,004,400	\$616,344	\$231,763	\$384,583	\$616,346	99.9997%
Commerical #2								
Quarterly Fixed	\$187.56	332.55		\$20,791	\$5,639	\$15,152	\$20,791	99.9993%
0 - 5000	\$44.58		95,000	\$4,235	\$6,464	-\$2,229	\$4,235	
5000 - 15,000	\$44.58		1,977,000	\$88,135	\$10,788	\$77,347	\$88,135	99.9996%
Over 15,000	\$50.00		1,752,400	\$87,620	\$17,000	\$70,619	\$87,619	99.9989%
Totals			3,824,400	\$200,781	\$39,891	\$160,889	\$200,780	99.9997%
Grand Total				\$4,464,374	\$1,197,956	\$3,266,419	\$4,464,375	100.0000%
					Aqua's Comm #2 Tariff Rate			
					\$193.333 \$187.835			
					Neither of which = the tariff rate = \$187.56			
					The numbers balance if the number of			
					Annual Commercial #2 bills = 332.549			
					90.20 242.35 332.55			

The conclusion is that the three billing numbers and nine volumes in the table from Exhibit B, page 4 are indeed Aqua's compliance data condensed into twelve numbers.

Exhibit D – page 1

This section shows the impossibility of the residential consumptions in Aqua's compliance data in the following table:

	# Bills	Annual Gallons
Residential		
Monthly Fixed	22,992	
0 - 1667		9,580,000
1667 - 5,000		17,826,100
Over 5,000		58,758,600
Totals	22,992	86,164,700

First, it must be understood how actual customer bills relate to these rate band volumes. The following is an example for a customer being billed for using 25,000 gallons in one billing period. His use would be distributed in the above table as follows:

<u>Rate Band</u>	<u>Gallons</u>
0 - 1667	1,667
1667 – 5,000	3,333
<u>Over 5,000</u>	<u>20,000</u>
Total Bill	25,000

Large users contributing to multiple rate bands leads to interactions that make for impossible situations. To illustrate, assume the over 5,000 user averages 12,000 gallons/month. That means:

700 customers are needed to fill the over 5,000 rate band
 $[= 58,758,600 / (12,000 - 5,000) / 12]$.

Those 700 customers would contribute 27,980,286 gallons to the "1667 - 5,000" rate band
 $[= 700 \times 3333 \times 12]$.

27,980,286 gallons is far greater than the actual volume for the "1667 - 5,000" rate band. Therefore, it is an impossible situation. This situation persists until the average user in the over 5,000 rate band exceeds 16,000 gallons per month.

Exhibit D – page 2

When the average bill exceeds 16,000 gallons/month another impossible situation develops. There must be 1,303 customers with zero consumption to make the rate band volumes match. The math here is more involved because multiple rate bands are involved. The following table is an illustration where the over 5,000 user averages 21,000 gallons/month. The next page goes through this table step by step.

<u>Residential Customers Using Over 5,000 gallons/Month</u>				
	Average Monthly Bill	Number Customers Required	Annual Volume	Rate Band
	21,000	306	58,758,600	>5,000
			12,241,375	1667- 5,000
			6,120,688	<1667
			77,120,663	total
<u>Customers Using 1667 - 5,000 gallons/Month</u>				
Remaining 1667 - 5,000 Annual Volume	Monthly Bill 1667- 5,000	Number Customers Required	Annual Volume	Rate Band
5,584,725	5,000	140	5,584,725	1667- 5,000
			2,792,363	<1667
			8,377,088	total
<u>Customers Using <1667 gallons/Month</u>				
Remaining 0- 1667 Annual Volume	Monthly Bill 0- 1667	Number Customers Required	Annual Volume	Rate Band
666,950	333	167	666,950	<1667
			666,950	total
613 Customers being billed with consumption > 0				
1,303 Customers with zero consumption				
<u>Billing Consumptions</u>		<u>Annual gallons</u>	<u>Cross Check</u>	
	<1667	9,580,000	0	
	1667- 5,000	17,826,100	0	
	>5,000	58,758,600	0	
		86,164,700	0	

Exhibit D – page 3

For the over 5,000 gallons/month rate band:

306 customers are required to achieve the 58,758,600 gallons/year.
[= 58,758,600/12/(21,000-5,000)].

Those 306 customers also contribute:

12,241,375 gallons to the “1667 - 5,000” rate band [= 306*12*3,333]

6,120,688 gallons to the “0 - 1667” rate band. [= 306*12*1,667]

For the 1,667 - 5,000 gallons/month rate band:

5,584,725 gallons are left to consume. [17,826,100 – 12,241,375]

Assume that all customers in this rate band will use the full 5,000 gallon/month.
This is the most favorable assumption to minimize the number of customers with zero consumption.

140 customers are required [= 5,584,725/12/3333].

These 140 customers also contribute 2,792,363 gallons to the “0 - 1667” rate band.
[= 140*12*1,667]

For the 0 – 1,667 gallons/month rate band:

666,950 gallons are left to consume [9,580,000 – 6,120,688 – 2,792,363].

To minimize the number of zero use customers, assume the lowest use by a customer in this rate band. New Garden customers are billed quarterly in increments of 1,000 gallons. Therefore, the smallest monthly bill would be 333 gallons.

167 customers produce this result [666,950/12/333].

Exhibit D – page 4

The grand total is that only 613 customers have volumes greater than zero [306 + 140 + 167]. 1,303 must have zero consumption or else the compliance volumes cannot be achieved.

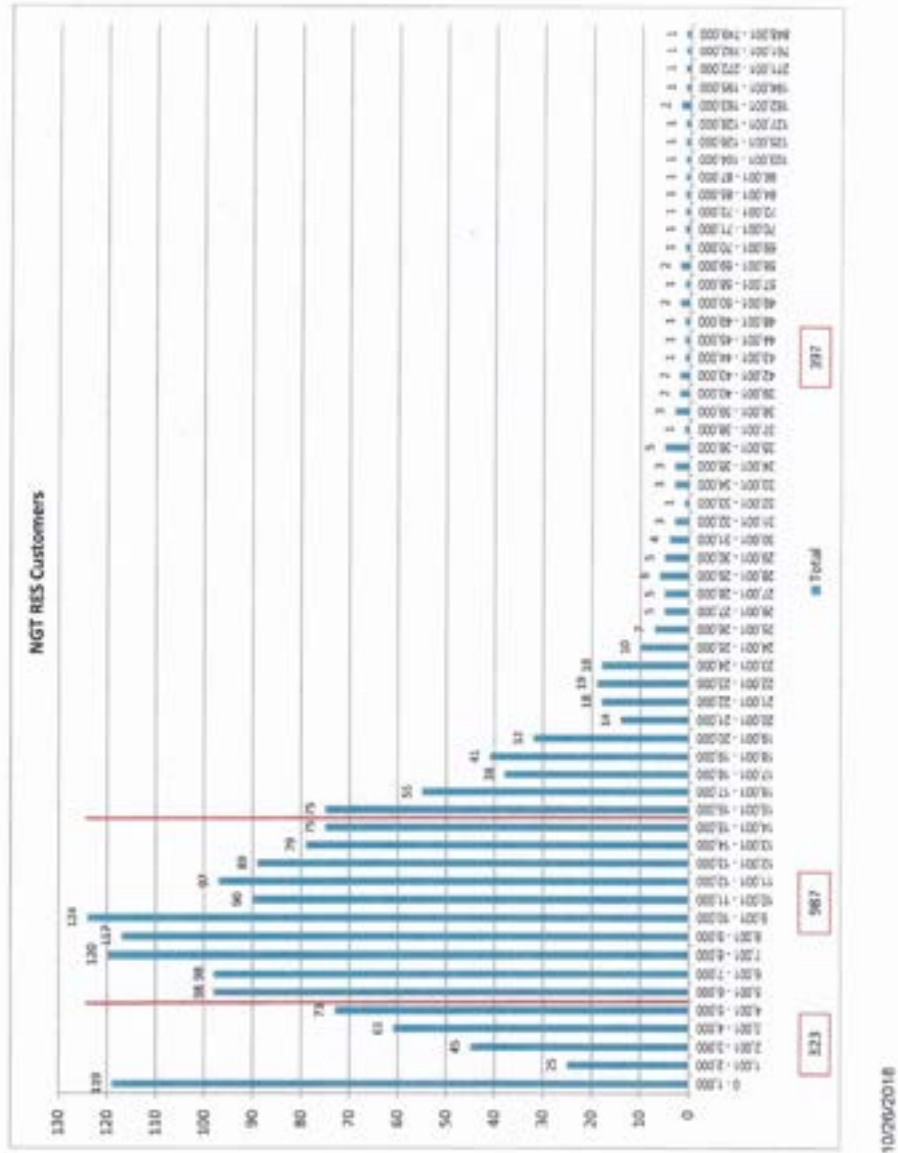
This methodology can be repeated for any monthly usage. As the following table shows, the result is always the same: Therefore, 1,303 customers must have zero consumption or else the compliance volumes cannot be achieved.

	Customer usage required for Aqua's Data			
Average				
Monthly	# Customers	# Customers	# Customers	# Customers
Volume	>5,000/mon	1667 - 5,000/mon	<1667/mon	@ zero
16,000	445	1	167	1,303
25,000	245	201	167	1,303
50,000	109	337	167	1,303
100,000	52	394	167	1,303
150,000	34	412	167	1,303
250,000	20	426	167	1,303

New Garden's data in Exhibit E shows only 119 customers with zero consumption. The conclusion is that Aqua's compliance data for residential customers is impossible to achieve.

Exhibit E

New Garden Township sewer use by residential customers



This data is for one quarter of the last year that New Garden owned and operated the sewer system. It was provided by New Garden Township officials. Note that the numbers on the bars provide quantitative data for use in Exhibit G.

Exhibit F

27,000 gallon sewer bill for a Commercial 1 customer

Aqua UA. Essential

Service To: **HARROGATE NO CONDO ASSOC**
200 SWAN RD
LANDENBERG, PA 19350

Account Number **002644629 1498186**
NEW GARDEN WASTEWATER
2200680 PWSID # WQ1596432

Aqua Pennsylvania Wastewater Toll Free: **877.987.2782** Questions about your sewer service? Contact us before the due date.
762 W. Lancaster Avenue Fax: **866.780.8292** Bill Date **June 23, 2021** Total Amount Due **\$ 618.50** Current Charges Due Date **July 15, 2021**
Bryn Mawr, PA 19010-3489 AquaAmerica.com

Meter Data	Billing Period	Days	Usage	Units
	04/29/21	92	27,000	Gallons
	01/27/21			
Average Daily Usage = 293 Gallons	Total Days:	92	Total Usage:	27,000 Gallons

Billing Detail

Amount Owed from Last Bill \$ 789.25
Total Payments Received 1,008.35
Remaining Balance 219.10 Credit
Current Wastewater Charges 47.00
Base User Charge 790.60
Amount Due \$ 618.50

Wastewater Center (see reverse side for other information)

- The due date refers to current charges and any deferred payment amount only. If you do not pay your bill on time, your service could be subject to interruption. To ensure proper credit, please remember to provide your full 16-digit account number when paying your bill.

RETURN THIS PORTION WITH YOUR PAYMENT

Aqua UA. Essential

MAKE CHECK PAYABLE TO:
Aqua PA WW

Account Number **002644629-1498186**

Aqua Pennsylvania Wastewater
762 W. Lancaster Avenue • Bryn Mawr, PA 19010-3489

DUE DATE **07/15/2021** TOTAL AMOUNT DUE **\$618.50**

Please do not remit payment to the above address

Cyc=2928 Sup=3125677 Seq=6364

Amount Enclosed \$

*****AUTO**MIXED AADC 197 C 23 P 1 8068 1 AB 0.425

HARROGATE NO CONDO ASSOC
C/O KIMBERTON PROPERTY MANAGEM
PO BOX 683
KIMBERTON PA 19442-0683

AQUA PENNSYLVANIA
PO BOX 70279
PHILADELPHIA PA 19176-0279

00264462914981860000000618508

Exhibit G

The following table quantitatively estimates the rate increase for residential customers. It was prepared from the New Garden volume chart in Exhibit E. It applies the old and new tariff rates for each use volume. The ratio of the total dollars at the bottom gives a dollar weighted average increase for residential customers.

Residential Based on One Quarter of NGT Data						
Billing	Number	Old Bill	Total	New Bill	Total	
Volume	Bills	Amount	Dollars	Amount	Dollars	Increase
0	119	\$112.91	\$13,436.29	\$136.38	\$16,229.22	20.8%
1	25	\$112.91	\$2,822.75	\$159.64	\$3,990.98	41.4%
2	45	\$112.91	\$5,080.95	\$182.90	\$8,230.41	62.0%
3	61	\$112.91	\$6,887.51	\$206.16	\$12,575.58	82.6%
4	73	\$112.91	\$8,242.43	\$229.42	\$16,747.37	103.2%
5	98	\$112.91	\$11,065.18	\$252.68	\$24,762.15	123.8%
6	98	\$128.08	\$12,551.84	\$275.93	\$27,041.53	115.4%
7	120	\$143.25	\$17,190.00	\$299.19	\$35,903.16	108.9%
8	117	\$158.42	\$18,535.14	\$322.45	\$37,726.88	103.5%
9	124	\$173.59	\$21,525.16	\$345.71	\$42,868.16	99.2%
10	90	\$188.76	\$16,988.40	\$368.97	\$33,207.30	95.5%
11	97	\$203.93	\$19,781.21	\$392.23	\$38,046.21	92.3%
12	89	\$219.10	\$19,499.90	\$415.49	\$36,978.43	89.6%
13	79	\$234.27	\$18,507.33	\$438.75	\$34,661.01	87.3%
14	75	\$249.44	\$18,708.00	\$462.01	\$34,650.45	85.2%
15	75	\$264.61	\$19,845.75	\$485.27	\$36,394.88	83.4%
16	55	\$284.26	\$15,634.30	\$518.70	\$28,528.50	82.5%
17	38	\$303.91	\$11,548.58	\$552.14	\$20,981.13	81.7%
18	41	\$323.56	\$13,265.96	\$585.57	\$24,008.37	81.0%
19	32	\$343.21	\$10,982.72	\$619.01	\$19,808.16	80.4%
20	14	\$362.86	\$5,080.04	\$652.44	\$9,134.16	79.8%
21	18	\$382.51	\$6,885.18	\$685.88	\$12,345.75	79.3%
22	19	\$402.16	\$7,641.04	\$719.31	\$13,666.89	78.9%
23	18	\$421.81	\$7,592.58	\$752.75	\$13,549.41	78.5%
24	10	\$441.46	\$4,414.60	\$786.18	\$7,861.80	78.1%
25	7	\$461.11	\$3,227.77	\$819.62	\$5,737.31	77.7%
26	5	\$480.76	\$2,403.80	\$853.05	\$4,265.25	77.4%
27	5	\$500.41	\$2,502.05	\$886.49	\$4,432.43	77.2%
28	6	\$520.06	\$3,120.36	\$919.92	\$5,519.52	76.9%
29	5	\$539.71	\$2,698.55	\$953.36	\$4,766.78	76.6%
30	4	\$559.36	\$2,237.44	\$986.79	\$3,947.16	76.4%
31	3	\$579.01	\$1,737.03	\$1,020.23	\$3,060.68	76.2%
32	1	\$598.66	\$598.66	\$1,053.66	\$1,053.66	76.0%
33	3	\$618.31	\$1,854.93	\$1,087.10	\$3,261.29	75.8%
34	3	\$637.96	\$1,913.88	\$1,120.53	\$3,361.59	75.6%
35	5	\$657.61	\$3,288.05	\$1,153.97	\$5,769.83	75.5%
37	1	\$696.91	\$696.91	\$1,220.84	\$1,220.84	75.2%
38	3	\$716.56	\$2,149.68	\$1,254.27	\$3,762.81	75.0%
39	2	\$736.21	\$1,472.42	\$1,287.71	\$2,575.41	74.9%
42	2	\$795.16	\$1,590.32	\$1,388.01	\$2,776.02	74.6%
43	1	\$814.81	\$814.81	\$1,421.45	\$1,421.45	74.5%
44	1	\$834.46	\$834.46	\$1,454.88	\$1,454.88	74.3%
48	1	\$913.06	\$913.06	\$1,588.62	\$1,588.62	74.0%
49	2	\$932.71	\$1,865.42	\$1,622.06	\$3,244.11	73.9%
57	1	\$1,089.91	\$1,089.91	\$1,889.54	\$1,889.54	73.4%
58	2	\$1,109.56	\$2,219.12	\$1,922.97	\$3,845.94	73.3%
69	1	\$1,325.71	\$1,325.71	\$2,290.76	\$2,290.76	72.8%
70	1	\$1,345.36	\$1,345.36	\$2,324.19	\$2,324.19	72.8%
72	1	\$1,384.66	\$1,384.66	\$2,391.06	\$2,391.06	72.7%
84	1	\$1,620.46	\$1,620.46	\$2,792.28	\$2,792.28	72.3%
86	1	\$1,659.76	\$1,659.76	\$2,859.15	\$2,859.15	72.3%
103	1	\$1,993.81	\$1,993.81	\$3,427.55	\$3,427.55	71.9%
125	1	\$2,426.11	\$2,426.11	\$4,163.12	\$4,163.12	71.6%
127	1	\$2,465.41	\$2,465.41	\$4,229.99	\$4,229.99	71.6%
162	2	\$3,153.16	\$6,306.32	\$5,400.21	\$10,800.42	71.3%
194	1	\$3,781.96	\$3,781.96	\$6,470.13	\$6,470.13	71.1%
271	1	\$5,295.01	\$5,295.01	\$9,044.63	\$9,044.63	70.8%
761	1	\$14,923.51	\$14,923.51	\$25,427.78	\$25,427.78	70.4%
848	1	\$16,633.06	\$16,633.06	\$28,336.62	\$28,336.62	70.4%
			\$414,102.61		\$763,410.62	84.4%

Exhibit H

New Garden Township sewer billings for its last 12 months of ownership.

New Garden Township Sewer Billing Data.
For the 12 month period 4Q2019 – 3Q2020
Received 22 Oct 2022

Hi Steve – here's the information we discussed this morning:

Total # of EDU's = 2,625

Total gallon consumption billed in 2020

Avondale Sewer = 29,413,000

Kennett Sewer = 59,764,000

Somerset Sewer = 37,287,000

Total Gallons = 126,464,000

% Commercial Accounts = Total # of Accounts is 1904
Total # of Commercial Accounts is 137
Percentage is 7.2%

Hope this is what you were looking for. Let me know if you need any additional information.

Hey Steve – one of the reports I ran last week actually broke down usage for Commercial vs. Residential so it was easy to find.

Out of the 126,464,000 gallons used in 2020, 25,250,000 were Commercial (this includes Commercial 1, Commercial 2, and mixed accounts) for all 3 plants which equates to 19.97%.

Hope this helps.

Exhibit I

The following table is from a Petition For Approval Of Settlement for Aqua's acquisition of New Garden's sewer⁷. It is part of Aqua's William Packer explaining the impact of the acquisition on rates. The relevant volumes are highlighted for convenience.

Aqua Pennsylvania Wastewater, Inc.

Calculation of New Garden Wastewater - Present Revenues

	Usage (Kqals)		Revenue*
1,916 Residential customers ^			
Base rate of \$112.91 per quarter for 0 to 5,000 gallons x 4 quarters	9,580	\$	865,000
Charges per quarter for 5,001 to 15,000 gallons x 4 quarters	17,826	\$	270,422
Charges per quarter over 15,000 gallons x 4 quarters	58,759	\$	1,154,607
Average Monthly Usage - Residential Class	3.75		
	45		
171 Commercial 1 customers ^			
Base rate of \$158.12 per quarter for 0 to 5,000 gallons x 4 quarters	855	\$	108,000
Charges per quarter for 5,001 to 15,000 gallons x 4 quarters	13,149	\$	309,011
Charges per quarter over 15,000 gallons x 4 quarters	0	\$	-
Average Monthly Usage - Commercial 1 Class	6.82		
19 Commercial 2 customers ^			
Base rate of \$192.92 per quarter for 0 to 5,000 gallons x 4 quarters	95	\$	15,000
Charges per quarter for 5,001 to 15,000 gallons x 4 quarters	1,977	\$	65,281
Charges per quarter over 15,000 gallons x 4 quarters	1,752	\$	73,022
Average Monthly Usage - Commercial 2 Class	16.77		
Average Monthly Usage - Commercial 1 & 2 Class	7.82		
0 Industrial customers ^			
Base rate of \$423.50 per quarter for 0 to 5,000 gallons x 4 quarters	0	\$	-
Charges per quarter for 5,001 to 15,000 gallons x 4 quarters	0	\$	-
Charges per quarter over 15,000 gallons x 4 quarters	0	\$	-
Total Annual Projected Revenue		\$	2,860,343

⁷ 21-Feb-2020 Settlement petition for Aqua's purchase of New Garden's sewer system
<https://www.puc.pa.gov/pcdocs/1655518.pdf> PDF page 38

Exhibit J

The data below details the weighted average calculation for an estimated 78% New Garden increase noted in Major Issue #4.

<u>Combined Consumption and Billing Adjustments</u>			
	# Bills	Annual Gallons	Percent of Total Volume
Residential			
Monthly Fixed	22,992		
0 - 1667		9,580,000	
1667 - 5,000		17,826,100	
Over 5,000		58,758,600	
Totals	22,992	86,164,700	82.9%
Commerical #1			
Monthly Fixed	2,052		
0 - 1667		855,000	
1667 - 5,000		13,149,400	
Over 5,000		0	
Totals	2,052	14,004,400	13.5%
Commerical #2			
Monthly Fixed	332		
0 - 1667		95,000	
1667 - 5,000		1,977,000	
Over 5,000		1,752,400	
Totals	332	3,824,400	3.7%
Grand Total	25,376	103,993,500	
Customer Category	Weight	Increase	Contribution
Residential	82.9%	84.0%	69.6%
Commercial 1	13.5%	57.0%	7.7%
Commercial 2	3.7%	28.0%	1.0%
Weighted Average Increase			78.3%

APPENDIX D



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Garrett P. Lent

glent@postschell.com
717-612-6032 Direct
717-731-1985 Direct Fax
File #: 203069

July 10, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: William Ferguson v. Aqua Pennsylvania Wastewater, Inc.
Docket Nos. C-2023-3043108 and C-2023-3043109**

**Pennsylvania Public Utilities Commission, *et al.* v. Aqua Pennsylvania, Inc. and
Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2024-3047822 and R-2024-3047824**

Dear Secretary Chiavetta:

Attached for filing, please find on behalf of Aqua Pennsylvania Wastewater, Inc. (“Aqua PA WW”), in the above-referenced proceedings, a Motion to Consolidate the Formal Complaints of William Ferguson at Docket Nos. C-2023-3043108 and C-2023-3043109 with the ongoing base rate case proceedings at Docket Nos. R-2024-3047824, *et al.*

Because the above-captioned matters are currently not consolidated, a copy of this Motion is being filed at each of the dockets noted. In addition, copies are being separately provided to (a) the Administrative Law Judges assigned to each matter and (b) the parties of record in each proceeding. The Certificate of Service attached to this Motion at Docket Nos. C-2023-3043108 and C-2023-3043109 reflects service upon the parties to those dockets; the Certificate of Service attached to this Motion at Docket Nos. R-2024-3047824, *et al.* reflects service upon the parties to those dockets.

Please direct any questions you have regarding this submission to the undersigned counsel.

Rosemary Chiavetta, Secretary
July 10, 2024
Page 2

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Garrett P. Lent".

Garrett P. Lent

GPL/dmc
Attachments

cc: The Honorable Eranda Vero (*pmcneal@pa.gov; w/attachments*)
The Honorable Gail M. Chiodo (*via email; w/attachments*)
The Honorable Alphonso Arnold III (*via email; w/attachments*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL

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ocaaqua2024@paoca.org

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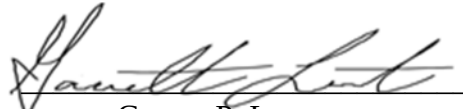
Susan Unvarsky and Sharon Ellis
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Steven Boyanowski
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judyccd@gmail.com

State Representative Christina Sappey
698 Unionville Road
Kennett Square, PA 19348
scooper@pahouse.net

John Day
614 Runyon Avenue
Piscataway, NJ 08854
john@johnday.us

Date: July 10, 2024

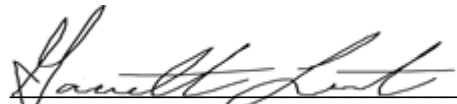

Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket Nos. R-2024-3047824, <i>et al.</i>
	:	
Aqua Pennsylvania Wastewater, Inc., <i>et</i> <i>al.</i>	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE, UNLESS THE PERIOD OF TIME IS OTHERWISE FIXED BY THE COMMISSION OR THE PRESIDING OFFICER. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



Michael W. Hassell, Esq. (ID # 34851)
Garrett P. Lent, Esq. (ID # 321566)
Nicholas A. Stobbe, Esq. (ID # 329583)
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Harrisburg, PA 17101
Phone: 717-731-1970
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E-mail: glent@postschell.com
E-mail: nstobbe@postschell.com

Date: July 10, 2024

Attorneys for Aqua Pennsylvania Wastewater, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	
Pennsylvania Public Utility Commission,	:	
<i>et al.</i>	:	
	:	Docket Nos. R-2024-3047824, <i>et al.</i>
v.	:	
	:	
Aqua Pennsylvania Wastewater, Inc., <i>et</i>	:	
<i>al.</i>	:	

**MOTION TO CONSOLIDATE OF
AQUA PENNSYLVANIA WASTEWATER, INC.**

**TO THE ADMINISTRATIVE LAW JUDGE ERANDA VERO, AND
TO THE ADMINISTRATIVE LAW JUDGES GAIL M. CHIDO AND ALPHONSO
ARNOLD III:**

Aqua Pennsylvania Wastewater, Inc. (“Aqua PA WW”) hereby moves to consolidate the Formal Complaints of Mr. William Ferguson (“Complainant”) at Docket No. C-2023-3043108 (the “Revenue Complaint”) and C-2023-3043109 (the “Expense Complaint”), collectively the “Consolidated Complaints” or “Complaints,” with the pending base rate proceeding of Aqua PA WW and Aqua Pennsylvania Inc. (“Aqua PA Water”) (collectively, “Aqua PA” or the

“Company”), pursuant to 52 Pa. Code § 5.81, for purposes of adjudication because they raise common issues of fact and law.¹

As explained herein, the Complaints involve the existing rates of Aqua PA WW applicable to New Garden wastewater operations. Those rates were set after a fully-litigated base rate case at Docket Nos. R-2021-3027385 and R-2021-3027386 (the “2021 Rate Case”).² Indeed, both the Revenue Complaint and the Expense Complaint take issue with the revenues and expense levels applicable to New Garden wastewater operations established by the *Rate Case Order*, which formed the basis for Aqua PA WW’s *Compliance Tariff*.

The same rates challenged in the Complaints are also now subject to a pending base rate case. Specifically, in the Company’s pending base rate case at Docket Nos. R-2024-3047824, *et al.*, Aqua PA proposed changes to Aqua PA’s base water and wastewater rates designed to produce a total increase in annual revenues of \$126,675,472 based upon data for a fully projected future test year (“FPFTY”) ending December 31, 2025 (“2024 Base Rate Case”). The filing was made in compliance with the Commission’s regulations and contains all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase. Among other things, the 2024 Base Rate Case seeks to **decrease** the base rates applicable to New Garden wastewater operations.

Each of the 2024 Base Rate Case and the Revenue and Expense Complaints deal with the same subject matter, *i.e.*, the application of base rates for wastewater service to New Garden

¹ This Motion is being filed at each of the above-captioned dockets, and it will be separately served upon (a) the Administrative Law Judges assigned to each docket and (b) the parties in each docket.

² On May 16, 2022, the Commission entered an Opinion and Order on the 2021 Rate Case (the “Rate Case Order”). Relevant to the Complaint, the *Rate Case Order* authorized Aqua PA WW to prepare a tariff to collect a set revenue requirement from New Garden Ratepayers, like the Complainant. On May 23, 2022, Aqua PA WW filed its compliance tariff and proof of revenues (the “*Compliance Tariff*”), consistent with the *Rate Case Order*.

customers within the Company's certificated service territory. Therefore, in the interests of administrative efficiency and judicial economy, Aqua PA WW believes that the above-captioned matters should be consolidated for purposes of litigation, as there is substantial overlap as to the factual and legal questions raised in the 2024 Base Rate Case and the Complaints.

In support of this Motion, Aqua PA WW states as follows:

I. BACKGROUND

1. Aqua PA WW is a "public utility" as that term is defined under the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Commission.

2. Aqua PA WW provides wastewater service to approximately 40,000 customers throughout the Commonwealth of Pennsylvania pursuant to its Commission-approved tariff.

3. The Complainant is a residential wastewater customer of Aqua PA WW with a service address of 313 Hyde Park Road, Landenberg, PA, 19350. The Complainant's service address is located in New Garden Township.

4. On September 19, 2023, Aqua PA WW was served with the above-captioned Revenue Complaint at Docket No. C-2023-3043108 which, *inter alia*, alleged that the method(s) in which Aqua PA WW set its New Garden Wastewater tariffs in the *2021 Rate Case* were irregular.

5. Also on September 19, 2023, Aqua PA WW was served with the Expense Complaint filed by the Complainant which alleged that Aqua PA WW was collecting revenue from New Garden ratepayers for an expense that it is not incurring. The Expense Complaint was docketed by the Commission at Docket No. C-2023-3043109.

6. On October 10, 2023, Aqua PA WW filed separate Answers and New Matter to each of the Complaints. In its New Matters, Aqua PA WW averred that the Complaints are barred

by Section 316 of the Public Utility Code (66 Pa. C.S. § 316) and the doctrine of collateral estoppel, and, if granted, would constitute impermissible retroactive ratemaking, constitute impermissible single-issue ratemaking and violate the Commission-made rate doctrine.

7. On October 25, 2023, the Complainant filed Replies to each of Aqua PA WW's New Matters at the respective dockets.

8. On October 27, 2023, the Commission issued a Telephonic Hearing Notice at both above-captioned Complaints dockets, scheduling a telephonic evidentiary hearing for December 12, 2023.

9. On November 3, 2023, Administrative Law Judge Eranda Vero issued a Prehearing Order in the Complaints proceeding.

10. On November 15, 2023, the Company filed a Motion seeking the continuance of the December 12, 2023 Complaints Evidentiary Hearing and referral of the Complaints to the Commission's Mediation unit.

11. On November 21, 2023, the ALJ issued an Order Consolidating Complaints, Granting the Request for Continuance, and Sending the Case to the [Commission's] Mediation Unit.

12. On November 22, 2023, the Commission issued a Hearing Cancellation Notice, cancelling the December 12, 2023 Evidentiary Hearing for the Complaints.

13. On December 8, 2023, the Commission issued a Mediation Notice in the Complaints proceeding.

14. On February 1, 2024, the Commission issued a Teams Virtual Mediation Sessions Notice.

15. On March 7, 2024, the Company and Complainant participated in a virtual Mediation session presided over by Mediator Teri-Lee Rhoades (“Mediator”).

16. On June 12, 2024, the Commission issued a Telephonic Hearing Notice, setting a Hearing date of July 23, 2024, for the Complaints.

17. The 2024 Base Rate Case was initiated on May 23, 2024, when Aqua PA filed on a consolidated basis Tariff Water – Pa. P.U.C. No. 4 (“Tariff Water No. 4”) and Tariff Sewer – Pa. P.U.C. No. 4 (“Tariff Sewer No. 4”) with the Commission to be effective for service rendered on or after July 22, 2024.

18. On June 13, 2024, the Commission issued an Order suspending Tariff Water No. 4 and Tariff Sewer No. 4 until February 22, 2024, unless otherwise permitted by Commission Order to become effective at an earlier date (“Suspension Order”).

19. On July 1, 2024, a Prehearing Conference was held in the 2024 Base Rate Case.

II. MOTION TO CONSOLIDATE

20. Aqua PA WW herein respectfully requests that the 2024 Base Rate Case at Docket Nos. R-2024-3047824, *et al.*, and the Complaints at Docket Nos. C-2023-3043108 and C-2023-3043109 be consolidated for disposition because the 2024 Base Rate Case and the Complaints are interrelated and raise common issues of law in fact.

21. All of the above-captioned proceedings involve consideration of the base rates for wastewater service applicable to New Garden ratepayers.

22. Each of the Complaints seeks to challenge specific components of the Company’s *Compliance Filing*, which established rates applicable to New Garden wastewater operations as a part of the 2021 Base Rate Case

23. The 2024 Base Rate Case seeks Commission approval to change (i.e., **decrease**) the rates applicable to New Garden wastewater operations that were established through the 2021 Base Rate Case.

24. Additionally, pursuant to the June 13, 2024 Suspension Order, the 2024 Base Rate Case shall include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules and regulations of Aqua PA WW, which the Complainant is challenging. *See* Suspension Order, Ordering ¶ 4.

25. If these cases were to proceed and not be consolidated, the Commission would, in effect, be reviewing the same complex base rate-related issues twice and in parallel.

26. Also, depending on the cases' outcomes, the Commission theoretically could grant relief in the two cases that conflicts or is inconsistent.

27. Therefore, it would be a waste of administrative and judicial resources to litigate these matters separately when they raise wholly overlapping issues of fact and law and involve concerns over Aqua PA WW's existing and proposed rates for New Garden customers which, through the 2024 Base Rate Case, Aqua PA WW seeks to **decrease**.

28. Thus, the consolidation of these proceedings will promote the efficient use of the time and resources of the parties and the Commission.

29. Aqua PA WW has contacted the Complainant via electronic mail to discuss consolidation. Aqua PA WW understands that the Complainant opposes the consolidation request.

30. For these reasons, Aqua PA WW respectfully requests that these proceedings be consolidated for purposes of disposition.

III. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Pennsylvania Public Utility Commission enter an order consolidating the 2024 Base Rate Case at Docket Nos. R-2024-3047824, *et al.*, with the consolidated Complaint proceeding at Docket Nos. C-2023-3043108 and C-2023-3043109 for purposes of disposition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael W. Hassell", is written over a horizontal line.

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Date: July 10, 2024

Attorneys for Aqua Pennsylvania Wastewater, Inc.

APPENDIX E

July 24, 2024

Via Electronic Filing:

Re: William Ferguson v. Aqua Pennsylvania Wastewater, Inc.
Docket Nos. C-2023-3043108
C-2023-3043109

Pennsylvania Public Utilities Commission, et al. v. Aqua Pennsylvania, Inc. and
Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2024-3047822
R-2024-3047824

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission

Dear Secretary Chiavetta:

Attached please find my answer to Aqua's motion to combine my complaints with Aqua's current rate case. I am requesting that Aqua's motion be denied.

Per the enclosed Certificate of Service I am sending this document to Aqua's law firm and the three Administrative Law Judges. I am assuming that the broader distribution for the rate case is not necessary since Aqua did not include it on the original motion. If this is not correct, please inform me who should be added.

Respectfully submitted,

William Ferguson, Complainant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of my answer to Aqua's motion to consolidate cases has been served upon the following persons via email:

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Administrative Law Judge Eranda Vero
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The Honorable Gail M. Chiodo
Administrative Law Judge
PA Public Utility Commission
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The Honorable Alphonso Arnold III
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PA Public Utility Commission
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Introduction

I am the Complainant in the two cases docketed at:

C-2023-3043108—a complaint that Aqua Wastewater Inc (Aqua) calculated New Garden sewer tariffs using data that did not reflect usage by the impacted customers.

C-2023-304109—a complaint that a major cost forecast by Aqua has never been incurred since the rate increase went into effect, but continues to be paid for by Aqua's New Garden sewer customers.

Both of these complaints evolved from the rate case Aqua filed August-2021 (Docket numbers: R-2021-3027385 and R-2021-3027386).

On July 10, 2024 Aqua filed a motion to consolidate these two complaints with Aqua's current rate case (docket # R-2024-3047824) before the Pennsylvania Public Utility Commission (PUC). This filing is my reply to that proposal.

I do not believe my complaints impact Aqua's current rate case. Further, I do not see how Aqua has shown how it would impact the rate case. Therefore, I am asking the PUC to deny Aqua's motion.

Basis For Denial:

1. Aqua's motion appears to be implying that my complaints could change the outcome of the current rate case (paragraph 26 on page 7). However, Aqua does not offer any examples of how this could occur. Paragraph 27 simply notes that it is *"theoretically"* a possibility.
2. Further, their motion states they are seeking a rate increase of \$126,675,472. While that increase is factual, that number is actually the result of requesting rates that will collect a total of \$797,670,110. That total revenue is determined by summing up all their forecast costs plus a return on their rate base. This difference is important because my complaints will in no way impact the costs and investments upon which the total revenue is calculated. Therefore, my complaints should have zero impact on the outcome of the current rate case.
3. If my complaints did impact the current rate case, theoretically, the logical solution would be to stop the rate case and adjudicate my complaints. Then, if my complaints result in any changes to Aqua's rate case assumptions, they could recalculate their numbers, re-file and then the rate case could proceed. Obviously, that scenario is totally unrealistic and is not going to happen. So, how do the two proceedings interact?

4. Items 1, 2 & 3, above, bring into question the issue of timing. My complaints were filed over eight months before Aqua filed its rate case. If the two proceedings interacted, it would have been appropriate for Aqua to file its motion to consolidate essentially at the same time as the rate case. Yet, Aqua waited almost seven weeks to file its consolidation motion. Why the delay?
5. Aqua's motion notes that: *"...the June 13, 2024 Suspension Order, the 2024 Base Rate Case shall include consideration of the lawfulness justness, and reasonableness of the existing rates, rules and regulations of Aqua PA WW, which the Complainant is challenging."* Several observations about this:
 - a. This seems to be a standard clause in suspension orders. It is included in the two previous Aqua rate cases and the last three PA American rate cases.
 - b. The rate cases I have followed do not appear to carefully examine previous cases. They focus on a "Fully Projected Future Test Year".
 - c. In summary, I fail to see how Aqua has established a connection between the two cases based on the suspension clause.
6. Aqua emphasizes in three different places (pages 3 and 7 of their motion) that their current rate case proposes to reduce New Garden wastewater rates. In fact, Aqua does so in **bold**. The proposed reduction is indeed a factual statement. However, it is in no way relevant to my complaints. Their proposed reduction is simply an artifact of how they elected to consolidate rate zones in their current rate case.
7. My complaints do not challenge the extensive rate making process that culminated in Aqua's May-2022 rate increase. The "Revenue Complaint" (C-2023-3043108) identified that the customer usage data Aqua applied to calculate tariffs was substantially different than actual customer use. Therefore, the resulting tariffs cannot be fair and just to the customers. The "Expense Complaint" (C-2023-3043109) identifies that a major cost Aqua forecast actually was eliminated shortly after the rate case was filed and many months before the rate increases went into effect. In both complaints a small and well defined set of customers have been impacted. Both complaints suggest remedies that do not require formal rate making action by the PUC.
8. I have filed formal complaints and am entitled to the appropriate legal hearing process to adjudicate them. I believe they are stand alone issues unrelated to Aqua's current rate case. Therefore, the complaints should be adjudicated separately.
9. The current rate case is a major undertaking that should not be burdened with my complaints that, at best, have a very tenuous connection. The many parties to the

rate case will not be interested in my complaints. More likely my complaints would be a distraction to a much larger proceeding.

Conclusion

I fail to see a connection between the cases. Nor, do I see that Aqua has established how the cases interact. Finally, I believe it would be a distraction to the much more important rate case. Therefore, I respectfully request the PUC to deny Aqua's request to consolidate my complaints with the current rate case. Further, I request the PUC to proceed promptly to adjudicate my complaints via standard PUC protocols.

Respectfully submitted,
William Ferguson, complainant

APPENDIX F

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	C-2023-3043108
v.	:	C-2023-3043109
	:	
Aqua PA Wastewater Inc.	:	

ORDER GRANTING MOTION TO CONSOLIDATE

First Complaint – Docket No. C-20023-3043108

On September 19, 2023, William Ferguson (Mr. Ferguson or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania Wastewater Inc. (Aqua, the Company, or Respondent) alleging that there are irregularities in how Aqua set New Garden wastewater tariffs in its last rate case at Docket No. R-2021-3027386 (2021 Rate Case). In support of his claim, Complainant attached extensive documentation to the Complaint. As relief, the Complainant sought as follows: 1) revision of the accuracy of Aqua's compliance data; 2) a Commission investigation into whether Aqua is exceeding its allowed revenue; 3) a revision of Aqua's tariff schedule for New Garden that conforms to an allowed revenue of \$4,428,399 per year based on actual use volumes; and 4) a recalculation of all ratepayer bills based on the revised tariffs, from the start of the May-2022 rate increase on, as well as a refund of all overcharges to its customers. This Complaint was docketed at C-2023-3043108 (First Complaint, or Revenue Complaint).

October 10, 2023, Aqua filed an Answer and New Matter to the First Complaint. In its Answer Aqua denied the material allegations of the First Complaint, whereas in the New Matter Aqua averred that the Complainant participated in the public input hearings held in the 2021 Rate Case. Specifically, Aqua averred that, at the public input hearing held on November 12, 2021, at 1:00 p.m., Mr. Ferguson provided testimony under oath regarding the proposed rate

increase and its applicability to New Garden customers. Mr. Ferguson presented no testimony challenging the pro forma usage data for New Garden customers. See New Matter ¶¶ 8.

In addition, Aqua averred that the Company addressed Mr. Ferguson's testimony from the November 12, 2021, public input hearing in its testimony and its briefs, and that no party challenged the pro forma usage data specific to New Garden wastewater customers. On February 18, 2022, the Administrative Law Judge issued the Recommended Decision in the 2021 Rate Case. According to Aqua, the Recommended Decision addressed the issues raised by the Complainant at the public input hearings. On May 16, 2022, the Commission entered the Rate Case Order. The Rate Case Order authorized Aqua to file tariffs reflecting, among other things, a revenue requirement for New Garden wastewater operations of \$4,428,399, as part of the overall allowed revenue requirement of Aqua of \$18,740,978 for wastewater service. Aqua argued that the authorized revenue requirement of \$4,428,399 reflected the impacts of the Commission-approved Act 11 allocation of certain wastewater revenues to water customers. On May 23, 2022, Aqua submitted its Compliance Tariff in accordance with the Rate Case Order and the Commission's regulations. Aqua maintains that the usage data used in the Compliance Tariff filing for New Garden operations was the same as the usage data presented in Exhibit 5-B, Part I, Schedules A-NG through E-NG as submitted by as a part of its initial filing in the 2021 Rate Case proceeding. 15. The Commission issued a Secretarial Letter dated June 3, 2023, which stated that "Commission Staff reviewed the [Compliance Tariff] revisions and proof of revenues and found that suspension or further investigation does not appear warranted at this time," and permitted the Compliance Tariff to become effective by operation of law. See New Matter ¶¶ 12-15.

In its New Matter, Aqua requested that Mr. Ferguson's First Complaint be denied in its entirety because the issues raised in the Complaint are barred by the application of 66 Pa.C.S. § 316,¹ as well as by the legal doctrine of *collateral estoppel* or issue preclusion.

¹ Pursuant to 66 Pa. C.S. § 316, Whenever the [C]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon

On October 25, 2023, Mr. Ferguson filed a Response to New Matter.

Second Complaint - Docket No. C-20023-3043109

On September 19, 2023, Mr. Ferguson filed a second Formal Complaint with the Commission against Aqua Pennsylvania Wastewater, Inc. alleging that Aqua is collecting revenue from New Garden ratepayers for a cost it is not incurring. As relief, the Complainant requested that the Commission investigate Aqua's "Purchased Wastewater" expenses. If the excess charge is verified, the Complainant requested that it be removed from the revenue Aqua is allowed to collect from New Garden ratepayers. This Complaint was docketed at C-2023-3043109 (Second Complaint or Expense Complaint).

October 10, 2023, Aqua filed an Answer and New Matter to the Second Complaint. In its Answer, Aqua denied the material allegations of the First Complaint, whereas in the New Matter, Aqua averred that the Complainant participated in the 2021 Rate Case and that Aqua's Main Brief submitted in the 2021 Rate Case addressed Mr. Ferguson claims. By way of further response, Aqua stated that Mr. Ferguson testified under oath at the public input hearing held on November 12, 2021, at 1:00 p.m. regarding the rates proposed in the 2021 Rate Case for New Garden wastewater operations. In that testimony, Mr. Ferguson did not challenge the Company's claimed expenses for Purchased Wastewater. Moreover, no other parties to the 2021 Rate Case challenged this expense. The Recommended Decision dated February 18, 2022, specifically considered Mr. Ferguson testimony, and the Rate Case Order issued in the 2021 Rate Case disposed of all issues related to Aqua's proposed rates for New Garden wastewater operations. New Matter ¶¶ 1-23. Aqua further argued that the Second Complaint is barred by Section 316 of the Code, 66 Pa.C.S. § 316, and the doctrine of collateral estoppel.

all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316. 17. Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. See Moore, Jr. v. PECO Energy Co., Docket No. C-2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), adopted without modification, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012).

On October 25, 2023, Mr. Ferguson filed a Response to New Matter.

By Hearing Notice dated October 27, 2023, a telephonic hearing was scheduled for December 12, 2023, for both the First and Second Complaints, and the matters were assigned to me.

On November 3, 2023, I issued a Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On November 15, 2023, Aqua filed a Motion seeking the continuance of the scheduled hearing and referral of the two matters to the Mediation Unit. In its Motion, Aqua indicates that Complainant is aware of its requests and does not object to them.

By order dated November 21, 2023, I granted Aqua's Motion for a continuance of the scheduled hearing. I also consolidated the two Complaints and referred the matters to the Mediation Unit.

The parties were unable to resolve the consolidated matters through mediation. By Hearing Notice dated June 12, 2024, a telephonic hearing was scheduled for July 23, 2024, for both the First and Second Complaints.

A second Prehearing Order was issued on June 27, 2023.

On July 10, 2024, Aqua filed a Motion seeking to consolidate Mr. Ferguson's First and Second Complaints with the pending base rate proceeding of Pennsylvania Public Utilities Commission, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., at Docket Nos. R-2024-3047822 and R-2024-3047824 (2024 Base Rate Case), pursuant to 52 Pa.

Code § 5.81, for purposes of adjudication because they raise common issues of fact and law (Motion to Consolidate).²

A Hearing Cancellation Notice was issued on July 12, 2024, informed the parties that the telephonic hearing scheduled for July 23, 2024, on the two consolidated matters were cancelled.

On July 24, 2024, Mr. Ferguson filed his Answer in opposition to Aqua's Motion to Consolidate.

On August 8, 2024, Mr. Ferguson testified at a Public Input Hearing for Aqua's 2024 Rate Cases. His testimony did not touch directly on the claims raised in his present Complaints.³

As of the date of this Order, Aqua's Motion to Consolidate has not been ruled upon. The Motion is now ready for ruling.

The Commission regulation pertaining to consolidation appears at 52 Pa. Code §5.81, and states, in relevant part:

§5.81. Consolidation.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

² Aqua's Motion to Consolidate was filed at each of the four dockets involved, and it was separately served upon the Administrative Law Judges assigned to each docket and the parties in each docket.

³ See Pennsylvania Public Utilities Commission, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., at Docket Nos. R-2024-3047822 and R-2024-3047824, Tr. 542-52.

The question of consolidation is clearly left to the sound discretion of the Commission or presiding officer.

Cases have been consolidated for adjudication; Re Middletown Taxi Company, 50 Pa. PUC 263 (1976), for hearing; City of York v. York Telephone and Telegraph Co., 43 Pa. PUC 240 (1967), for briefing; Clepper Farms, Inc. v. Grantham Water Co., 41 Pa. PUC 749 (1965), and have been refused consolidation for any purpose; Dopp v. Williamsburg Borough Dept. of Water and Sewer, 59 Pa. PUC 25 (1984).

In considering the consolidation of cases, the first criteria (set forth in the Commission's regulations) is that the proceedings must involve "a common question of law or fact." An examination of Commission precedent in such cases as Applications of Philadelphia Electric Co., 43 Pa. PUC 781 (1968), Pa. Public Utility Comm'n v. Bell Telephone Co. of Pennsylvania, 46 Pa. PUC 568 (1973), and Pa. Public Utility Comm'n v. Butler Twp. Water Co., 52 Pa. PUC 442 (1978), as well as those cited above, establishes that considerations in addition to the presence of common questions of law or fact must also be evaluated in ruling on a consolidation. These other considerations are:

1. Will the presence of additional issues cloud a determination of the common issues?
2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?
3. Do issues in one proceeding go to the heart of an issue in the other proceeding?
4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?
5. Will different statutory and legal issues be involved?
6. Does the party with the burden of proof differ in the proceedings?
7. Will consolidation unduly delay the resolution of one of the proceedings?
8. Will supporting data in both proceedings be repetitive?

No single consideration, nor group of these considerations, is dispositive of a consolidation, any more so than the presence of a common question of law or fact. Rather, the evaluation of all of them and a balancing of those favoring and disfavoring consolidation is required.

In its Motion to Consolidate, Aqua argued that: “...the June 13, 2024, Suspension Order, the 2024 Base Rate Case shall include consideration of the lawfulness justness, and reasonableness of the existing rates, rules and regulations of Aqua PA Wastewater Inc, which the Complainant is challenging.” Motion to Consolidate ¶ 24.

In his response to the Motion, Mr. Ferguson challenged the timing of Aqua’s Motion to Consolidate, noting that his Complaints were filed over eight months before Aqua filed its rate case but that the Motion to Consolidate was filed seven weeks after the after the filing of Aua’s rate case. Answer to Motion to Consolidate ¶ 4.

Next, Mr. Ferguson argued that Aqua has failed to establish a connection between his Complaints and Aqua’s most recent base rate cases currently pending before the Commission. He averred that cases regarding proposed rate increases “do not appear to carefully examine previous cases. They focus on “Fully Projected Future Test Year.” Answer to Motion to Consolidate ¶ 5. In addition, the Complainant explained that the Revenue Complaint alleges that the customer usage data Aqua applied to calculate tariffs was substantially different than actual customer use. Therefore, the resulting tariffs cannot be fair and just to the customers. The Expense Complaint, on the other hand, alleges that a major cost Aqua forecast actually was eliminated shortly after the rate case was filed and many months before the rate increases went into effect. According to Mr. Ferguson, his two Complaints concern a small and well-defined set of customers who have been impacted by Aqua’s rates currently in effect. Furthermore, the Complaints suggest remedies that do not require formal rate making action by the Commission. Answer to Motion to Consolidate ¶ 5.

It is true that the Commission’s June 13, 2024, Suspension Order in Aqua’s 2024 Base Rate Case ordered an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase in that filing, in addition to the Company’s existing rates, rules, and regulations. However, the timing of the filing of Mr. Ferguson’s Complaints, the late stage of the proceedings in Aqua’s 2024 Base Rate Case, as well as the nature of some of Mr. Ferguson’s

claims make it appropriate to adjudicate his Complaints separately from the 2024 Base Rate Case.

Tariff provisions previously approved by the Commission are *prima facie* reasonable. Sattar v. Aqua Pa., Inc., Docket No. C-2010-2169756 (Order entered July 28, 2012); Zucker v. Pa. Pub. Util. Comm’n, 437 A.2d 1067 (Pa. Cmwlth. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Citing* Shenano Twp. bd. of Supervisors v. Pa. Pub. Util. Comm’n, 686 A.2d 910 (Pa. Cmwlth. 1996).

Mr. Ferguson’s Consolidated Complaints will be set for evidentiary hearings.

THEREFORE,

IT IS ORDERED:

1. That the Aqua Pennsylvania Wastewater Inc’s Motion to Consolidate is denied.

2. That the Consolidated Complaints of William Ferguson against Aqua Pennsylvania Wastewater Inc., at Docket Nos. C-2023-3043108 and C-2023-3043109 shall be set for a hearing to address the issues raised in the Complaints.

Date: October 21, 2024

_____/s/
Eranda Vero
Administrative Law Judge

C-2023-3043108 - WILLIAM FERGUSON v. AQUA PENNSYLVANIA WASTEWATER INC.

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November 15, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: William Ferguson v. Aqua Pennsylvania Wastewater, Inc.
Docket Nos. C-2023-3043108 and C-2023-3043109**

Dear Secretary Chiavetta:

Attached for filing please find the Motion to Convert the Evidentiary Hearing to A Prehearing Conference Or, In the Alternative, Continue the Evidentiary Hearing ("Motion") Of Aqua Pennsylvania Wastewater, Inc. ("Aqua PA WW") for the above-referenced proceeding.

As noted in the Motion and Notice to Plead, Aqua PA WW requests that the answer period be shortened to five (5) days, to allow for a ruling on the requests contained in the Motion to be granted prior to the November 25, 2024 hearing date.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Garrett P. Lent
Principal

GPL/dmc
Attachment

Rosemary Chiavetta
November 15, 2024
Page 2

cc: The Honorable Eranda Vero (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST-CLASS MAIL

William Ferguson
313 Hyde Park Road
Landenberg, PA 19350
zzzferg@gmail.com

Date: November 15, 2024

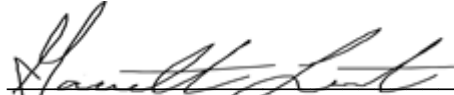

Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE, UNLESS THE PERIOD OF TIME IS OTHERWISE FIXED BY THE COMMISSION OR THE PRESIDING OFFICER. **IN THE INSTANT MOTION, THE COMPANY REQUESTS AN EXPEDITED RESPONSE PERIOD OF FIVE (5) CALENDAR DAYS TO FACILITATE A RULING ON THE MOTION IN SUFFICIENT TIME BEFORE THE HEARING.** YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



Michael W. Hassell, Esq. (ID # 34851)
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Date: November 15, 2024

Attorneys for Aqua Pennsylvania Wastewater, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	

**MOTION TO CONVERT THE EVIDENTIARY HEARING
TO A PREHEARING CONFERENCE
OR, IN THE ALTERNATIVE, CONTINUE THE EVIDENTIARY HEARING OF
AQUA PENNSYLVANIA WASTEWATER, INC.**

TO THE ADMINISTRATIVE LAW JUDGE ERANDA VERO:

Aqua Pennsylvania Wastewater, Inc. (“Aqua PA WW” or the “Company”) hereby moves to convert the Telephonic Evidentiary Hearing in the above-captioned proceeding, scheduled for November 25, 2024, at 10:00 a.m., into a Telephonic Prehearing Conference. Aqua PA WW believes that the judicial economy would be served by converting the Telephonic Evidentiary Hearing into a Telephonic Prehearing Conference. This would permit both the parties, *i.e.*, Aqua PA WW and William Ferguson (“Complainant”) and Administrative Law Judge Eranda Vero (the “ALJ”) to discuss procedural checkpoints and deadlines for submission of substantive motions, permit discovery, and to discuss the submission of written testimony in this proceeding. Through pre-served written testimony, Aqua PA WW believes that the parties would be better able to determine whether factual stipulations may be reached that would avoid the need for additional Evidentiary Hearing time. In the alternative, Aqua PA WW requests that the Telephonic Evidentiary Hearing scheduled in this matter be continued for a period of at least thirty (30) days.

In support of this Motion, Aqua PA WW states as follows:

I. BACKGROUND

1. Aqua PA WW is a “public utility” as that term is defined under the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Commission.

2. Aqua PA WW provides wastewater service to approximately 40,000 customers throughout the Commonwealth of Pennsylvania pursuant to its Commission-approved tariff.

3. The Complainant is a residential wastewater customer of Aqua PA WW with a service address of 313 Hyde Park Road, Landenberg, PA, 19350. The Complainant’s service address is located in New Garden Township.

4. On September 19, 2023, Aqua PA WW was served with the above-captioned Revenue Complaint at Docket No. C-2023-3043108 which, *inter alia*, alleged that the method(s) in which Aqua PA WW set its New Garden Wastewater tariffs in the *2021 Rate Case* were irregular.¹

5. Also on September 19, 2023, Aqua PA WW was served with the Expense Complaint filed by the Complainant which alleged that Aqua PA WW was collecting revenue from New Garden ratepayers for an expense that it is not incurring. The Expense Complaint was docketed by the Commission at Docket No. C-2023-3043109.

6. On October 10, 2023, Aqua PA WW filed separate Answers and New Matter to each of the Complaints. In its New Matters, Aqua PA WW averred that the Complaints are barred by Section 316 of the Public Utility Code (66 Pa. C.S. § 316) and the doctrine of collateral estoppel,

¹ Those rates were set after a fully-litigated base rate case at Docket Nos. R-2021-3027385 and R-2021-3027386 (the “*2021 Rate Case*”). On May 16, 2022, the Commission entered an Opinion and Order on the 2021 Rate Case (the “*Rate Case Order*”). Relevant to the Complaint, the *Rate Case Order* authorized Aqua PA WW to prepare a tariff to collect a set revenue requirement from New Garden Ratepayers, like the Complainant. On May 23, 2022, Aqua PA WW filed its compliance tariff and proof of revenues (the “*Compliance Tariff*”), consistent with the Rate Case Order.

and, if granted, would constitute impermissible retroactive ratemaking, constitute impermissible single-issue ratemaking and violate the Commission-made rate doctrine.

7. On October 25, 2023, the Complainant filed Replies to each of Aqua PA WW's New Matters at the respective dockets.

8. On October 27, 2023, the Commission issued a Telephonic Hearing Notice at both above-captioned Complaints dockets, scheduling a telephonic evidentiary hearing for December 12, 2023.

9. On November 3, 2023, Administrative Law Judge Eranda Vero issued a Prehearing Order in the Complaints proceeding.

10. On November 15, 2023, the Company filed a Motion seeking the continuance of the December 12, 2023, Complaints Evidentiary Hearing and referral of the Complaints to the Commission's Mediation unit.

11. On November 21, 2023, the ALJ issued an Order Consolidating Complaints, Granting the Request for Continuance, and Sending the Case to the [Commission's] Mediation Unit.

12. On November 22, 2023, the Commission issued a Hearing Cancellation Notice, cancelling the December 12, 2023 Evidentiary Hearing for the Complaints.

13. On December 8, 2023, the Commission issued a Mediation Notice in the Complaints proceeding.

14. On February 1, 2024, the Commission issued a Teams Virtual Mediation Sessions Notice.

15. On March 7, 2024, the Company and Complainant participated in a virtual Mediation session presided over by Mediator Teri-Lee Rhoades ("Mediator").

16. On June 12, 2024, the Commission issued a Telephonic Hearing Notice, setting a Hearing date of July 23, 2024, for the Complaints.

17. On July 10, 2024, Aqua PA WW filed a Motion to Consolidate the above-captioned proceedings with Aqua Pennsylvania, Inc., and Aqua PA WW's ongoing base rate case at Docket Nos. R-2024-3047822 and R-2024-3047824, *et al.* ("2024 Rate Case").

18. Also on July 10, 2024, Aqua PA WW filed a Notice of Appearance.

19. On July 12, 2024, the Commission issued a Hearing Cancellation Notice, cancelling the July 23, 2024 Hearing Notice.

20. On July 24, 2024, the Complainant filed an Answer in opposition to the Company's Motion to Consolidate this proceeding with the Company's 2024 Base Rate Case.

21. On October 21, 2024, the ALJ issued an Order denying Aqua PA WW's Motion to Consolidate, among other things.

22. On October 22, 2024, the Commission issued a Telephonic Hearing Notice scheduling the Evidentiary Hearing for November 25, 2024, at 10:00 a.m.

23. On October 24, 2024, the ALJ issued a Prehearing Order.

II. MOTION TO CONVERT

24. Pursuant to section 5.222 of the Commission's regulations, it is the Commission's policy to arrange for prehearing conferences in non-rate proceedings "to make possible a more effective use of hearing time in formal proceedings... to otherwise expedite the orderly conduct and disposition of the proceedings and to serve the ends of justice and the public interest..." 52 Pa. Code § 5.222(a).

25. A prehearing conference will aid in accomplishing the goals set forth in Section 5.222 of the Commission's regulations. Specifically, conversion of the Evidentiary Hearing into

a Prehearing Conference would aid in the expeditious and orderly conduct and disposition of this proceeding.

26. At the Prehearing Conference in this proceeding, Aqua PA would be prepared, in consultation with the Complainant, to discuss the submission of substantive motions, pre-served written testimony, and discovery processes.

27. Importantly, this case involves a complaint against existing, Commission-made rates that were established in the *2021 Rate Case*. In addition, the ongoing *2024 Rate Case* involves the suspension and investigation of proposed rates, including changes to the rates paid by the Complainant.² Aqua PA believes that many, if not all of the issues in this Complaint, can be resolved by substantive motions that would obviate the need for an evidentiary hearing.

28. In addition, and if such substantive motions are not successful, through pre-served written testimony and discovery, the parties would be given an opportunity to narrow the scope of issues that must be addressed through live testimony.

29. Moreover, submission of pre-served written testimony would facilitate the discussion of factual stipulations as between Aqua PA WW and the Complainant, which would potentially reduce the time necessary to conduct a future Evidentiary Hearing and the live testimony offered at a future Evidentiary Hearing.

30. Aqua PA WW submits that the Complainant would not be prejudiced if this Motion is granted. Although the Complaints were filed slightly more than one-year ago, they do not raise issues of a pressing nature requiring an immediate Evidentiary Hearing.

² A Joint Petition for Settlement was submitted in the *2024 Rate Case* on November 7, 2024, and remains pending before the Administrative Law Judges assigned to that matter.

III. MOTION FOR CONTINUANCE OF SCHEDULED EVIDENTIARY HEARING

31. Section 1.15(b) of the Commission's regulations states:

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date.

52 Pa. Code § 1.15(b).

32. In addition, the Prehearing Order issued on October 24, 2024, provides that:

You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must submit a written request to [the ALJ] (a "motion") at least five (5) days before the hearing. [...] Your motion should include:

- (1) The case name, case number, and hearing date;
- (2) The reason you are requesting a continuance; and
- (3) State whether the other party(s) agrees to the request (or if you do not know).

Prehearing Order, p. 2 (Oct. 24, 2024).

33. Aqua respectfully requests that the November 25, 2024 Evidentiary Hearing be continued to accommodate to filing of substantive motions and answers thereto that may obviate the need for a hearing in this matter, and/or provide the parties with an opportunity to stipulate as to any facts not in dispute. Resolution of such substantive motions or any stipulations that the

parties may reach will serve administrative economy, and make sure that the Commission's resources are used efficiently in a hearing in this matter.

34. This is Aqua PA WW's second request for a continuance in this matter.

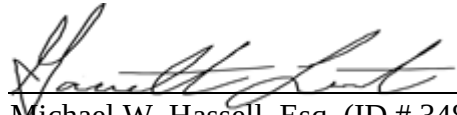
35. Aqua PA WW has discussed the above-described Motion with the Complainant.

The Complainant has indicated that he opposes the Motion.

III. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the November 25, 2024, Evidentiary Hearing be converted to a Telephonic Prehearing Conference in the above-captioned proceeding, or, in the alternative, the scheduled Evidentiary Hearing be continued for a period of at least thirty (30) days. Further, the Company respectfully requests that the due date for any Answer to this Motion be due within five (5) calendar days of its filing, *i.e.*, on or before November 20, 2024, and that the ruling on the instant Motion be issued as promptly as possible thereafter, to accommodate evidentiary hearing preparation in the event that this Motion is denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael W. Hassell", is written over a horizontal line.

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Date: November 15, 2024

Attorneys for Aqua Pennsylvania Wastewater, Inc.

APPENDIX H

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	C-2023-3043108
v.	:	C-2023-3043109
	:	
Aqua PA Wastewater Inc.	:	

ORDER DENYING MOTION TO CONVERT OR CONTINUE

On November 15, 2024, Aqua Pa wastewater Inc (Aqua) filed a motion to convert the evidentiary hearing scheduled for November 25, 2024, to a prehearing conference or to delay the hearing for approximately 30 days (Motion). In its Motion, Aqua states as follows,

This would permit both parties, i.e. Aqua PA WW and William Ferguson (“Complainant”) and Administrative Law Judge Eranda Vero (the “ALJ”) to discuss procedural checkpoints and deadlines for submission of substantive motions, permit discovery, and to discuss the submission of written testimony in this proceeding. Through pre-served written testimony, Aqua PA WW believes that the parties would be better able to determine whether factual stipulations may be reached that would avoid the need for additional Evidentiary Hearing time.

On November 17, 2024, the Complainant, William Ferguson, filed a Reply to Aqua’s Motion objecting to the request that the November 25, 2024, evidentiary hearing be converted to a prehearing conference or be delayed for approximately 30 days. In particular, Mr. Ferguson objects to Aqua's request arguing that Aqua has had ample time to prepare for the scheduled hearing.

I agree with Mr. Ferguson given that the consolidated Complaints were filed 14 months ago, on September 19, 2023. Consequently, Aqua’s Motion is denied. The November 25, 2024 hearing will be held as scheduled.

THEREFORE,

IT IS ORDERED:

1. That Aqua PA Wastewater, Inc.'s Motion is denied. third request for continuance of the scheduled hearing is denied.

2. That the further telephone hearing scheduled for November 25, 2024, in the matter of *William Ferguson v Aqua PA Wastewater Inc.*, at Docket Nos. C-2023-3043108 and C-2023-3043109 will take place as scheduled.

Date: November 20, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge

C-2023-3043108 - WILLIAM FERGUSON v. AQUA PENNSYLVANIA WASTEWATER INC

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(Aqua Pennsylvania)

APPENDIX I

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

Public Meeting held June 18, 2025

Commissioners Present:

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

William Ferguson

C-2023-3043108

C-2023-3043109

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Exceptions filed by William Ferguson (Mr. Ferguson or the Complainant) on April 21, 2025, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Eranda Vero, which was served on the Parties on March 31, 2025, in the above-captioned proceeding; (2) the Petition to Reopen the Record (Petition), filed by the Complainant on May 9, 2025; and (3) the Motion to Strike Certain Portions of the Reply Exceptions (Motion), filed by the Complainant on May 9, 2025. Replies to Exceptions were filed by Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company) on May 1, 2025. Aqua filed an Answer to the

Petition to Reopen the Record (Answer to Petition) on May 19, 2025. Aqua filed an Answer to the Motion to Strike (Answer to Motion) on May 29, 2025. In the Initial Decision, the ALJ dismissed two Formal Complaints (Complaints) filed by Mr. Ferguson on September 19, 2023. For the reasons discussed below, we shall: (1) deny the Complainant's Exceptions; (2) adopt the Initial Decision of ALJ Vero; (3) dismiss the Complaints; (4) deny the Petition; and (5) deny the Motion, consistent with this Opinion and Order.

I. Background

This case involves two Complaints concerning rates approved by the Commission in its Opinion and Order entered May 16, 2022 (*2021 Rate Case Order*) for the New Garden Township (New Garden) wastewater customers in Aqua's 2021 base rate case at Docket Nos. R-2021-3027385 and R-2021-3027386 (*2021 Rate Case*).

In the first Complaint, Mr. Ferguson alleged that there are irregularities in how Aqua set its tariff in the *2021 Rate Case*, with respect to the rates it charges to wastewater customers in New Garden. This Complaint was docketed at C-2023-3043108 (Revenue Complaint). In the second Complaint, the Complainant averred that Aqua was collecting revenue for a cost characterized as "Purchased Wastewater Expense" that it was no longer incurring from the hauling of wastewater. This Complaint was docketed at C-2023-3043109 (Expense Complaint). The Complaints were consolidated by Order dated November 21, 2023.

II. History of the Proceeding¹

On September 19, 2023, the Complainant filed a Formal Complaint with the Commission against Aqua alleging that there were irregularities in Aqua's calculations used to establish the rates in its wastewater tariff for New Garden customers in the *2021 Rate Case*. As relief, the Complainant requested that the Commission require Aqua to: (1) provide actual usage data for its compliance calculations; (2) revise its tariff with respect to its rates for New Garden customers based on the actual data; (3) recalculate all bills since the rate increase granted by the Commission in the *2021 Rate Case* went into effect; and (4) refund all overcharges paid thus far. Revenue Complaint at 7.

On October 10, 2023, Aqua filed an Answer and New Matter in response to the Revenue Complaint. In its Answer, Aqua denied the material allegations of the Revenue Complaint. In its New Matter, Aqua averred that the Complainant participated in the public hearings for Aqua during the *2021 Rate Case* by offering sworn testimony on November 12, 2021. Aqua contended that the Company addressed Mr. Ferguson's testimony in its own testimony and its briefs in that proceeding. Additionally, Aqua averred that the Complainant provided testimony regarding the proposed rate increase and its applicability to New Garden customers. Aqua stressed that the Complainant did not provide testimony challenging the *pro forma* usage data for New Garden customers. I.D. at 2 (citing New Matter at ¶ 8). In its New Matter, Aqua also requested that the Revenue Complaint be denied in its entirety because the issues raised by the Complaint are barred by the application of 66 Pa.C.S. § 316, as well as by the legal doctrine of *collateral estoppel* or issue preclusion. I.D. at 3.

¹ The History of the Proceeding is summarized here. A more extensive History of the Proceeding can be found in the Initial Decision at 1-7.

On September 19, 2023, the Complainant filed the Expense Complaint, alleging that although Aqua had estimated the Purchased Water Expense (for hauling of wastewater from one facility to another for treatment) to continue through the fully projected future test year (FPFTY), the expense ended by the end of 2021.² Expense Complaint at 8. As relief, the Complainant requested that: (1) the Commission investigate Aqua’s “Purchased Wastewater” expense; (2) if the excess expense is verified, the expense be removed from the revenue Aqua is allowed to collect from New Garden ratepayers; and (3) all trucking funds collected “so far” should be refunded to customers. I.D. at 3, Complaint at 9.

On October 10, 2023, Aqua filed an Answer and New Matter in response to the Expense Complaint (Expense Answer). In its Answer, Aqua admitted, in part, and denied, in part, the material allegations. Aqua denied that it was collecting revenue that it is not incurring. Aqua provided that individual cost components of a base rate proceeding may change, but that this is not a basis to change rates or order refunds after a base rate proceeding. Expense Answer at 2. In its New Matter, Aqua noted that Mr. Ferguson participated in the public input hearing held in the *2021 Rate Case* and provided testimony under oath regarding the proposed rate increase and its applicability to New Garden customers. Expense Answer at 7-8. Aqua provided that no party challenged the *pro forma* wastewater treatment and disposal costs of the New Garden rate division as part of the *2021 Rate Case*. Expense Answer at 8.

On July 10, 2024, Aqua filed a Motion seeking to consolidate Mr. Ferguson’s Complaints with the pending base rate proceeding of *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, at Docket Nos. R-2024-3047822 and R-2024-3047824 (*2024 Rate Case*), pursuant to 52 Pa. Code § 5.81,

² In the *2021 Rate Case*, Aqua utilized a FPFTY ending March 31, 2023. *2021 Rate Case Order* at 1.

for purposes of adjudication because they raise common issues of fact and law (Motion to Consolidate). I.D. at 5.

On July 24, 2024, Mr. Ferguson filed an Answer in opposition to Aqua's Motion to Consolidate. I.D. at 5.

On August 8, 2024, Mr. Ferguson testified at a Public Input Hearing for Aqua's *2024 Rate Case*. Mr. Ferguson's testimony did not relate directly to the claims raised in the Complaints.³ I.D. at 6.

On October 22, 2024, ALJ Vero issued an Order denying Aqua's Motion to Consolidate Mr. Ferguson's Complaints with Aqua's *2024 Rate Case* and set the cases for a hearing. I.D. at 6.

The hearing convened as scheduled on November 25, 2024. Mr. Ferguson appeared *pro se* and testified in support of his Complaints. Mr. Ferguson sponsored fourteen exhibits (Complainant's Exhibits A through N), which were admitted into the record. Garrett P. Lent, Esq. represented Aqua and presented the testimony of Aqua employee, Ms. Erin Feeney, Manager of Rates. Aqua sponsored seven exhibits (Aqua Exhibits A through E, 1-G, and 5-B), which were admitted into the record. I.D. at 6-7.

The record closed on December 30, 2024.

On March 31, 2025, the Commission issued the Initial Decision of ALJ Vero, wherein she recommended that the Commission dismiss the Complaints of Mr. Ferguson against Aqua, finding that the Complainant failed to prove that

³ See *2024 Rate Case*, Tr. at 542-52.

Aqua violated a statute, regulation, Commission Order, or tariff and because the claims he raised are barred by law and no relief can be granted. I.D. at 1.

As noted above, on April 21, 2025, the Complainant filed Exceptions to the Initial Decision. On May 1, 2025, Aqua filed Replies to Exceptions.

On May 9, 2025, the Complainant filed the Petition. Aqua filed an Answer to the Petition on May 19, 2025.

Also on May 9, 2025, the Complainant filed the Motion, seeking to have certain portions of Aqua's Reply Exceptions stricken. Aqua filed an Answer to the Motion on May 29, 2025.

III. Discussion

A. Legal Standards

1. Burden of Proof

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional

evidence favorable to the complainant's claim. *See Milkie*, 768 A.2d at 1220; *see also Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on the complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁴ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*)).

⁴ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

2. Petitions to Reopen the Record

Commission Regulations allow a party to petition to reopen a proceeding any time after the record is closed, but before a final decision is issued, for the purpose of taking additional evidence. 52 Pa. Code § 5.571(a); *see e.g., Application of Kris Eckerl t/b/a Michael's Moving and Storage*, Docket No. A-2014-2429336 (Order entered November 19, 2015). The burden is on the petitioner to show grounds for reopening the proceeding, including changes of fact or law that have occurred since the conclusion of the hearing. 52 Pa. Code § 5.571(b). The Commission may reopen the record after the presiding officer has issued a decision if there is reason to believe: (1) that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding; and (2) that the party seeking to reopen the proceeding has demonstrated “good cause” for the admittance of this evidence. 52 Pa. Code §§ 5.571(d), 5.431(b).

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Vero made twenty-one Findings of Fact (FOF) and reached ten Conclusions of Law (COL). *See I.D.* at 7-10, 18-19. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

1. Revenue Complaint – Docket No. C-2023-3043108

The ALJ noted Mr. Ferguson’s testimony that the outcome of the *2021 Rate Case* allowed Aqua to collect \$4,428,399 per year from New Garden customers. Aqua calculated tariffs that would deliver this result. The ALJ provided that Mr. Ferguson’s Revenue Complaint focused on two issues regarding the consumption data Aqua used to calculate these tariffs. I.D. at 12 (citing Tr. at 40). The ALJ also noted Mr. Ferguson’s testimony that the consumption data in question does not reflect the actual use by customers. Additionally, Mr. Ferguson testified that Aqua’s total volume forecast was less than actual consumption at the time of filing, which would have the effect of increasing rates, and therefore revenue, above the allowed number. *Id.* According to Mr. Ferguson, it is not possible to arrive at fair and reasonable tariffed rates using invalid data. I.D. at 12 (citing Tr. at 65).

2. Expense Complaint – Docket No. C-2023-3043109

The ALJ stated that Mr. Ferguson provided testimony that towards the end of its operations, New Garden Township Sewer Authority was required to truck wastewater from its South End facility to its East End facility at a cost of \$1.2 million per year. New Garden’s wastewater operation was sold to Aqua in December 2020.⁵ Aqua continued to haul wastewater for eight to ten months after the purchase. Aqua activated an existing pipeline between the facilities at a cost of \$600,000. When the pipeline was activated, the transport of wastewater by truck was discontinued. I.D. at 11 (citing Tr. at 31). Mr. Ferguson testified that Aqua included a \$1.2 million per year cost for “Purchased Wastewater” in its *2021 Rate Case*. The Complainant highlighted that the

⁵ See *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code For approval of its Acquisition of the Wastewater System Assets of New Garden Township*, Docket No. A-2016-2580061 (Final Order entered December 3, 2020) (*Acquisition Proceeding*).

cost ended two months after the *2021 Rate Case* was filed. Mr. Ferguson claimed that Aqua had the opportunity to correct its filing before the rate increase became effective on May 19, 2022, but failed to do so. Therefore, Mr. Ferguson claimed that Aqua was able to improperly increase its revenue and profitability. I.D. at 11-12 (citing Tr. at 11, 34, 42).

3. Aqua's Testimony

The ALJ noted that Aqua presented the testimony of Ms. Erin Feeney, Manager of Rates for Aqua. Ms. Feeney testified that in a typical rate case, the Company's historic test year usually ends about four months before the initial filing. Ms. Feeney also asserted that the Company's initial filing for the *2021 Rate Case* contained the best information the Company had at the time, using rate-making estimates. I.D. at 13 (citing Tr. at 143).

The ALJ acknowledged Ms. Feeney's testimony regarding Mr. Ferguson's Revenue Complaint. Ms. Feeney explained that the Company used the best information available at the time of the filing – *i.e.*, the actual data provided by New Garden in the prior *Acquisition Proceeding*. I.D. at 14 (citing Tr. at 145-46). Ms. Feeney further explained that at the heart of Mr. Ferguson's Revenue Complaint is a rate design problem, and that if Aqua were to reset the rate bands using more recent data but keep the 106 million gallons in order to collect and design rates equal to the \$4.4 million of authorized revenue, the current rate for the first two bands, where most of the residential customers are located, would be higher and not lower. I.D. at 14 (citing Tr. at 153). Additionally, Ms. Feeney testified that the rate design ordered by the Commission in the *2021 Rate Case Order* was proposed by the Commission's Bureau of Investigation and Enforcement (I&E), and not Aqua. I.D. at 14 (citing Tr. at 124-25).

Regarding Mr. Ferguson's Expense Complaint for hauling wastewater, the ALJ noted Ms. Feeney's explanation that at the time of the filing of the *2021 Rate Case* on August 20, 2021, the Company was aware that there was a large expense it was incurring for hauling wastewater between two facilities in the New Garden division. According to Ms. Feeney, the Company was actively searching for a solution to eliminate the trucking expense, but no solution had been found at the time of the filing. Therefore, Ms. Feeney explained, the Company's filing reflected its belief that it would continue to incur this expense until the end of the FPFTY. I.D. at 13-14 (citing Tr. at 143).

The ALJ provided that Ms. Feeney emphasized that the *2021 Rate Case* was fully litigated. Ms. Feeney stated that no active parties challenged the *pro forma* usage data or wastewater treatment and disposal costs with respect to the New Garden rate division. Ms. Feeney testified that the Company addressed Mr. Ferguson's public input testimony in the briefs filed by Aqua. I.D. at 14-15 (citing Tr. at 122-23). In addition, Ms. Feeney noted that the Recommended Decision in the *2021 Rate Case* addressed the issues raised by Mr. Ferguson in his sworn public input hearing testimony. I.D. at 15 (citing Tr. at 123; Aqua Exh. A).

The ALJ also noted Ms. Feeney testimony that on May 23, 2022, Aqua submitted its Compliance Tariff, which was filed in accordance with both the Commission's *2021 Rate Case Order* and the Commission's regulations. The usage data used in the Compliance Tariff filing was the same as the usage data presented in the initial rate case filing. I.D. at 15 (citing Aqua Exh. 5-B). Ms. Feeney stressed that Aqua's Compliance Tariff filing was subject to a review process before it was permitted by the Commission to become effective by operation of law. I.D. at 15 (citing Tr. at 139-41; Aqua Exhs. C, D).

4. The ALJ's Disposition

The ALJ provided that the Order issued in this proceeding on October 22, 2024, advised the Complainant that tariff provisions previously approved by the Commission are *prima facie* reasonable. I.D. at 15 (citing *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered July 28, 2011); *Zucker v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). The ALJ further provided that Mr. Ferguson was advised that a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. I.D. at 16 (citing October 22, 2024 Order at 8 (additional citations omitted)).

The ALJ stated that at the November 25, 2024 evidentiary hearing, Mr. Ferguson clarified that he was challenging Aqua's existing tariff provisions not because the facts and circumstances leading to the creation of the tariff had changed so drastically as to render the application of the tariff provision unreasonable, but because he believed that Aqua did not meet its obligation to provide factual and correct data for its New Garden sewer operation in its *2021 Rate Case*. I.D. at 16 (citing Tr. at 11). Mr. Ferguson requested that the Commission: (1) investigate Aqua's revenues based on usage compliance data and the wastewater hauling expense as reported in the Company's filings, (2) determine new tariffs, and (3) order refunds to customers in Aqua's New Garden division if overcharges are found. I.D. at 16 (citing Tr. at 90).

The ALJ reasoned that ratemaking, by its nature, is prospective. I.D. at 16 (citing *Columbia Gas of Pa., Inc. v. Pa. PUC*, 613 A.2d 74, 76 (Pa. Cmwlth. 1992))

(*Columbia Gas*)). The ALJ explained the use of a future test year and the prohibition against retroactive ratemaking, as follows:

Typically, a utility files a general rate case with a record of revenues and expenses for the past year and a projection of anticipated expenses and revenues for a future test year. See 66 Pa.C.S. § 315(e). The future test year is a projection of a future 12-month period reflecting anticipated or projected results of operations. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76. The use of a test year allows the prudently managed utility to recover all expenses and a reasonable return and, therefore, requires normalization or removal of all abnormal, non-recurring events from the test year. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76; see also Cawley & Kennard, *Rate Case Handbook*, 1983, pp. 54, 150-51. Based on the information provided, the Commission determines whether the utility has proved that its requested rates are just and reasonable. 66 Pa.C.S. § 315(a).

Because of the prospective nature of rates, a rule against retroactive ratemaking has developed. The rule against retroactive ratemaking prohibits a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. *Cheltenham & Abington Sewerage Co. v. Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942); see also Krieger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 Univ. Ill. L. Rev. 983, 984. The policy reasons behind this rule are that if retroactive ratemaking is allowed, it makes the “test year” method of ratemaking meaningless and the general principle that those customers who use power should pay for its production rather than requiring future ratepayers to pay for past use. The Commonwealth Court has stated this rule as “[t]he Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations.” *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n*, 487 A.2d 118 (Pa. Cmwlth. 1985); *Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994).

Also, in *Philadelphia Electric Co. v. Pennsylvania Public Utility Commission*, 502 A.2d 722 (Pa. Cmwlth. 1985), the Commonwealth Court held that there should be no line-by-line examination of items in a rate case and an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery. Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. *Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

I.D. at 16-17.

The ALJ concluded that what Mr. Ferguson is seeking from the Commission is equivalent to retroactive ratemaking on two single issues – the revenue rate design and the wastewater hauling expense – which were fully considered in the *2021 Rate Case*. The ALJ dismissed the consolidated Complaints in their entirety, finding that the claims therein are barred by law and no relief can be granted.

I.D. at 17.

C. Petition to Reopen the Record

1. Petition and Answer

In his Petition, the Complainant states that the purpose of his Petition is to: (1) reemphasize the need for a Commission investigation into Aqua's rate case behavior; and (2) request a limited reopening of the record to address Aqua's wastewater usage projections, as detailed in the Revenue Complaint, and the wastewater hauling expense, as detailed in the Expense Complaint. Petition at 3. The Complainant provides that:

[T]he facts and law have not changed since the record was closed, but the public interest requires reopening because the essential facts have not been adequately elucidated which has

allowed Aqua to make evasive and disingenuous arguments that, if not countered with the complete facts, will produce an unjust result and a disincentive for honest rate case behavior.

Petition at 2.

The Petition also includes four pages of improper replies to Aqua's Reply Exceptions filed on May 1, 2025 in this proceeding, and discussed, *infra*. Petition at 4-8. We note that these replies to Aqua's Reply Exceptions do not constitute permissible pleadings before the Commission and will not be considered because they are improper filings under the Commission's Regulations. Specifically, Section 5.535 of the Commission's Regulations, 52 Pa. Code § 5.535, does not permit a party to file a reply to Reply Exceptions. 52 Pa. Code § 5.535(a).

In its Answer to the Petition, Aqua maintains that the Complainant is seeking a second attempt to meet his burden of proof by having the record reopened to serve discovery and gather evidence related to the timing of wastewater trucking expenses and alleged adjustments to the Company's Compliance Tariff. Answer to Petition at 4 (citing Petition at 2). Aqua contends that the Complainant offers no explanation as to how re-opening the record to allow additional discovery on facts he concedes were known and discoverable throughout this proceeding would serve the public interest. Aqua submits that the Complainant was afforded ample opportunity to conduct discovery regarding these matters in advance of the evidentiary hearing to gather the materials he now requests. Additionally, the Company reasons, the Complainant was given the opportunity to cross-examine Aqua's witness on these points in lieu of discovery. Aqua argues that the Complainant was provided a full and fair opportunity to pursue his claims, and the public interest does not require any additional discovery or hearing in this case. Answer to Petition at 5.

2. Disposition

On review, we shall deny the Complainant's Petition. The Complainant, in his Petition, repeats the arguments he articulated in his two Complaints and his Exceptions, *infra*. In our view, the Complainant has not presented any material changes of fact or law, nor has he shown good cause such that the record developed in this proceeding should be re-opened. The Complainant could have asked the Company at the evidentiary hearing for the information he is seeking. In fact, he mentioned these issues at the hearing during his testimony. Tr. at 23, 45. At the hearing, the ALJ explained repeatedly that the Aqua witnesses were available to answer his questions regarding the matters for which he is now seeking to reopen the record. Tr. at 8, 14-15, 23-24, 46, 81. Furthermore, the Complainant participated in cross-examination of the Aqua witness and was free to ask his questions at that time. Tr. at 142-50. Additionally, the Complainant participated in the re-cross-examination of the Aqua witness. Tr. at 156-60.

The information the Complainant is seeking was discoverable, and thus available, prior to the closing of the record. Consequently, this information constitutes neither new nor persuasive evidence sufficient to warrant reopening the record. In addition, we are not persuaded by the Complainant's assertion that reopening the record is in the public interest. The Complainant had the opportunity to present his case at the evidentiary hearing and through his Exceptions. He has not met his burden of proof that Aqua has violated a statute, regulation, Commission Order or tariff. Accordingly, as we find no good cause shown to reopen the record, the Complainant's Petition is, therefore, denied.

D. Motion to Strike Aqua's Replies to Exceptions

1. Motion and Answer

In his Motion, the Complainant requests that the Commission strike and exclude from consideration the portions of Aqua's Reply Exceptions, *infra*, appearing in Parts II(A), (B), (C), and (D) on pages 2-13 that reply to the Complainant's Exception Nos. 1-3, *infra*. Motion at 4.

The Complainant maintains that Section 1309(a) of the Code, 66 Pa.C.S. § 1309(a), provides prospective rate relief, and Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), provides refund relief, and both sections apply to the Complaints. According to the Complainant, Aqua's argument invoking the *prima facie* reasonableness of Commission-approved rates, the rule against retroactive ratemaking, the prohibition against single-issue ratemaking, and Aqua's objections to refunds are "inapt and irrelevant to this case." Motion at 3.

In its Answer to the Motion, Aqua contends that the Complainant provides no specific facts in support of the Motion. According to Aqua, the Complainant merely restates the basis for his Complaint and repeats the same arguments found in the Complainant's Exceptions. Answer to Motion at 3. Aqua puts forth that the Commission has previously rejected a similar motion to strike replies to exceptions where the complainant argued without basis that the replies contain misrepresentations of fact and the motion provides no factual or legal support to strike the replies. Answer to Motion at 3 (citing *Koger v. Duquesne Light Company*, Docket No. C-2023-3038703, 2025 Pa. PUC LEXIS 11 (Order entered January 8, 2025)).

According to Aqua, the Complainant admits that he is not offering any new basis for his Motion but relies on the same arguments found in the Complainant's

Exceptions, *infra*. In this regard, Aqua highlights the Complainant's statement that "Consequently, for these reasons and the reasons further explained in Ferguson's Exceptions, portions of Aqua's Reply Exceptions should be stricken and excluded from consideration of the merits of Ferguson's complaints." Answer to Motion at 4 (citing Motion at 3). Therefore, in Aqua's view, the Motion is an "impermissible collateral attack on Aqua's Replies to Exceptions" as the Motion provides no factual or legal basis to strike Aqua's Replies to Exceptions, but is merely a restatement of the Complainant's arguments in his Exceptions. Aqua notes that the Commission's Regulation at 52 Pa. Code § 5.535 provides a party with the right to file replies to exceptions, but that there is no provision in the Commission's Regulations that provides a party with the right to file an answer or reply to replies to Exceptions. Answer to Motion at 4-5.

2. Disposition

Upon review, we find that the Motion is an attempt by the Complainant to reply to Aqua's Replies to Exceptions, which is an improper and procedurally defective filing. As Aqua observes in its Answer to Motion, our Regulations provide no opportunity to file replies to reply exceptions. *See* 52 Pa. Code § 5.535. Moreover, the Complainant provides no new facts in his Motion. Rather, his Motion is merely a reiteration of his arguments from his Complaints and his Exceptions, *infra*. As discussed more fully below, the ALJ correctly found that the Complainant was seeking unlawful retroactive ratemaking and single-issue ratemaking and properly dismissed the Complaints. The ALJ also found that the claims raised by the Complainant are barred by law and no relief can be granted. I.D. at 19. We agree. The *2021 Rate Case* was a fully litigated proceeding. The rates in the Compliance Tariff were set in accordance with the *2021 Rate Case Order*. Mr. Ferguson has not provided a credible, factual or legal basis for striking portions of Aqua's Replies to Exceptions. Therefore, we will deny the Complainant's Motion.

E. Exceptions, Replies, and Dispositions

We note at the outset that to the extent the Complainant used extra-record materials in his Exceptions, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). Accordingly, any extra-record information the Complainant has proffered in his Exceptions will not be considered. *Apollo Gas*. Also, where the Complainant has offered new arguments in his Exceptions not previously addressed in the record, we note that these arguments cannot be considered after the record has been closed. *See* 52 Pa. Code § 5.431.

1. Complainant's Exception No. 1, Aqua's Replies, and Disposition

a. Exception No. 1 and Replies

In his Exception No. 1, the Complainant contends that the ALJ erred by concluding that the Complainant did not meet his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a), because he did not overcome the *prima facie* reasonableness of Aqua's commission-approved tariff. Exc. at 8 (citing I.D. at 19, COL Nos. 9 and 10). In addition, the Complainant avers that the ALJ erred by not imposing the burden of proof found in Section 315(b) of the Code, 66 Pa.C.S. § 315(b), on Aqua and overlooked the Complainant's right to complain under Section 1309(a) of the Code, 66 Pa.C.S. § 1309(a). The Complainant acknowledges that the ALJ described Mr. Ferguson's burden of proof under Section 332(a). Exc. at 8 (citing I.D. at 10-11). Additionally, Mr. Ferguson provides that the ALJ found that the Complainant did not meet his burden of proof "because tariff provisions approved by the Commission are *prima facie* reasonable and Mr. Ferguson did not overcome that *prima facie* reasonableness." Exc. at 9 (citing I.D. at 15, 16). However, Mr. Ferguson insists that he

does not have to prove, as the ALJ stated, “that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable.” Exc. at 9 (citing I.D. at 16).

According to Mr. Ferguson, he complained that “Aqua had committed improprieties in its *2021 Rate Case*, and he requested that the Commission institute an investigation into Aqua’s conduct.” As relief, the Complainant argues, he requested various possible remedies to make the New Garden wastewater customers whole. The Complainant contends that he “did not challenge the finality of the Commission’s rate order.” He argues that he was not seeking that the rate case be revisited and the tariff revised, but that if the Commission’s investigation of his allegations merits it – customers should receive an immediate payment by check or bill credit. Exc. at 9-10.

The Complainant argues that his Complaints were authorized by Section 1309(a) of the Code, 66 Pa.C.S. § 1309(a), with refunds authorized by Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), if such rates were found to be unreasonable or the tariffed rates were found to be incorrectly charging customers. Exc. at 10 (citing *Michael Christian v. Audubon Water Co.*, Interim Order Denying Respondent’s Preliminary Objections issued September 4, 2024, Docket No. C-2024-3049476 (*Audubon*)). The Complainant argues further that he met his burden of proof as found in his Exception No. 4, *infra*. He provides that “Aqua’s excuses were astoundingly weak, especially because Section 315(b) required Aqua to do more than merely present co-equal evidence.” The Complainant avers that he established a *prima facie* case that Aqua did not meet the requirements of Section 315(e) regarding the fully projected test year data. Exc. at 11. The Complainant contends that the testimony of Aqua’s witness, Ms. Feeney, did not prove that Aqua complied with Section 315(e). Exc. at 12.

In Reply to the Complainant’s Exception No. 1, Aqua argues that the Complainant is challenging Commission-approved base rates. R. Exc. at 5. Aqua contends that under Section 1303 of the Code, 66 Pa.C.S. § 1303, the rates specified in a utility’s tariff have the force and effect of law and are binding until changed. Aqua explains that it is well established law that, as a general rule, any adjustment to the “commission-made rate” of a Pennsylvania public utility can only be effective prospectively. Aqua explains further that the Pennsylvania Supreme Court held that a utility is permitted to charge rates approved by the Commission until the Commission subsequently issues an order setting new rates. R. Exc. at 6 (citing *Cheltenham & Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334, 337 (Pa. 1942)).

According to Aqua, the Complainant has provided no evidence that the facts and circumstances leading to the creation of the tariff provisions have changed so drastically as to render the application of the tariff provision unreasonable. R. Exc. at 7. Aqua contends that the evidence presented by Ms. Feeney demonstrated that: (1) Aqua collected less revenues from New Garden operations than it was authorized for calendar year 2023; and (2) the rates charged by Aqua for New Garden operations do not actually reflect the full cost of service for those operations. *Id.* at 7 (citing Tr. at 130-33; Aqua Exh. E at 22). Aqua avers that the Complainant cannot demonstrate that the application of the tariff is unreasonable under these circumstances. R. Exc. at 7.

Aqua maintains that regardless of whether the Complainant sought an “investigation” or any other relief, he is challenging a Commission-approved rate. Additionally, Aqua provides that this argument ignores the fact that the disputed rates were already investigated by the Commission as part of the fully litigated *2021 Rate Case* and were set by the Commission in the *2021 Rate Case Order*. R. Exc. at 7.

Aqua submits that the Complainant’s reliance on *Audubon* is misplaced for two reasons: (1) *Audubon* did not dispose of the merits of a complaint against existing,

Commission-approved rates, but denied certain preliminary objections; and (2) *Audubon* demonstrates that the ALJ correctly applied the law in this matter. The presiding officer in *Audubon* concluded that the complainant “bears the burden of proof in this matter and is cautioned that challenging the reasonableness of a Commission-approved tariff carries a heavy burden.” R. Exc. at 8 (citing *Audubon* at 7 (emphasis in original)).

Finally, Aqua provides that while the Complainant cites to his Exception No. 4 to claim he demonstrated a *prima facie* case for his claims, he did not carry his “very heavy burden.” Aqua explains that the Company set its rate in its Compliance Tariff in accordance with the *2021 Rate Case Order*, it collected less than it was authorized from the New Garden operations in 2023, and the rates for New Garden do not actually reflect the full cost of service for New Garden wastewater customers. R. Exc. at 8 (citing Tr. at 130-33).

b. Disposition

On consideration of the record evidence, we find that the Complainant did not meet his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a). Namely, the Complainant did not “establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission.” *See* 66 Pa.C.S. § 701; I.D. at 10. In his Revenue Complaint, the Complainant generally argued that Aqua miscalculated the amount of wastewater New Garden customers would generate, resulting in rates that are too high. In his Expense Complaint, the Complainant submitted that Aqua did not continue to incur an expense that it estimated would continue through the FPFTY, and thereby overcharged New Garden wastewater customers. *See* Revenue Complaint at 7-42; Expense Complaint at 7-12. We disagree with both of the Complainant’s claims.

Regarding the Revenue Complaint, Aqua testified that the Company used the wastewater data available from New Garden Township, as provided in the *Acquisition Proceeding*. Tr. at 136. Aqua also testified that if the relief Mr. Ferguson sought was granted, Aqua would be justified in charging higher rates to New Garden customers, rather than lower rates. *Id.* at 152-53. Aqua provided in its testimony that the rates for New Garden wastewater customers were recovering less than the actual cost of service. The full cost of service would have been approximately \$5.4 million in the *2021 Rate Case*. *Id.* at 133.

Turning to the Expense Complaint, Aqua testified that at the time of the filing of the *2021 Rate Case*, the Company used the data available to it. Aqua was aware of the cost and expected this expense to continue through the FPFTY. Aqua explained that, after the trucking expense ended, the Company incurred additional costs that were not included in the *2021 Rate Case* filing for additional power, labor, and outside contractor costs. Tr. at 151. Mr. Ferguson testified that Aqua spent \$600,000 to reinstate a pipeline to be able to discontinue the trucking expense and that New Garden left the wastewater storage completely full in anticipation of the sale. *Id.* at 21. Mr. Ferguson testified that Aqua “trucked 6,000 to 8,000 gallons [sic] loads 12 hours a day for 8 to 10 months and [that] it cost over \$800,000.” *Id.* at 31. Mr. Ferguson acknowledged that the pipeline was idle for fifteen years and may have required hydrostatic pressure testing to determine its viability. *Id.* at 40. However, Mr. Ferguson did not acknowledge that there may have been a cost for the hydrostatic testing.

While Mr. Ferguson contends in his Exceptions that Aqua did not incur the \$1.2 million annual cost as long as it originally expected, he does not include, in his calculations, the costs required to upgrade the pipeline or acknowledge that the costs Aqua incurred may have exceeded the monthly rates estimated by New Garden, as costs may have increased, and New Garden left the wastewater storage completely full. Exc. at 19-20. Aqua testified that “there are expenses that the company actually incurred

when the trucking costs went away. We had additional power costs, additional labor costs, additional outside contractor services costs. So there were other costs that were not included in the filing that we did incur.” Tr. at 151.

While the Complainant cites to his Exception No. 4, *infra*, arguing that he established a *prima facie* case, we disagree with this assertion. ALJ Vero advised the Complainant that he had “a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable.” I.D. at 15-16 (citing *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996)). We agree with ALJ Vero that the Complainant has not met his burden of proof to show that the tariff is unreasonable. Aqua testified that the Company used the information available at the time of the filing. Aqua incurred additional expenses not included in the *2021 Rate Case*. Aqua received less than its allowed revenues in 2023 for the New Garden costs. The New Garden wastewater customers paid less than the cost of service. If Mr. Ferguson were granted the relief he has sought, Aqua may be justified in charging higher rates to New Garden customers, instead of lower rates. Tr. at 152-53. All of this evidence, when considered together, supports the finding that the Complainant has failed to show that the ALJ erred by concluding that the Complainant has failed to carry his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a). Furthermore, we find no error in Conclusion of Law Nos. 9 and 10. Accordingly, we shall deny the Complainant’s Exception No. 1.

2. Complainant’s Exception No. 2, Aqua’s Replies, and Disposition

a. Exception No. 2 and Replies

In his Exception No. 2, Mr. Ferguson contends that the ALJ erred by concluding that the Complainant did not meet his burden of proof under Section 332(a) of

the Code, 66 Pa.C.S. § 332(a), because his “claims are barred by the law and no relief can be granted under the rule against retroactive ratemaking.” Exc. at 8 (citing I.D. at 18, COL Nos. 5 and 6). The Complainant contends that the rule against retroactive ratemaking does not apply here because it only applies to the setting of future rates. Mr. Ferguson avers that “because of Aqua’s misconduct during its 2021 rate case, the resulting rates...were unreasonable under Section 1309(a) and that he and other New Garden Township customers were being incorrectly charged under Aqua’s tariff.” Exc. at 13.

In Reply to the Complainant’s Exception No. 2, Aqua argues that the ALJ correctly addressed the general prohibition against retroactive ratemaking. R. Exc. at 9 (citing I.D. at 16-17, 18-19, COL Nos. 4-6). Aqua alleges that the Complainant contradicts himself by stating that his Complaints “do not seek a recovery of surpluses or refunds of deficits, but then also asserts that his “complaints were expressly authorized by Section 1309(a), with refunds authorized by Section 1312(a).” R. Exc. at 10 (citing Exc. at 10, 13). Aqua provides that the Complainant states he is seeking “restitution to harmed customers.” R. Exc. at 10 (citing Exc. at 12).

Aqua submits that the Complainant’s statement that “he seeks an investigation to determine whether intentional overcharges occurred by Aqua’s misconduct” falsely claims that Aqua somehow violated the Code, a Commission regulation, or Commission Order by establishing wastewater rates in its tariff pursuant to the *2021 Rate Case Order* and charging Mr. Ferguson consistent with those Commission-approved rates. R. Exc. at 10 (citing Exc. at 13). Aqua avers that the Complainant’s statement that “he and other New Garden Township customers were being incorrectly charged under Aqua’s tariff” should be rejected. R. Exc. at 10 (citing Exc. at 13). Aqua explains that this is the first time the Complainant has raised this claim, and it contradicts Mr. Ferguson’s sworn statements on cross-examination. R. Exc. at 10.

b. Disposition

We find that the Complainant is seeking unlawful retroactive ratemaking with this claim. Mr. Ferguson’s argument that the prohibition against retroactive ratemaking does not apply here is incorrect. He is asking for a revised tariff and refunds to affected customers, which is tantamount to retroactive ratemaking. Furthermore, his claim that he and other New Garden customers were being charged incorrectly is a new argument, which is procedurally improper at this stage of the proceeding. It is not appropriate to include a new argument at the Exceptions stage of a case because new arguments cannot be considered after the record has been closed. 52 Pa Code § 5.431. Moreover, we note that the Complainant testified at the evidentiary hearing that he was being charged in accordance with the Commission-approved tariff. Tr. at 108-09. For these reasons, we shall deny the Complainant’s Exception No. 2.

3. Complainant’s Exception No. 3, Aqua’s Replies, and Disposition

a. Exception No. 3 and Replies

In his Exception No. 3, the Complainant argues that the ALJ erred by concluding that he failed to carry his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a), because of the prohibition against single-issue ratemaking. Exc. at 14.

According to the Complainant, the general rule under Pennsylvania law is that “there may be no line by line examination” of items of expense or revenue and variations in “an isolated item of revenue or expense” may not, “**without more**,” support “a Commission order of refund or recovery.” Exc. at 14 (citing *Phila. Elec. Co. v. Pa. PUC*, 502 A2.d 722, 727-728 (Pa. Cmwlth 1985) (emphasis in original)). Additionally, the Complainant submits that single issue ratemaking occurs “when only

one element of the general ratemaking equation is examined *between rate cases...*” Exc. at 14 (citing *Petition of UGI Utilities, Inc. – Elec. Div. for Approval of Its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, 2011 Pa. PUC LEXIS 1690 at *28 (Recommended Decision issued July 13, 2011) (emphasis in original)). The Complainant argues that his Complaints provide “more” to support a refund and occurred during a rate case, not between rate cases. Exc. at 14-15.

In its Replies, Aqua notes the Complainant’s assertion that his “complaints did not involve occurrences between rate cases” but involved “actions that occurred during Aqua’s rate case.” Aqua further notes the Complainant’s argument that Aqua engaged in “extraordinary misconduct” that satisfies the “extraordinary and non-recurring” event exception to the general prohibition. R. Exc. at 11 (citing Exc. at 15). Aqua explains that in each Complaint, Mr. Ferguson has clearly challenged singular elements of the rates established in the *2021 Rate Case*. R. Exc. at 11.

b. Disposition

We find that the Complainant is improperly seeking single-issue ratemaking in his claims in both the Revenue Complaint, based on wastewater usage calculations, and the Expense Complaint, based on the wastewater hauling expense. However, we find no error in Conclusion of Law Nos. 7 and 8. We disagree with the Complainant that something “more” exists here allowing for the re-examination of two rate items in the *2021 Rate Case*. Aqua has testified that it used the information available at the time to complete its rate case estimations. Aqua collected less than the allowed revenues in 2023, and the New Garden wastewater customers paid less than the cost of service. Therefore, we shall deny the Complainant’s Exception No. 3.

4. Complainant's Exception No. 4, Aqua's Replies, and Disposition

a. Exception No. 4 and Replies

In his Exception No. 4, the Complainant argues that the ALJ erred by failing to address and decide the substantive merits raised in his Complaints, which he submits established a *prima facie* case. The Complainant reiterates his arguments from the Revenue Complaint, the Expense Complaint, and the evidentiary hearing. Exc. at 15-24.

In its Reply to Exception No. 4, Aqua provides that the ALJ correctly recognized the applicable ratemaking principles and acknowledged that the rates set forth in the Compliance Tariff were reviewed and vetted by the Commission. R. Exc. at 13 (citing I.D. at 10, 15-16). Aqua submits that the result of this review process was that Aqua was authorized to implement a rate increase that was substantially less than what the Company requested in the *2021 Rate Case*. According to Aqua, the ALJ and the Commission are not required to reach a decision on the merits because the instant Complaints are properly barred by the general prohibition against retroactive and single-issue ratemaking. R. Exc. at 13-14.

Aqua maintains that the Complainant did not carry his burden of proof with respect to the Revenue Complaint. Aqua notes that the ALJ correctly cited to and discussed the testimony provided by Aqua's witness, Ms. Feeney, at the hearing. R. Exc. at 17 (citing I.D. at 14-15). Aqua highlights Ms. Feeney's testimony that the Company used the best data available to Aqua at the time it filed the *2021 Rate Case*. Aqua used actual consumption data from New Garden that had been provided to Aqua during the proceeding to acquire the New Garden system. Aqua stresses that the usage data utilized by Aqua was not challenged by any active party in the case. R. Exc. at 17 (citing Tr. at 121-23).

Aqua avers that when the Commission issued the *2021 Rate Case Order*, it authorized a lower revenue requirement increase than what Aqua sought, and authorized Aqua to collect \$4.4 million in revenue using a rate design proposed by I&E for the New Garden operations. R. Exc. at 17 (citing Tr. at 124-25). Additionally, Aqua notes that the Compliance Tariff was submitted consistent with the *2021 Rate Case Order* and was reviewed and approved by the Commission. R. Exc. at 17 (citing Tr. at 139-41; Aqua Exhs. C and D).

Aqua states that the Complainant remains of the opinion that while the Compliance Tariff “did demonstrate compliance,” it only did so because “the Commission was unaware of the data issues.” R. Exc. at 18 (citing Exc. at 24). However, according to Aqua, the Complainant provides no basis for this claim. Aqua contends that the Complainant’s claim ignores the fact that the *2021 Rate Case* was fully litigated and the usage data used by Aqua was not challenged by any party. R. Exc. at 18 (citing I.D. at 14-15).

In addition, Aqua maintains that the Complainant did not meet his burden of proof with respect to the Expense Complaint. According to Aqua, the Complainant provided no evidence that the Company’s projections with regard to the Purchased Wastewater Expense were unreasonable at the time the *2021 Rate Case* was filed. Aqua submits that the Complainant argues for the first time in his Exceptions that Aqua stopped incurring this expense between August and October 2021 after a pipeline was activated. R. Exc. at 16 (citing Exc. at 18). Aqua avers that the Complainant provides no citation to any evidence of record in this matter to support this claim, which clearly demonstrates that an alternative solution was put into place during this time frame after Aqua developed its projections, and after the record in the *2021 Rate Case* closed. R. Exc. at 16.

Aqua insists that the Complainant failed to carry his heavy burden with respect to the Revenue Complaint and the Expense Complaint. Aqua further maintains that both the Revenue Complaint and Expense Complaint are properly barred by law. R. Exc. at 17, 18.

b. Disposition

As provided, *supra*, in our disposition of Exception No. 1, we find that the Complainant has failed to carry his burden of proof. Aqua used data from New Garden, obtained during the *Acquisition Proceeding*, to determine usage by the New Garden wastewater customers. Aqua expected the wastewater hauling to continue through the FPFTY. Aqua incurred additional costs that were not part of the rate case when the costs for wastewater hauling ended. The Complainant acknowledges that the ALJ addressed the Complainant's arguments. Exc. at 15, 20 (citing I.D. at 11-13). We find no error in the ALJ's evaluation of the Complainant's evidence and testimony. We agree with the ALJ that the Complainant failed to prove that Aqua has violated a statute, regulation, Commission Order, or tariff. *See* I.D. at 19, COL No. 10. Therefore, we shall deny Exception No. 4.

5. Complainant's Exception No. 5, Aqua's Replies, and Disposition

a. Exception No. 5 and Replies

In his Exception No. 5, the Complainant argues that Finding of Fact Nos. 8, 12, and 13 are incomplete, misleading, and unfair. The Complainant submits that the doctrine of collateral estoppel does not apply to this proceeding because the sworn testimony he provided at the November 21, 2021 public input hearing in the *2021 Rate Case* did not address "issues of law, fact, or ultimate fact adjudicated in the rates case." The Complainant argues that "adjudication of Ferguson's complaints was

not *relitigation* of the issues presented by Ferguson’s complaints.” In Mr. Ferguson’s view, such “issues were raised and decided for the first time and not redundantly so.” Exc. at 24-26 (emphasis in original).

In its Reply, Aqua notes that the ALJ did not render a ruling on the issue of collateral estoppel. Aqua avers that each of the ALJ’s Findings of Fact establish that the rates for New Garden’s wastewater operations, challenged by the Complainant, were considered and disposed of via a fully litigated base rate proceeding in order to establish the presumption that these rates are just and reasonable. R. Exc. at 19 (citing I.D. at 15-16). According to Aqua, if the ALJ had applied the doctrine of collateral estoppel and barred the Complaints on these grounds, it would have been correct to bar the Complaints on this and other related grounds. R. Exc. at 19.

b. Disposition

Upon review, we find that the ALJ did not address or apply the doctrine of collateral estoppel in the Initial Decision. The ALJ stated at the evidentiary hearing that “collateral estoppel did not apply or does not apply, as far as I’m concerned.” Tr. at 180. Consequently, we find that the Complainant’s claims regarding the application of the doctrine of collateral estoppel is, therefore, moot. The Complaints were dismissed on the basis that the claims therein would violate the prohibition of retroactive ratemaking and single-issue ratemaking. Moreover, the ALJ found that the Complainant failed to meet his burden of proof that Aqua violated a statute, regulation, Commission Order, or tariff. I.D. at 19. Upon review of the record, along with the Initial Decision and the Complainant’s Exceptions, we do not find that Finding of Fact Nos. 8, 12, and 13 are incomplete, misleading or unfair. Accordingly, the Complainant’s Exception No. 5 is denied.

IV. Conclusion

In light of the above discussion, we shall: (1) deny the Complainant's Exceptions; (2) adopt the ALJ's Initial Decision; (3) dismiss the Complaints; (4) deny the Complainant's Petition to Reopen the Record; and (5) deny the Complainant's Motion to Strike, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by William Ferguson on April 21, 2025, to the Initial Decision of Administrative Law Judge Eranda Vero, issued on March 31, 2025, at Docket Nos. C-2023-3043108 and C-2023-3043109, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Eranda Vero, issued on March 31, 2025, at Docket Nos. C-2023-3043108 and C-2023-3043109, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaints filed by William Ferguson, on September 9, 2023, at Docket Nos. C-2023-3043108 and C-2023-3043109, are dismissed.

4. That the Petition to Reopen Proceeding, filed by William Ferguson on May 9, 2025, is denied.

5. That the Motion to Strike Certain Portions of the Reply Exceptions, filed by William Ferguson on May 9, 2025, is denied.

6. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Matthew L. Homsher". The signature is written in a cursive style with a large, stylized "M" and "H".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: June 18, 2025

ORDER ENTERED: June 18, 2025

APPENDIX J



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
Office of Administrative Law Judge
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120
October 22, 2024

In Re: C-2023-3043108
C-2023-3043109

(SEE ATTACHED LIST)

William Ferguson v. Aqua Pennsylvania Wastewater Inc

Billing Dispute

CALL-IN TELEPHONE HEARING NOTICE

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Call-In Telephonic

Date: Monday, November 25, 2024

Time: 10:00 AM

Presiding: Administrative Law Judge Eranda Vero
Phone: 215.560.2105 Fax: 717.231.4764

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

Toll-free Bridge Number: **866.560.8322**
PIN Number: **36676820**

WITNESSES: If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the Conference and PIN numbers above.

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

REPRESENTATION. If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

PRESENTING EXHIBITS. If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to the Presiding Officer at evero@pa.gov and one (1) copy each must be sent to every other party. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly pre-marked for identification purposes.

ACCOMMODATION. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Please call the OALJ scheduling office at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the session, we will make every reasonable effort to have an interpreter present. Please call the scheduling office at the Public Utility Commission at least ten (10) business days prior to the hearing to submit your request.

- Scheduling Office: (717) 787-1399
- Persons who are deaf or hearing-impaired may call a relay operator at 711.

E-FILING. The PUC offers a free e-Filing Subscription Service. This service allows a user to file documents electronically and receive an automatic email notification whenever a document is added, removed, or changed on the PUC website in a specific case. For information and to subscribe to this service, visit the PUC’s website at:

<https://www.puc.pa.gov/filing-resources/efiling/>

PAPER FILING. If you do not have the capability to open and use an e-Filing account, you may file paper documents with the Secretary of the Commission. Filing of paper documents must be sent by overnight delivery to:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

It is important that you retain the tracking information as proof of submission. Emailed or faxed submissions filings to the Commission are not acceptable.

CONFIDENTIAL MATERIAL. If a filing contains confidential or proprietary material, the filing should be submitted by overnight delivery to ensure arrival. Large filings containing confidential or proprietary material may also be submitted through the Commission's Share Point File system. These filings should be followed by a hard copy with a flash drive or CD for the Commission's file. Filers should contact the Secretary's Bureau in advance to set up a Share Point File before submitting the filing.

Cc:
ALJ Vero
L Jackson
Calendar File

**C-2023-3043108 - WILLIAM FERGUSON v. AQUA PENNSYLVANIA WASTEWATER
INC**

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(Counsel for Aqua Pennsylvania)

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Accepts eService
(Aqua Pennsylvania)

APPENDIX K

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Ferguson	:	
	:	
v.	:	C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	

PREHEARING ORDER FOR TELEPHONE HEARING

AND NOW this 24th day of October 2024, it is hereby ORDERED:

1. DATE AND TIME OF HEARING. An initial telephonic hearing will be held for this case on:

Monday, November 25, 2024, beginning at 10:00 a.m.

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

Toll-free Bridge Telephone Number: **1.866.560.8322**

PIN Number: **36676820**

You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.

2. FAILURE TO APPEAR: You must attend the hearing and present evidence on the issues raised in the pleadings. You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice”

which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

3. CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. **To request a continuance, you must serve a written request to me and every other party (a “motion”) at least five (5) days before the hearing.** Your motion should be served pursuant to paragraph 5 below. Your motion should include:

- (1) The case name, case number, and hearing date;
- (2) The reason you are requesting a continuance; and
- (3) State whether the other party(s) agrees to the request. If you do not know whether the other party(ies) agrees to the request, state that you do not know.

4. PRESENTING EXHIBITS. If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to the presiding officer’s Legal Assistant at pmcneal@pa.gov and one (1) copy each must be served to every other party pursuant to paragraph 5B below. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly pre-marked for identification purposes. **Do not include account numbers or any other personally identifiable information (PII), such as social security numbers, in your documents or exhibits. It is the parties’ responsibility to redact any PII contained within a document or exhibit before submitting it into the record.** Do not file your proposed documents or exhibits with the Secretary’s Bureau. However, you should file a Certificate of Service with the Secretary’s Bureau indicating you sent the proposed documents or exhibits to every other party.

Note that attachments to your Complaint or Answer are not admitted into the record unless submitted separately. Please be sure to have all pre-served exhibits with you at the time of the hearing. This hearing may be your only opportunity to present evidence in support of your complaint.

5. FILING AND SERVING DOCUMENTS. When you file a document, you must provide the original to the PUC **and** serve a copy to the other party or parties. Instructions on how to file with the PUC and serve other parties are provided below.

A. FILING DOCUMENTS

(1) E-FILING. To file with the PUC, the PUC offers a free e-Filing Subscription Service. This service allows a user to file documents electronically and receive an automatic email notification whenever a document is added, removed, or changed on the PUC website in a specific case. For information and to subscribe to this service, visit the PUC's website at: <https://www.puc.pa.gov/filing-sources/efiling/>

(2) PAPER FILING. If you do not have the capability to open and use an e-Filing account, you may file paper documents with the Secretary of the Commission. Filing of paper documents may be hand delivered or sent to:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

(3) CONFIDENTIAL MATERIAL. If a filing contains confidential or proprietary material, the filing should be submitted by overnight delivery to ensure arrival. Large filings containing confidential or proprietary material may also be submitted through the Commission's Share Point File system. These filings should be followed by a hard copy with a flash drive or CD for the Commission's file. Filers should contact the Secretary's Bureau in advance to set up a Share Point File before submitting the filing.

B. SERVING DOCUMENTS

(1) SERVING OTHER PARTIES. When you file documents with the PUC, you must also serve a copy on the other party or parties. You may serve a copy by U.S. First-Class Mail or by hand. You may also serve a copy by eService or email, if the

other party has agreed to electronic service. For your convenience, a copy of the PUC's current service list of all parties to this proceeding is enclosed with this Order.

(2) SERVING THE PRESIDING OFFICER. Be sure that you serve me directly with a copy of any document that you file in this proceeding at the time of its filing. You must email one (1) copy to me, via my legal assistant, Pamela McNeal at pmcneal@pa.gov. **If you do not have access to email, you must serve me by mail, addressed to:**

Administrative Law Judge Eranda Vero
PA Public Utility Commission
801 Market Street Suite 4063 4th Floor
Philadelphia, PA 19107

If you send me any correspondence or document, you must also send a copy of that correspondence or document to every other party pursuant to paragraph 5 of this Order.

6. DOMESTIC VIOLENCE VICTIM. If you are a domestic violence victim and you want to be considered for protections that may be available to domestic violence victims, you must submit a copy of your Protection from Abuse (PFA) Order or other Court Order issued by a Pennsylvania court, which provides evidence that you are a domestic violence victim. You should mark this Order as "CONFIDENTIAL." In the case of these Orders, we will take precautions to ensure that your address is not made public.

7. REPRESENTATION. If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.¹ And, unless you are an attorney, you may not represent someone else.

¹

52 Pa. Code §§ 1.21 & 1.22.

8. BURDEN OF PROOF. The Complainant (the one filing the Complaint) bears the burden of proof and must present evidence sufficient to demonstrate that the utility has violated the Public Utility Code, or a regulation or order of the PUC.²

9. ACCOMMODATION. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Please call the PUC scheduling office at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearing, we will have an interpreter present. Please call the scheduling office at the PUC at least ten (10) business days prior to your hearing to submit your request.

Scheduling Office: (717) 787-1399
The AT&T Relay Service number for persons who are deaf or hearing-impaired is:
1-800-654-5988.

10. CONTACT INFORMATION. If your e-mail address or telephone number changes during the course of the proceeding, you must immediately update the Office of Administrative Law Judge by calling 717-787-1399.

11. SETTLEMENT. The PUC's policy is to encourage settlements.³ The utility shall contact the Complainant at least one week before the scheduled hearing to talk over a possible settlement of this case. Even if you are unable to settle this case, you may still resolve many questions or issues during your talks. If an agreement is reached on all the issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled.

12. PAYMENT ARRANGEMENT CASES. If you have requested a payment arrangement, Chapter 14 of the Public Utility Code will be applied.⁴ You must be prepared to testify about the total gross monthly income of the household. A household includes all adults living at the service address and benefiting from the utility service. The "total gross monthly

² 66 Pa.C.S. § 332(a).

³ 52 Pa. Code § 5.231(a).

⁴ 66 Pa.C.S. §§ 1401-1419.

household income” includes, but is not limited to, the following: (a) the “before taxes or other deductions” pay from salaries, wages, tips or other compensation; (b) pension, retirement or social security benefits; (c) Supplemental Security Income (SSI); (d) unemployment compensation benefits; (e) workers’ compensation benefits; (f) alimony; and (g) any other source(s) of income.

The utility must prepare and submit the following documents at least five (5) business days before the hearing: (a) an account statement, showing the history of the account for a minimum of 24 months or the entire history of the account, whichever is less; (b) a copy of the most recent Bureau of Consumers Services (BCS) decision, if any; and (c) a brief summary of any payment arrangement(s) made between the utility and the customer.

The customer must make monthly payments for current usage on or before the billing due date while this complaint is pending. Failure to make payments may result in the utility terminating your service.

13. BILLING COMPLAINT. If you are claiming that there are incorrect charges on your utility bill, then you must be prepared to provide the dates that are important and an explanation about any amounts or charges that you believe are not correct.

14. VIOLATIONS. A finding of a violation of a PUC Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with 66 Pa.C.S. § 3301 or other provisions of the Public Utility Code.

15. HEARING PROCEDURES. Although the hearing is being conducted telephonically for the convenience of the parties, it is still a formal hearing and will be conducted in accordance with the PUC’s Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3, and 5.

Please be sure to participate from a location, and using a phone, where background noise will be minimized, and the reception is clear.

16. FURTHER INFORMATION. A guide to participating in a Formal Complaint proceeding is available on the PUC's website at: <https://www.puc.pa.gov/complaints/formal-complaints>

Date: October 24, 2024

_____/s/
Eranda Vero
Administrative Law Judge

C-2023-3043108 - WILLIAM FERGUSON v. AQUA PENNSYLVANIA WASTEWATER INC.

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(*Aqua Pennsylvania*)