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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
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Yefim Shnayder	C-2021-3029134
Andrea and Matthew Rivera	C-2021-3029154
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John Day	C-2021-3028734
Robert Dolan	C-2021-3028798
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Ronald and Alexis Koenig	C-2021-3028483
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Stephen and Teresa Mason	C-2021-3028576
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Lisa Rampone	C-2021-3028804
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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

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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 FPFTY in any rate proceeding and such FPFTY 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 FPFTY. 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 FPPTY *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.