

the court in *Popowsky 2011* recognized that *Newtown Artesian Water* purchased a significant portion of its water from other sources, precedent clearly demonstrates that where an automatic adjustment clause is not specifically authorized by statute, a utility must show that the expense is easily identifiable and beyond the utility's control.¹¹⁸ Thus, Aqua contends that it has made this showing. Aqua R.B. at 105-06, n.41.

Upon our review of the record, we are not persuaded by the Company's arguments that there is a need to implement the ECAM and PWAC in this proceeding. First and foremost, we agree with the ALJ and the opposing Parties that granting Aqua's request to adopt the riders constitutes single-issue ratemaking because the costs that Aqua proposes to recover through the reconcilable surcharges apply to costs that are normal, ongoing costs of providing water service. Therefore, because we find that the costs are not unique, unexpected, or non-recurring, we conclude that it would not be prudent to permit the Company to use the Section 1307(a) statute to justify its requests for the proposed riders because the Company has not persuaded us that it has experienced any extraordinary circumstances with regard to its purchased water and energy costs when compared to the other routine O&M costs it recovers through base rates.

We also disagree with the Company's contention that since the Commission approved a similar rider in *Newton Artesian Water*, the Commission should approve its proposed riders in this proceeding. Our review of the record indicates that there is a major difference between the rider approved for *Newtown Artesian Water* and those proposed here. According to testimony presented by I&E's witness, Mr. Esyan Sakaya, "unlike Aqua's situation, Newtown purchased approximately 52% of the water sold in the first half of 2009 from the Bucks County Water Authority (I&E Exh. No. 3, Sch. 3, p.1)" and "[t]he purchased water expense was over 29% of total O&M and depreciation expense for the same period (I&E Exh. No. 3 Sch. 3, p.2)." I&E St. 3 at 18.

¹¹⁸ See Aqua M.B. at 245 (citing, in part, *Popowsky 2011*).

Here, the record indicates that Aqua only purchases 2.46% of the total water it sells. Mr. Sakaya further testified:

The total proposed purchased water expense claim is \$4,135,311 (Aqua Ex. No. 3, Sch. C-7 1.i). Subtracting the affiliated purchases of \$297,839 leaves \$3,837,472 (\$4,135,311 - \$297,839) of non-affiliated purchase water expense. The total Operating, Maintenance and Depreciation expense for the Company is approximately \$272,527,954 (Aqua Ex. 5-A, Sch. C, column 2, line 4, p. 9). Therefore, non-affiliated purchased water expense is only 1.4% (\$3,837,472 / \$272,527,954) of total operating, maintenance and depreciation expenses. This 1.4% is minimal compared to the 24% - 70% of purchased gas costs that is typical for a natural gas utility with a PGC adjustment.

I&E St. 3 at 16. We note that the OSBA's witness, Mr. Kalcic, testified that based on the \$4.15 million in total purchased water expense claim in this proceeding, "[t]he Company's total claimed cost of service for its water operations (excluding Act 11) is \$575.03 million. As such, Aqua's claimed purchased water expense amounts to only 0.7% of its total costs." OSBA St. 1 at 24.

With regard to the Company's purchased power expense the Company proposes to recover through the ECAM, Mr. Sakaya testified:

[T]he total proposed purchased power expense, projected for the FPFTY ending March 31, 2023 is \$8,182,196 (AP Ex. No. 1-A, Sch. C-6.1, line 3). The total Operating, Maintenance and Depreciation expense for the Company is approximately \$272,527,954 (AP Ex. 5-A, Sch. C, column 2, line 4, p. 9). Therefore, purchased power expense is only 3.0% (\$8,182,196 / \$272,527,954) of total Operating, Maintenance and Depreciation expenses. This 3.0% is nowhere near the 24% - 70% that is typical for gas utilities with a PGC adjustment. Even large variations in an expense of this size

would not represent an extraordinary impact to the Company's operational outlook.

I&E St. 3 at 23. Using Mr. Kalcic's comparison that he calculated for the Company's total percentage of purchased water to the Company's total cost, we calculate that the Company's claimed purchased energy costs amounts to only 1.4% of its total costs $[(\$8,182,196 \div \$575,030,000) \times 100 = 1.4\%]$.

In view of the above comparisons, our approval of the reconcilable rider for *Newton Artesian Water* does not justify approving the ECAM and PWAC riders in this proceeding as argued by Aqua. The *Newtown Artesian Water* case is a rare exception where we determined such a rider was absolutely necessary because of the extraordinary circumstances in that case. Such circumstances are not relevant with regard to the Company's purchased water and energy costs in this proceeding. As the ALJ and the opposing Parties appropriately observed, these expenses are routine O&M expenses that are not unique, unexpected, or non-recurring. R.D. at 100-02. Thus, we are of the opinion that granting the Company's request to adopt its ECAM and PWAC reconcilable riders would be akin to single-issue ratemaking. As emphasized by the Commonwealth Court, single-issue ratemaking is similar to retroactive ratemaking and is generally prohibited if it impacts on a matter normally considered in a base rate case such as this proceeding. *See Popowsky 2011*, 13 A.3d at 593. Additionally, we agree with the ALJ that to approve the proposed riders "would violate the ratemaking principle of matching revenues, expenses, return and rate base." R.D. at 102. Accordingly, the Company's *Newtown Artesian Water* argument in its Exceptions is denied.

Regarding the Company's Exception to the ALJ's ruling that Aqua failed to demonstrate that it cannot adequately control its energy and purchased water costs through normal mechanisms, we again are not persuaded by the Company's arguments. The Company has not submitted any convincing historical data demonstrating erratic

fluctuations in its water or energy costs between rate cases that would persuade us that such costs are beyond the Company's control. In fact, the record demonstrates otherwise. I&E witness, Mr. Sakaya, testified that historical data submitted by the Company "shows no significant price volatility from municipal water suppliers from 2019 to 2023." I&E St. 3-SR at 13 (citing Aqua Exh. 1-A(a), Sch. C-7.1.1.). Mr. Sakaya also noted that "the cost of purchased water on a cost per unit basis generally increases from rate case to rate case like many other expenses, such as payroll and benefits, but it is not volatile and subject to large unanticipated increases or decreases." I&E St. 3 at 15. The fact that the Company's purchased water and energy expenses are not volatile or unpredictable makes it easier for the Company to control its costs. In this regard, we agree with the OCA's position that because the Company's purchased water costs are known and subject to contractual agreements with various entities, Aqua's costs are not entirely beyond its control.

We also agree with the ALJ's evaluation of this matter when she stated the following with regard to the ECAM:

As the advocates observe, Aqua is a large company with considerable buying power. There is no reason to believe that it cannot adequately control its energy costs through normal cost control mechanisms. Incentivizing cost containment by including energy costs in base rates is more effective than relying on the notion of a "regulatory compact with customers and ratepayers in the delivery of safe, adequate, and reliable utility service."

R.D. at 102.

In light of the above, we conclude that Aqua has unreasonably requested an exception to the normal rate making treatment for purchased water and energy expenses by requesting that future increases be automatically recovered through a reconcilable surcharge. Accordingly, Aqua's Exception No. 11 is denied and the ALJ's

recommendation is adopted in its entirety with regard to the proposed ECAM and PWAC.

2. Federal Tax Adjustment Surcharge

a. Positions of the Parties

Aqua proposed to add a new reconcilable surcharge, entitled the Federal Tax Adjustment Surcharge (FTAS), to its water and wastewater tariffs (Tariff Water No. 3, Original Pages 32-34, and Tariff Sewer No. 3, Original Pages 16-19) which will adjust its water and wastewater base rates when there are changes in federal corporate income tax rates by adding the revenue requirement for the incremental impact of the change in the federal corporate income tax rate. Aqua St. 8 at 14-15.

Aqua explained that the FTAS is analogous to the State Tax Adjustment Surcharge (STAS) that the Company, and other major Pennsylvania utility companies, have had in place for many years, and just as the STAS provides for adjustments to base rates for changes in state taxes (and more specifically for changes under the Pennsylvania Corporate Net Income Tax), so too does the FTAS provide for adjustments to base rates for changes in federal corporate income tax. Aqua St. 8 at 18.

According to the Company, the FTAS was proposed because significant changes in the federal corporate income tax rate can substantially impact the Company's revenue requirement and it is more appropriate to adjust rates quickly to reflect significant federal tax rate changes. Aqua St. 8 at 15, 17. The Company cited the TCJA as an example to describe the difficulty and delays of implementing federal corporate tax rate changes in the current environment. Aqua St. No. 8 at 17. The Company explained that for companies like Aqua that had planned base rate cases in 2018, the lower tax rate was reflected in those decisions prospectively in early 2019, along with refunds for 2018.

Id. The Commission set temporary rates for other companies and implemented surcredits¹¹⁹ on July 1, 2018, to begin the flow through of the tax rate decrease and required those companies to record regulatory liabilities for the first half of 2018. *Id.* This process delayed receipt of the effects of the tax rate change and required changes to rates previously charged for service. *Id.* The Company expressed its concerns that the White House recently has proposed an increase in the corporate tax rate from 21% to 28% and, if enacted, this will roll back some tax reductions enacted only a few years ago. *Id.* at 15. The Company presented an analysis showing the effect the potential corporate tax increase would have on its revenue requirement. *Id.* at 16-17. The Company opined that any delay in adjusting rates can result in either significant refunds or retroactive collections after the effective date of the tax rate change and may compel Aqua to file another rate case sooner than originally planned at significant cost and time to all parties. *Id.* at 15, 16. The Company averred that the FTAS will avoid these concerns because it is designed to adjust rates as fast as possible to reflect tax rate changes. *Id.* at 18.

I&E opposed the FTAS. According to I&E, the Company's stated need for the surcharge is speculative as the Company cannot say with certainty if or when an increase to the federal corporate income tax rate might be enacted or ever take effect. I&E St. 1-SR at 32-46. Furthermore, the Commission and its advisory staff have appropriately responded to changes in tax law as they have recently dealt with this issue in response to the reduction in the federal corporate income tax rate that took effect starting January 1, 2018, because of the TCJA. *Id.* at 32. I&E is confident that the Commission would provide adequate and timely guidance on a statewide basis to affected regulated utilities if such a tax rate change occurs. Accordingly, I&E opined that there is no need for the proposed FTAS at this time.

¹¹⁹ Generally, a "surcredit" is a surcharge returned to a customer.

I&E also had concerns about allowing rate adjustments in a surcharge mechanism for excess ADIT because deferred taxes require more scrutiny of regulators and statutory parties due to subjectivity in certain circumstances in determining the proper normalization periods, particularly for tax differences associated with non-protected assets that are not subject to the strict requirements of IRS normalization rules. *Id.* at 33-39. In addition, I&E testified in favor of a one-sided interest component for a reconcilable rider where the Company must pay interest to ratepayers for excess tax amounts due to be refunded to ratepayers so that companies would be encouraged to promptly refund its customers. I&E St. 1-SR at 39-40.

The OCA also opposed the implementation of the FTAS. OCA St. 2 at 14-15. The OCA submitted that the Company's proposal to implement the FTAS is premised on Aqua's belief that the federal corporate income tax rate may be increased from 21% to 28%, but it is uncertain when the next change in the corporate federal income tax rate will occur, and whether the legislation enacting the change will include other provisions which affect corporate federal income tax liabilities. *Id.* at 15. Based on the provisions attached to the TCJA (*i.e.*, the tax treatment of net operating loss carryback and caps, and limits on net interest deductions), the OCA asserted that such provisions need to be given consideration before they are allowed. *Id.* According to the OCA, the FTAS is neither necessary nor reasonable because it is unknown when or even if the federal government will make legislative changes to the federal tax rate. *Id.* The OCA concluded that any changes to the federal corporate income tax rate should be addressed by the Commission on a generic basis. *Id.* at 16.

b. Recommended Decision

The ALJ agreed with I&E and the OCA that Aqua's proposed FTAS should be rejected because it is uncertain when the next change in the federal corporate income tax rate will occur, and it is unknown whether any future legislation enacting a change in

the federal corporate tax rate would include other provisions which would affect tax liabilities. The ALJ stated that, at this time, there is no pending legislation proposing an increase to the federal corporate income tax rate, and even if legislation was being considered in Congress, there is no way of knowing if or when and in what form the tax change would be implemented. The ALJ concluded that, while it may be true that changes in tax rates may affect utilities differently, the FTAS proposal is premature and should be rejected because there is no current legislation to actually consider, and Aqua is requesting a surcharge mechanism with no trend or context in which to evaluate it. R.D. at 106.

c. Aqua Exception No. 12 and Replies

In its Exception No. 12, the Company believes the ALJ erred in rejecting the proposed FTAS. Aqua Exc. at 36. First, Aqua opines neither the ALJ nor any of the other Parties found or concluded that the proposed method of calculation, mechanics, or safeguards contained in the FTAS were unreasonable. Aqua Exc. at 37 (citing Aqua M.B. at 261, noting that no parties contested these aspects of the FTAS).

The Company believes that the ALJ's concern – that a change in the federal corporate income tax rate is uncertain – is irrelevant to the determination of whether the FTAS is just and reasonable, because “if no change occurs, the FTAS has no impact upon customers,” and “if/when a change does occur, the FTAS will act as a temporary mechanism if/when a change occurs between a utility's base rates and will more-timely ensure that the impacts of the change are reflected in the utility's rates.” Aqua Exc. at 37 (citing Aqua M.B. at 262; Aqua St. 8-R at 9).

Aqua also argues that it has demonstrated that any change in the federal corporate income tax rate would have a significant impact upon tax expense, and the Company's rates. The Company estimates that an increase in the federal corporate

income tax rate from 21% to 28% would result in a \$14 million increase in its revenue requirement. Aqua Exc. at 37 (citing Aqua St. No. 8 at 1). The Company avers that this calculation is un rebutted; therefore, it is reasonable to infer that any changes in the federal corporate income tax rate, whether an increase or a decrease, will significantly impact the Company's base rates. Aqua Exc. at 37.

Aqua also reiterates its analogy of its proposed FTAS with the existing STAS mechanism in that "[j]ust as the STAS provides for adjustments to base rates for changes in state rates (and more specifically for changes under the Pennsylvania Corporate Net Income Tax), so too does the FTAS provide for adjustments to base rates for changes in federal corporate income tax." Aqua Exc. at 37-38 (citing Aqua St. 8 at 18).

In reply to Aqua Exception No. 12, I&E first disagrees with the Company's representation that the ALJ "did not find or conclude that the proposed method of calculation, mechanics, or safeguards contained in the FTAS were unreasonable." I&E R. Exc. at 12 (citing Aqua Exc. at 37). I&E submits that the ALJ did not have to consider whether the FTAS is reasonable because she concluded that the proposed FTAS is premature when she stated in her Recommended Decision that "at this time there is no pending legislation proposing an increase to the federal corporate income tax rate." I&E R. Exc. at 12 (citing R.D. at 106). I&E notes that the ALJ further concluded that "while it may be true that future changes in tax rates may affect utilities differently, there is no current legislation to actually consider and Aqua is requesting a surcharge mechanism with no trend or context in which to evaluate it." *Id.* In view of the fact that the ALJ made no determinations to find that the terms of the FTAS were reasonable, I&E submits that Aqua's Exception here should be rejected. *Id.*

In its reply, the OCA disagrees with Aqua's arguments in its Exceptions that the lack of evidence of any change in the federal tax liabilities is irrelevant, and that

there would be a large impact on Aqua if there is a change in the federal income tax rate. OCA R. Exc. at 22 (citing Aqua Exc. at 36-38). The OCA contends that Aqua's arguments are without merit because, if the issue of tax liabilities is "irrelevant," then there is no reason to implement Aqua's proposed FTAS. *Id.* Thus, the OCA opines that Aqua's position is consistent with the evidence that establishes that the FTAS is not necessary. *Id.* Because Aqua has not presented any evidence that a tax change is imminent and its witness admitted that "no one can say with any certainty if/when an increase to the federal corporate income tax will take effect," the OCA argues that Aqua's proposed FTAS must be rejected. *Id.*; R.D. at 106 (citing Aqua St. 8-R at 10).

The OCA also takes issue with Aqua's argument that the impact of any tax changes would be large. OCA R. Exc. at 22. The OCA asserts that Aqua's statement is pure speculation because the Company has no knowledge or certainty of any upcoming tax changes. The OCA avers that the Company has presented its FTAS as the only way to address a hypothetical tax change. Nevertheless, the OCA stresses that future, unknown changes to the federal corporate income tax rate should be addressed by the Commission on a generic basis for all the public utilities similar to what the Commission did in February 2018, when it initiated a generic proceeding to determine the effects of the TCJA on public utilities' tax liabilities. *Id.* (citing OCA M.B. at 83; OCA St. 2 at 15).

d. Disposition

We agree with the ALJ's recommendation that the Company's proposed FTAS reconcilable rider should be rejected because it is premature, and no trend or context has been established under which it can be evaluated. In reaching our decision on this matter, we share the concerns of the ALJ and the opposing Parties that it is uncertain when the next change in the federal corporate income tax rate will occur, and it is unknown whether any future legislation enacting a change in the federal corporate tax rate would include other provisions which would affect tax liabilities. Thus, we agree

with the ALJ that the FTAS proposal is premature because there is no current legislation to actually consider and Aqua is requesting a surcharge mechanism with no trend or context within which to evaluate it. *See* R.D. at 106. We further find that the FTAS is not necessary at this time because this Commission, in conjunction with our advisory staff, recently provided timely guidance on a statewide basis to the affected regulated utilities with regard to the method of calculation, mechanics, or safeguards on the methodology to use in implementing the federal corporate income tax rate that took effect starting January 1, 2018. *See Tax Cuts and Jobs Act of 2017*, Docket No. M-2018-2641242. In our opinion, the Commission may utilize this same process again should changes in the federal tax rate occur in the future. Furthermore, we support the OCA's position that any changes to the federal corporate income tax rate should be addressed by the Commission on a generic basis for all the public utilities under its jurisdiction because "future legislation changing the federal corporate income tax rates may impact other provisions which affect corporate federal tax liabilities." *See* OCA M.B. at 83.

For the reasons above, we shall deny Aqua's Exception No. 12 and adopt the ALJ's recommendation that rejects the Company's FTAS reconcilable rider it proposed in its water and sewer tariffs.

3. Universal Service Rider

a. Positions of the Parties

Aqua proposed to include a Universal Service Rider (USR) in its water and wastewater tariffs¹²⁰ that would adjust its residential base rates to recover the costs of its

¹²⁰ *See* proposed Tariff Water No. 3, Original Pages 32-34, and proposed Tariff Sewer No. 3, Original Pages 19-21.

proposed customer assistance programs (CAP) from all residential customers, except those enrolled in the Company's CAPs. Aqua explained that its proposed USR is similar to the riders in the tariffs of its affiliated Peoples Companies¹²¹ and other energy utilities throughout the state and that it has filed the USR consistent with the terms of the *Aqua-Peoples Settlement*¹²² that was approved by the *Aqua-Peoples Acquisition Order*.¹²³ R.D. at 107; Aqua M.B. at 264; Aqua St. 10 at 9; Aqua St. 2 at 17-18.

According to the Company, the USR will be used to recover those costs associated with the following low-income offerings: (1) CAP discounts; (2) CAP arrearage forgiveness benefits; (3) CAP administration by a third party (*i.e.*, Dollar Energy Fund); and, (4) the proposed Conservation and Emergency Repair Program (\$100,000 per year). Aqua St. 10 at 9. Aqua's calculation of the costs to be recovered through the USR is based on its anticipated enrollment in the CAP, subject to an annual reconciliation and audit by the Commission. Aqua St. 10 at 10. Aqua submitted that approval of the USR will ensure that residential ratepayers are only responsible for actual costs of the program, rather than projected costs that may not come to fruition. *Id.*

¹²¹ The Peoples Companies include Peoples Gas Company, Peoples – Equitable Division, and Peoples Natural Gas Company LLC.

¹²² See *Joint Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties*, Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063; June 26, 2019 (*Aqua-Peoples Settlement*).

¹²³ See *Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC for All of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding, LLC's Membership Interests by Aqua America, Inc.*, Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 (Order entered Jan. 24, 2020) at 147-150 (*Aqua-Peoples Acquisition Order*).

The Company provided the following explanation on how its proposed USR will operate:

The USR would adjust customers' bills by adding a charge or credit to reflect increases or decreases, respectively, in the Company's "Baseline Cost." The Baseline Cost is the estimate to administer and provide benefits under the various program components in the proposed CAP. Costs and revenues under the USR will be reconciled each year, and an over or under collection, as applicable, will be included in the "E" factor of the charge.

Aqua M.B. at 264; Aqua St. 2 at 18.

The OCA argued that the USR should not be approved for the following reasons: (1) any recovery of low-income program costs should be recovered in base rates rather than through a reconcilable rider, and the associated costs should be based on net costs, rather than gross costs (R.D. at 107; OCA St. 5 at 42); (2) it is not appropriate for Aqua to use the Peoples Companies' reconcilable riders as models to recover costs for its low-income programs because when the Commission approved the reconcilable riders for Pennsylvania gas and electric utilities, the Commission relied upon specific statutory language from Pennsylvania Energy Competition Acts,¹²⁴ which are not applicable to water/wastewater companies (*Id.* at 43-44); (3) the recovery of the low-income program costs should not be subject to a reconcilable recovery rider because CAP costs: (a) are normal operating costs that represent a small portion of Aqua's total operating revenues; (b) will not vary widely based on changes in total consumption as would occur with energy CAPs; and (c) are not variable costs that fluctuate outside of Aqua's control (*Id.* at 45); and (4) the Company proposed to recover the low-income program costs only from the residential customer class (*Id.* at 46).

¹²⁴ Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2804(9); Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2203(8) (collectively, the Energy Competition Acts).

I&E agreed with the Company in opposing the OCA's position that the Company's universal service program (USP) costs be recovered through base rates. I&E argued it is preferable that the Company's costs for a full-scale universal service plan be recovered via a reconcilable surcharge mechanism that tracks dollar-for-dollar net costs similar to what is used by the Peoples Companies. I&E St. 1-R at 3.

I&E also opposed the OCA's suggestion that only net costs¹²⁵ of the program be recovered via base rates because the OCA failed to address how the Company would not potentially over or under-recover associated net costs if projections are incorporated as a component of base rates which would not be updated until the Company's next base rate case filing. I&E St. 1-R at 3-4.

I&E made the following three recommendations with regard to the Company's proposed USP: (1) in view of the fact that, for the first time, the Helping Hand program will be funded by involuntary ratepayer funding, the Company should be required to perform income verifications to admit participants into the programs to ensure legitimacy of applicants and reduce misuse of the program. (I&E St. 1 at 45; I&E St. 1-R at 5; I&E St. 1-SR at 53); (2) the Company should be required to perform the appropriate tracking, to be reported in the Company's next base rate case filing, that demonstrates its efforts to encourage participants to take advantage of the Federal Low-Income Household Water Assistance Program funds made available via the American Rescue Plan. (I&E St. 1 at 45; I&E St. 1-R at 5; I&E St. 1-SR at 53); and (3) that Aqua should be required to

¹²⁵ The OCA noted that the Company indicated that it does not conduct any collectability studies for its water or wastewater operations assessing the rate at which the Company converts billings into collected revenue. However, the Company did state that it has collection contracts which provide contingency fees ranging between 18% to 40% of the amount collected. Thus, the OCA recommended that a 28% offset (the middle of the contingency fee range) to the gross costs of the program be applied to obtain the net program costs that the Company should be permitted to recover. OCA St. 5 at 42.

monitor available federal and state assistance programs and notify customers of all available sources of aid. (I&E St. 1 at 49; I&E St. 1-SR at 54).

b. Recommended Decision

The ALJ recommended that the Commission approve the Company's proposed USR because she found "it is clear from a review of the *Aqua-Peoples Acquisition Order* that the Commission agreed that a 'comparable' funding mechanism as those used by the natural gas and electric distribution companies in Pennsylvania is preferable." R.D. at 108. She further determined that the use of the USR, which will be subject to audit and an annual reconciliation process, will allow actual costs to be maintained and tracked separately, because the costs proposed for inclusion in the Company's USR are easily identifiable, and any adjustments to the costs would be a simple mathematical exercise. R.D. at 108.

In further support of her recommendation to use the USR reconcilable surcharge to recover Aqua's low-income program costs, the ALJ determined: (1) certain costs that the Company will incur under its CAP program are outside of its control; (2) the Company's enrollment projections, which include a substantial ramp-up in projected participation between Years 1 and 3 of the CAP,¹²⁶ could be less than or exceed the projections; (3) since there is no limit on the number of customers who could participate in the CAP, costs may vary based on enrollment levels;¹²⁷ and (4) the ability to adjust and reconcile the costs associated with such programs via the USR "is particularly important when launching a new program that may not meet or could exceed

¹²⁶ Aqua St. 10 at 11.

¹²⁷ Aqua St. 10-R at 12; see also Aqua Exhibit RFB-1-R (The OCA's witness, Mr. Colton, admitting no limitation on the number of customers who could participate was proposed).

enrollment expectations.”¹²⁸ R.D. at 106-109. In view of the above, the ALJ agreed with Aqua that the reconcilable nature of the proposed USR will “ensure ratepayers are only responsible for actual program costs which may be more or less than original projections.” R.D. at 109 (citing Aqua St. 10-R at 13).

The ALJ explained that if the projected low-income program costs were included in base rates, as argued by the OCA, the costs would “be subsumed regardless of the potential difference between projected and actual costs.” R.D. at 109. The ALJ cited the *Final CAP Investigatory Order*¹²⁹ for the proposition that the Commission has recognized that the recovery of universal service costs through a surcharge, rather than in base rates, is a more effective way to ensure robust customer assistance programs. *Id.*

Finally, the ALJ found that the proposed rider is consistent with the general theme of the *Aqua-Peoples Settlement* to share best practices throughout Aqua and the Peoples Companies. The ALJ explained that this is reaffirmed by the plain language of the *Aqua-Peoples Settlement* which required that Aqua will include “a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania.” R.D. at 109 (citing *Aqua-Peoples Settlement* at ¶ 108; OCA St. 5 at 42-43). Therefore, the ALJ concluded that Aqua’s proposed USR should be approved because it complies with the terms of the *Aqua-Peoples Settlement* that was approved as part of the *Aqua-Peoples Acquisition Order*. R.D. at 109.

¹²⁸ Aqua St. 10-R at 13.

¹²⁹ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (Final Investigatory Order entered December 18, 2006) (*Final CAP Investigatory Order*) at 15. See also testimony of Aqua’s witness, Ms. Rita F. Black, Aqua St. 10 at 10.

c. OCA Exception No. 16 and Replies

In its Exception No. 16, the OCA excepts to the ALJ's recommendation to adopt Aqua's proposed USR to recover the costs associated with its CAPs. OCA Exc. at 26 (citing R.D. at 107-09). The OCA maintains its position that it is proper that Aqua recover the costs of the low-income programs through base rates as normal operating expenses, rather than through the reconcilable USR, and that Aqua should only be permitted to recover the *net* costs of the program. OCA Exc. at 26, 28 (citing OCA M.B. at 152-61; 175-78; OCA R.B. at 82-89).

In support of its Exception, the OCA first asserts that, contrary to the ALJ's and the Company's view, the language in the *Aqua-Peoples Settlement* that directed the Company to file "a comparable cost recovery mechanism" to the natural gas and electric utilities' cost recovery mechanism, did not require that a specific cost recovery mechanism be used. OCA Exc. at 26 (citing R.D. at 147-50). The OCA asserts that the ALJ relied on only a portion of the language in the *Aqua-Peoples Settlement*, and thus, erred by interpreting the above language to mean that Aqua *must* propose, in its next base rate proceeding, a cost-recovery mechanism *just* like that used by the natural gas and electric utilities. OCA Exc. at 26. The OCA cites to its Briefs in which it provided detailed arguments on why a reconcilable rider is not required by the *Aqua-Peoples Settlement*. OCA Exc. at 27 (citing OCA M.B. at 152-161; 175-78; OCA R.B. at 82-89).

In reply, Aqua disagrees with the OCA's position that the ALJ erred by relying on only a portion of the *Aqua-Peoples Settlement* and that the OCA is attempting to "walk back" its admission in its Briefs that Aqua was contractually obligated under this settlement to "implement a universal service program with a suite of low-income assistance programs." Aqua R. Exc. (citing Aqua R.B. at 67; OCA M.B. at 120). The Company submits that the OCA's argument is inconsistent because it wants Aqua to implement a universal service plan similar to those in place at other energy utilities, but

then proposes that Aqua be required to recover its costs differently than the energy utilities' methodology. Aqua R. Exc. at 14 (citing Aqua R.B. at 68).

I&E also disagrees with the OCA's position and replies that it agrees with the ALJ's recommendation that the *Aqua-Peoples Acquisition Order* that approved the *Aqua-Peoples Settlement* permitted Aqua to use a reconcilable rider. I&E avers that Aqua's proposed USR is consistent with the directives of the Commission in the *Aqua-Peoples Acquisition Order* and Aqua's obligation to comply with the terms of the Settlement. I&E R. Exc. at 17-18.

Next, the OCA excepts to the ALJ's conclusion that the program costs are outside of the Company's control, and that a reconcilable surcharge is necessary to allow for full cost recovery and to ensure robust customer assistance programs. OCA Exc. at 27 (citing R.D. at 107-08). The OCA avers that the ALJ disregarded the fact that there is no statutory basis for the full cost recovery of water low-income program costs as there is for energy low-income program costs. Thus, the OCA asserts that a comparison between energy utilities' mature universal services programs with a statute-defined cost recovery mechanism and Aqua's proposed discount/arrearage forgiveness programs is not appropriate. OCA Exc. at 27.

Aqua replies that it disagrees with the OCA's claims that the costs of the program are within Aqua's control, and there is no statutory basis for the cost recovery of water program costs. The Company retorts that the OCA is ignoring its own admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. Aqua R. Exc. at 14 (citing Aqua M.B. at 159; OCA St. 5SR at 29).¹³⁰ In addition, the Company argues that the OCA's assertion that there is no

¹³⁰ The Company projects that the cost of discounts for the water program alone range from \$3 million to \$8 million. The OCA projects costs of \$4 million to \$10 million under its proposal. See Aqua R.B. at 69.

statutory basis for this reconcilable rider ignores Section 1307(a) of the Code, 66 Pa. C.S. § 1307(a). Aqua claims that it has demonstrated that the rider satisfies Section 1307(a). Aqua R. Exc. at 14 (citing Aqua M.B. at 264-265; Aqua R.B. at 68-70).

Next, the OCA argues that the ALJ ignored that every other Pennsylvania water utility with low-income discount programs, including Pennsylvania-American Water Company and Pittsburgh Water and Sewer Authority (PWSA), treat their low-income program costs as normal operating costs that are recovered through base rates.¹³¹ OCA Exc. at 27 (citing OCA R.B. at 87; OCA St. 5SR at 28-29). The OCA asserts that the Commission should also require that Aqua continue doing the same in this case. The OCA adds that contrary to the ALJ's conclusion, there is no need for Aqua to use a reconcilable surcharge because Aqua does not anticipate that there will be substantial fluctuations in the costs of the program. OCA Exc. at 27 (OCA R.B. at 88; OCA St. 5 at 45-46).

The Company rejoins that the OCA disregards the fact that other water utilities' programs are not as robust as the programs proposed by Aqua. Aqua R. Exc. at 14 (citing Aqua M.B. at 158).

Finally, the OCA excepts to the ALJ's Recommended Decision because she did not address the OCA recommendations that only net costs, rather than gross costs, of low-income programs should be recovered, and those costs should be included in base rates, including a cost offset to reflect the benefits of the program to Aqua's uncollectible expenses. OCA Exc. at 28 (citing OCA St. 5 at 42). The OCA submits that the ALJ appeared to ignore the need for an offset which the OCA recommended be established to address the impact of the program on Aqua's uncollectible expenses. *Id.* According to the OCA, an offset is needed for the discount and arrearage forgiveness program costs in

¹³¹ See OCA R.B. at 87; OCA St. 5SR at 28-29.

order to prevent the double-recovery of costs. *Id.* The OCA cites to its Briefs in which it explained that the Commission previously has concluded that double recovery is possible through a reconcilable surcharge and that an offset is appropriate here. OCA Exc. at 28 (citing OCA M.B. at 153-54; OCA R.B. at 83-85).

The Company replies that it disagrees with the OCA's claims that an offsetting reduction to Aqua's uncollectibles expense associated with the proposed USP is required. The Company asserts that the OCA's Exception should be denied because this recommendation is premature and unnecessary where a reconcilable rider is used. Aqua R. Exc. at 14-15 (citing Aqua M.B. at 155-61, 264-65; Aqua R.B. at 67-71, 107).

I&E also replies that it disagrees with the OCA's arguments in its Exceptions that Aqua's net costs of the program should be recovered in base rates. I&E R. Exc. at 12. I&E further states that it supports the ALJ's determination that the *Aqua-Peoples Settlement* requires that Aqua's proposal include "a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania," which do not net their costs. I&E R. Exc. at 12 (citing R.D. at 109).

d. Disposition

The primary argument in this matter focuses on whether the *Aqua-Peoples Acquisition Order*, through the approved, modified, *Aqua-Peoples Settlement*, requires or permits Aqua to implement a reconcilable rider (*i.e.*, the proposed USR) to recover its low-income program costs in its CAP program. The ALJ, Aqua, and I&E share the opinion that it does. However, the OCA asserts in its Exceptions that the ALJ erred in her reliance on the *Aqua-Peoples Settlement* by incorrectly interpreting that it meant that Aqua was given the clearance to file the reconcilable USR exactly like those used by its Peoples' affiliates to recover the costs associated with its low-income CAP.

Upon our review of the *Aqua-Peoples Merger Order* and the *Aqua-Peoples Settlement*, we disagree with the ALJ's reliance on language in the *Aqua-Peoples Settlement* that the ALJ used as the basis to recommend that the Company's proposed USR be approved. As the OCA noted, the ALJ relied on the testimony of Aqua's witness, Ms. Rita Black, who testified with regard to the Company's implementation of the terms of Paragraph 108 of the *Aqua-Peoples Settlement* as follows:

[Paragraph 108] notes that, through the Helping Hand Collaborative process, Aqua PA was to consider development of a comprehensive and universal service and conservation program. The items for evaluation included a customer assistance program, hardship fund, water conservation program, low-income service repair program and a comparable funding mechanism as utilized by energy utilities in the Commonwealth. Following this evaluation, Aqua PA would propose a recoverable universal service plan in its next base rate proceeding using input from the Helping Hand Collaborative and best practices from the Peoples Companies.

Aqua St. 10 at 3; *see also Merger Settlement* at 135; OCA M.B. at 117; OCA R.B. at 85-86; OCA St. 5 at 7. In support of her recommendation, the ALJ averred, "[i]t is clear from a review of the *Aqua Peoples Acquisition Order* that the Commission agreed that a 'comparable' funding mechanism as those used by the natural gas and electric distribution companies in Pennsylvania is preferable." R.D. at 107-08 (citing *Aqua-Peoples Acquisition Order* at 147-150).

We disagree. We find that the *Aqua-Peoples Settlement* did not dictate that a specific cost recovery be used. When we adopted the *Aqua-Peoples Settlement*, we never *directed* that Aqua use the same mechanism used by the Peoples' Companies and other energy Companies to recover the costs of its low-income programs. Paragraph 108 of the *Aqua-Peoples Settlement*, which we approved without modification, is stated in its entirety as follows:

Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA. The items to be evaluated for inclusion in Aqua PA's proposal include: (1) a bill payment/customer assistance program; (2) a hardship fund; (3) a water conservation program; (4) a low-income service repair line and replacement program; and (5) a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania. Aqua PA will submit a rate recoverable universal service proposal in Aqua PA's next base rate case that considers the best practices learned from the Peoples Companies and through conversations from the Helping Hand collaborative.

Aqua-Peoples Settlement ¶ 108 at 23 (emphasis added). We note that Item No. 5 in Paragraph 108 merely states that the Company will include “a *comparable funding mechanism*” for evaluation, and the sentence following Item No. 5 states that Aqua will submit a “*rate recoverable universal service proposal*” in its next base rate case. However, the testimony of Aqua's witness, Ms. Black, quoted above, left out the word “rate” before “recoverable” when she stated, “Aqua PA would propose a *recoverable universal service plan* in its next base rate proceeding.” Nothing in Paragraph 108 specifically directed the type of a comparable funding mechanism that must be evaluated. The Settlement stated only that Aqua was allowed to “consider” such a funding mechanism. Furthermore, the text “rate recoverable” implies that the costs of the universal service proposal should be recovered through base rates. In this regard we, agree with the OCA's assertion that “[i]f the parties had intended to mandate use of a funding mechanism akin to the mechanisms used by Pennsylvania's energy utilities, the Settlement would have said so.”¹³² Similarly, if it were the intent of the Commission to permit the use of a reconcilable rider, we specifically would have modified Paragraph 108 to state that was our intention. Accordingly, we conclude in view of the fact that the

¹³² OCA St. 5SR at 36

settlement stated only that Aqua was allowed to “consider” such a funding mechanism, we reject the ALJ’s reliance on Paragraph 108 in support of her recommendation that the Company’s USR should be approved because it is consistent with the Commission’s directive to file a reconcilable rider to recover its low-income CAP expenses.

It is also important to note that the use of a Section 1307(a) reconcilable rider, such as is proposed here, is the exception, rather than the rule, as can be observed during the history of the Commission, how few times the use of this mechanism has been either legislatively mandated (*i.e.*, when the Energy Competition Acts specifically permitted its use for energy companies) or directed by the Commission (*i.e.*, the implementation of the STAS).¹³³ In this regard we agree with the OCA that Section 1307(a) of the Code does not authorize the Commission to approve surcharges other than in limited circumstances.¹³⁴ OCA M.B. at 157. We further note that when we established the reconcilable surcharge recovery mechanism for energy companies pursuant to the Energy Competition Acts, we concluded that, consistent with the direction given in the Energy Competition Acts, we must allow recovery through a surcharge that is either reconciled or adjusted frequently to track changes in the level of CAP costs. *See* OCA St. 5 at 44 (citing *Final CAP Investigatory Order* at 14-15). However, those energy riders that were approved under legislative mandate for the Peoples Companies and other energy companies are not appropriate models upon which to base the cost recovery for

¹³³ *See* 52 Pa. Code § 69.52, Exh. A (State Tax Adjustment Surcharge Order, entered March 10, 1970). Furthermore, as I&E’s witness, Mr. Sakaya, testified, “the PGC [Purchased Gas Cost], STAS and DSIC mechanisms are authorized by statute while the PWA [Purchased Water Adjustment] and ECA [Energy Cost Adjustment] are not, and, furthermore, the establishment of the PGC and STAS were specifically related to historic volatility.” I&E St. 3-SR at 12-13.

¹³⁴ *See* 66 Pa. C.S. § 1307(a); *CSIC Order*, 869 A.2d at 1160; *see also Pennsylvania Indus. Energy Coal. v. Pa. PUC*, 653 A.2d 1336, 1349 (Pa. Cmwlth. 1995), *aff’d per curiam*, 543 Pa. 307, 670 A.2d 1152 (1996) (*PIEC*). The general rule for expense items is that if the item in question is normally considered in a base rate case, then singling that item out for recovery outside of a base rate case is not appropriate. *CSIC Order*, 869 A.2d at 1157; *PIEC* at 1350.

Aqua's low-income water programs because there has been no legislative carve-out for water companies such as that which exists for energy companies.

We also agree with the OCA's Exceptions in which it argues that a reconcilable rider is not needed here because the Company admitted there will not be substantial fluctuation in its low-income program costs due to changes in bills. OCA St. 5 at 45 (citing OCA-V-29). Aqua disagrees with the OCA's Exception and maintains that the OCA ignores its own witness's admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. Aqua R. Exc. at 14 (citing Aqua M.B. at 159). The Company asserts that it has projected that the cost of discounts for the water program alone will range from \$3 million to \$8 million, while the OCA has projected costs of \$4 million to \$10 million under its proposal. Aqua R. Exc. at 14 (citing Aqua R.B. at 69). Nevertheless, the OCA avers that unlike natural gas bills, which may vary widely, Aqua's water bills will not experience substantial cost fluctuations due to changes in bills. OCA St. 5 at 45. The OCA explained that the variability in costs, such as those found in energy CAPs, would not be present in Aqua's program because, except for a small portion attributable to discounts on Tier 2 consumption for the lowest income, the vast bulk of discounts provided – whether using Aqua's or the OCA's proposed discounts - are applicable only to the base facility charge and to the first tier of consumption (*i.e.*, the first 2,000 gallons of use). *Id.*

We find the OCA's arguments to be more persuasive. The variability arguments presented by the Company assumes that its and the OCA's projections will vary between \$3 million to \$8 million or between \$4 million and \$10 million from month to month. We are of the opinion that such an occurrence is unlikely because the costs associated with Aqua's low-income water assistance offerings will likely start at some point between those ranges and gradually increase over time as participation in the program increases until it eventually levels off at the top of the projected ranges, taking into account the amount of public outreach conducted by the utility and the number of

customers who will actually qualify for each offering pursuant to the design of the programs. Notwithstanding the Company's and the OCA's arguments, we note that this is just one consideration to take into account in considering the reasonableness of a reconcilable surcharge; another issue is the appropriateness of implementing a reconcilable rider in this rate case proceeding rather than addressing it pursuant to Section 1307(a) in the context of a generic investigation proceeding where all water utilities would have the opportunity to participate. This is especially relevant here because, as the OCA noted, all Pennsylvania water utilities that offer discount programs, including Pennsylvania-American Water Company and PWSA, currently recover their low-income assistance program costs through base rates. OCA Exc. at 27 (citing OCA R.B. at 87; OCA St. 5SR at 28-29).

The OCA also excepted to the ALJ's adoption of the Company's position that the reconcilable USR should be approved because the program costs are outside of the Company's control and that a reconcilable surcharge is necessary to allow for full cost recovery and to ensure robust customer assistance programs. OCA Exc. at 27 (citing R.D. at 107-08). As noted, the OCA asserts in its Exceptions that the ALJ disregarded that the statutory mandate, which was enacted to permit energy companies to recover their full low-income program costs, does not apply to water utilities. The OCA further contends in its Exceptions that it is not appropriate to compare the energy utilities' mature universal services programs with a statute-defined cost recovery mechanism and Aqua's proposed discount/arrearage forgiveness programs. Aqua Exc. at 27. Aqua disagrees with the OCA's claims that the costs of the program are within Aqua's control because the OCA ignores its own admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. Aqua R. Exc. at 14 (citing Aqua M.B. at 159; OCA St. 5SR at 29). The Company also submits that, contrary to the OCA's assertion, Section 1307(a) provides a statutory basis for its proposed reconcilable rider.

Although the Company is correct that Section 1307(a) provides the statutory basis for the use of reconcilable riders, the fact remains that unlike energy companies, the water companies are not statutorily-mandated to implement universal service plans or to use a Section 1307(a) rider to recover the associated costs as are the energy companies.¹³⁵ In addition, as we stated, *supra*, use of such riders are the exception rather than the rule, and it is our preference that it is best to consider the development of a policy regarding the use of a Section 1307(a) reconcilable rider to recover water utilities' low-income programs in a generic investigation proceeding. Furthermore, we disagree with the Company that its program costs are beyond its controls; the Company is responsible for establishing the budget and parameters associated with each of its programs. In this regard, the Company has some control over the number of customers who may or may not qualify.

Next, the OCA excepted to the ALJ's Recommended Decision because the ALJ did not address its witness, Mr. Roger D. Colton's, recommendation that only net costs, rather than gross costs, of low-income programs should be recovered in base rates including via a cost offset that reflects the benefits of the program to Aqua's uncollectible expenses. OCA Exc. at 28 (citing OCA St. 5 at 42); OCA M.B. at 151-52. In this regard, the OCA averred in its Main Brief that its witness, Mr. Colton, provided the following testimony why he believed a lost revenue offset to gross low-income program costs for the discount and arrearage forgiveness programs is necessary and should be adopted:

The "basis" for my recommended lost revenue adjustment is not that Aqua PA has performed no collectability analysis. The basis for my adjustment is that, in the absence of such an adjustment, Aqua PA will recover some parts of low-income rates twice. Aqua PA's proposal to include 100% of its low-income discount through rates assumes that, in the absence of the discount, 100% of the billed revenue to discount

¹³⁵ See 66 Pa. C.S. § 2804(9) for electric utilities and § 2203(8) for gas utilities.

participants would have been collected. Only given this assumption is it reasonable to say that the dollar amount of the discount needs to be replaced by separately including that discounted revenue in rates. We know, however, that Aqua PA does not collect 100% of its low-income billings in the absence of the discount.

OCA M.B. at 153 (citing OCA St. 5SR at 30-31). The OCA further submitted in its Main Brief that Mr. Colton argued that the unpaid dollars of its low-income customers are currently reflected in base rates and that Aqua is proposing “to continue to reflect those unpaid dollars in rates and, in addition, to collect 100% of its discounted revenues again as though all of the discounted revenue would have been collected in the absence of the discount program.” OCA M.B. at 154 (citing OCA St. 5SR at 31 (emphasis in original)). Thus, the OCA recommended, that since Aqua has collection contracts which provide contingency fees between 18% to 40% of the amount collected (OCA-II-47), that an “offset in the middle of that range (28%)” should be used to reduce the cost of Aqua’s bill discount program. OCA R.B. at 83 (citing OCA St. 5 at 42).

Aqua replied that the OCA’s recommendation is premature and unnecessary where a reconcilable rider is used. Aqua R. Exc. at 14-15. Aqua’s witness, Ms. Black, submitted that the OCA’s assertions lack merit because:

[o]ver time, as participation in the program grows and matures to a stable level, bad debt levels will adjust accordingly, reflecting appropriate levels of collectability for the Company. I would further note that because we do not have a historical study of low income billing collections and its relation to bad debt, any adjustment proposed at this stage would be premature. Use of the reconcilable rider, which limits arrearage forgiveness recovery to those cost which are

actually incurred due to customers receiving benefits from timely payments, will align recovery with actual collections experience.

Aqua M.B. at 161 (citing Aqua St. 10-R at 14). Aqua averred in its Reply Brief that even if this offset were necessary and appropriate, the OCA's 28% offset is unreasonable and any offset established should be based on actual collections experience gained after implementation of the CAP to ensure the offset reflects the actual collection savings. Aqua R.B. at 70-71.

We agree with the Company. In our opinion, the OCA's proposed 28% offset is arbitrary; and it would not be prudent to adopt it as a realistic offset to reflect actual collections savings. Nevertheless, we agree with the OCA that there is a potential that the Company's CAP may result in a double recovery of low-income rates. Inasmuch as the Company acknowledged that any offset should be based on actual collections experienced gained after the implementation of the CAP to ensure it is an accurate representation of actual collections savings, we shall deny the OCA's Exception concerning its recommended offset and, instead, direct Aqua to take the necessary actions within its Company to monitor and maintain the necessary information that could be used in its next base rate proceeding to determine whether a double-recovery is occurring, and if so, to determine an appropriate offset that should be applied to prevent any double recovery. The Company is further directed to consult with the OCA and I&E to determine the necessary data needed to accomplish this directive.

Accordingly, consistent with the discussion above, we shall reverse the ALJ's recommendation and adopt the OCA's Exception No. 16, in part, by rejecting the Company's proposed reconcilable USR and requiring that the Company continue to recover its low-income program costs through base rates. However, the OCA's Exception No. 16, with regard to its requests that the Company be directed to collect only

the net costs of its low-income program in this proceeding is denied because an appropriate offset has not been determined in this proceeding and needs further review.

Therefore, consistent with the above discussion, the Company is directed to begin monitoring and reviewing the appropriate billing data for purposes of determining, in its next base rate proceeding, if, and to what extent, any offset to its low-income program cost recovery is necessary to avoid any double recovery the Company may receive through actual collections after the implementation of its CAP. The Company is further directed to consult with the OCA and I&E to determine the necessary data needed to accomplish this directive.

XII. Miscellaneous Issues

A. Universal Service Issues

1. Consideration of Affordability and CAP Design

a. Positions of the Parties

Aqua explained that before this proceeding, it made certain commitments regarding its existing Helping Hand Program¹³⁶ and the evaluation and development of a more comprehensive USP as a part of the Commission's approval of the acquisition of the Peoples Companies by Essential Utilities, Inc., f/k/a Aqua America, Inc. Aqua M.B.

¹³⁶ Several years ago, Aqua implemented a program called "A Helping Hand" to facilitate the payment of water and wastewater bills by its low-income residential customers. Helping Hand is "a program designed to help limited-income customers with arrearages to reduce the amount they owe through regular monthly payments." Under the program, "[f]or each timely payment made, participants receive a \$25 credit towards their prior arrearage." Helping Hand does not provide a discount or Percentage of Income Payment Plan (PIP). Aqua St. 10 at 4.

at 141 (citing *Aqua-Peoples Acquisition Order*). In the settlement agreement the Commission approved in the *Aqua-Peoples Settlement*, the parties agreed as follows:

108. Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA. The items to be evaluated for inclusion in Aqua PA's proposal include: (1) a bill payment/customer assistance program; (2) a hardship fund; (3) a water conservation program; (4) a low income service repair line and replacement program; and (5) a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania. Aqua PA will submit a rate recoverable universal service proposal in Aqua PA's next base rate case that considers the best practices learned from the Peoples Companies and through conversations from the Helping Hand collaborative.

Aqua M.B. at 141-142 (citing *Aqua-Peoples Settlement* at ¶ 108).

Consistent with its commitments in the *Aqua-Peoples Settlement*, Aqua has proposed to implement a CAP that builds upon the successful aspects of Helping Hand in order to further assist low-income customers throughout its service territory. Aqua M.B. at 143 (citing Aqua St. 10 at 5-8). The proposed CAP adds tiered bill discount benefits, similar to the structure in place at the Peoples Companies, and an Emergency Repair Program to the benefits already afforded under Helping Hand. The proposed three tiers are set at 100% of the Federal Poverty Level (FPL), 150% FPL, and 200% FPL, with the highest level of discounts provided to those in the first tier and gradually reducing the discounts in the other tiers. Aqua M.B. at 145 (citing Aqua St. 10 at 7; Aqua Exh. RFB-2 (setting forth the discounts to the Base Facility Customer Charge and Consumption Charge that an enrollee can obtain based on their income tier)).

The OCA analyzed the affordability of water and wastewater bills and cited to the extensive testimony of its witness, Mr. Colton. OCA M.B. at 120-131. CAUSE-PA similarly argued that existing rates are unaffordable. CAUSE-PA M.B. at 17-18. Therefore, both Parties recommended modifications to Aqua's proposed CAP.

Among other things, the OCA argued that the benefits of the affordability program contemplated by the proposed USP should be modified to increase the level of discounts provided to customers and to adjust the structure of the income tiers. OCA M.B. at 136-39; 141-42. The OCA also recommended that the design of the discount program should evolve toward a PIP¹³⁷ similar to the program operated by Aqua's sister utility, Peoples Gas. The OCA stated that Aqua should not immediately move to a PIP design but, rather, that a series of policy decisions by the Commission would first be needed, including what water and wastewater burden should be deemed affordable, and such decisions are best addressed in a statewide proceeding involving all water and wastewater utilities and related stakeholders and would involve additional analysis and data than is available in this rate proceeding. OCA M.B. at 135-136; OCA St. 5 at 31. The OCA proposed that Aqua be required to present a PIP in its next base rate proceeding. OCA M.B. at 144-52.

CAUSE-PA supported the OCA's recommendations regarding discount structure and adjusted income tiers. CAUSE-PA M.B. at 21 (citing OCA St. 5 at 35,

¹³⁷ The Commission's CAP Policy Statement provides the following:

Total payment for total electric and natural gas home energy under a percentage of income plan is determined based upon a scheduled percentage of the participant's annual gross income. The participating household's gross income and size place the household at a particular poverty level based on the [Federal Poverty Income Guidelines].

52 Pa. Code § 69.265(2)(i).

Table 9; OCA St. 5 at 39, Table 13; CAUSE-PA St. 1-R at 7). Additionally, CAUSE-PA stated that as its witness, Harry Geller, Esq., recommended in his direct testimony, Aqua should be required to closely monitor and analyze the water and wastewater burdens of CAP participants and should transition its proposed bill discount structure to a PIP structure if participants are not reaching acceptable levels of affordability. CAUSE-PA M.B. at 22 (citing CAUSE-PA St. 1 at 44-45; OCA St. 5 at 31).

Aqua explained in its direct and rebuttal testimony that it performed an affordability analysis and considered bill affordability as a part of the development of the proposed USP. Aqua M.B. at 144-48; Aqua R.B. at 58. The Company averred that the program, as designed, takes affordability into account and also balances the interests of ratepayers who are not low-income, but who bear the costs of universal service programs. Specifically, the Company contended that the OCA and CAUSE-PA fail to consider the effect of their proposed changes upon the rates of non-low-income customers. Aqua R.B. at 59. Aqua also argued that its proposed bill discount program should not be modified. Aqua M.B. at 153-54; Aqua R.B. at 60. Aqua stated that it should not be required to propose a PIP in its next base rate proceeding, particularly when the Company questions the cost/benefit of a PIP for water and wastewater customers at this time. Aqua submitted that once its proposed USP is in place, it can and should be evaluated in the context of a USP proceeding specifically focused on the effectiveness, costs, and benefits of the programs. Aqua R.B. at 63. Aqua further submitted that the OCA and CAUSE-PA's other suggestions regarding discount structure and adjusted income tiers, which would require programmatic changes to the existing system, were unreasonable and not feasible at this time, because Aqua will be converting its billing system to SAP in 2023 and development of the system is in the early stages. *Id.* at 61-62.

b. Recommended Decision

The ALJ agreed with the Company that substantial modification of Aqua's proposed CAP was not appropriate at this time. While the ALJ recognized that the Code permits consideration of a broad range of issues in base rate proceedings, the ALJ concluded that this rate case was not the best forum for considering "the complex social and economic issues related to affordability as it impacts CAP design." R.D. at 113. The ALJ noted the OCA's acknowledgment that the Commission has not established the water and wastewater burden that should be deemed affordable and the OCA's concession that the "policy decision of the appropriate water and wastewater burdens is best addressed in a statewide proceeding involving all water/wastewater utilities and related stakeholders or would involve additional analysis that would require more time and data than is available in this proceeding." *Id.* (citing OCA M.B. at 135-36; OCA St. 5 at 31).

For example, the ALJ pointed out that the OCA and CAUSE-PA proposed that Aqua should be required to implement a PIP in its next base rate case. The ALJ determined that this base rate proceeding was not an adequate venue for consideration of whether implementing a PIP is reasonable, and this complex issue would be better reviewed in the universal service stakeholder process which would allow the parties to review data from the current program and its associated costs through a more flexible discourse. The ALJ similarly found that many of the structural refinements to the CAP design regarding bill discount and arrearage forgiveness benefits should be more fully considered at a later time, reasoning that Aqua explained that many of these recommendations cannot be efficiently implemented until the Company converts its current customer information system (CIS) to SAP in 2023. R.D. at 113. The ALJ agreed with Aqua that consideration of the structural changes proposed by the OCA and CAUSE-PA should be deferred until Aqua's transition to SAP, noting that the Company has committed to providing arrearage forgiveness benefits for each full CAP payment

made, regardless of timeliness, when the conversion to SAP is completed. *Id.* at 113-14 (citing Aqua St. 10-R at 10).

The ALJ further reasoned that the OCA and CAUSE-PA have not demonstrated that the costs to make these proposed changes while Aqua is using its current CIS is reasonable. The ALJ stated that such proposed enhancements can be considered during the process of evaluating the effectiveness of the design of Aqua's universal service program in the future. The ALJ noted the OCA's concession that Aqua's proposed bill discount program will improve affordability for low-income customers. R.D. at 114. The ALJ also noted that Aqua's proposed USP was presented to and vetted by stakeholders participating in its Helping Hand Collaborative, including CAUSE-PA and the OCA, before this proceeding. *Id.* (citing Aqua St. 10 at 3). The ALJ further noted that Aqua was able to draw upon the knowledge and expertise of its affiliates, the Peoples Companies, and the Peoples Companies' Director of Community Assistance Program, Ms. Black, to develop the USP. The ALJ concluded that while a robust low-income program is required to offset the rate increases proposed in this case, increasing costs to non-low-income customers should also be mitigated. R.D. at 114.

c. OCA Exception No. 17, CAUSE-PA Exception No. 1, and Replies

In its Exception No. 17, the OCA avers that the ALJ erred in her determination to adopt Aqua's proposed program design without modification. OCA Exc. at 28. The OCA argues that the ALJ disregarded the evidence it presented, including OCA witness Mr. Colton's, extensive analysis of the affordability of Aqua's proposed program design for its water and wastewater discount and arrearage forgiveness proposals. *Id.* (citing OCA M.B. at 117-75; OCA R.B. at 73-82, 91-96). The OCA states that, instead, the ALJ improperly deferred the determination of the OCA's recommended program modifications to a generic proceeding sometime in the future. OCA Exc. at 28.

In so doing, the OCA believes that the ALJ misunderstood the purpose of Mr. Colton's testimony. The OCA explains that the purpose of Mr. Colton's affordability analysis was not to create a final, definitive assistance program for Aqua but, rather, Mr. Colton understood that the program would need to evolve and recommended that the affordability targets be established in a future generic proceeding and that Aqua propose a PIP in its next base rate proceeding. *Id.* at 29. The OCA emphasizes that Mr. Colton's testimony was intended to demonstrate the problems with Aqua's proposed discount and arrearage forgiveness levels, particularly for customers from 0-50% of the FPL and to show that the proposed program design will not achieve the objectives of the *Aqua-Peoples Settlement* to consider a "comprehensive universal services program." *Id.* (citing *Aqua-Peoples Settlement* at 135; OCA M.B. at 133-36; OCA R.B. at 76-77).

The OCA explains that a comprehensive universal services program should be designed to achieve affordability for customers, and the evidence Mr. Colton presented demonstrated that the discount program Aqua proposed for water and wastewater customers will significantly under-serve those customers from 0-50% of the FPL and will not help customers achieve affordability after implementation. *Id.* The OCA additionally states that the ALJ ignored the evidence of the shortcomings of the continuation of the current \$25/month arrearage forgiveness program described in Mr. Colton's testimony. OCA Exc. at 29 (citing OCA St. 5 at 59-60, Schs. RDC-1, RDC-2; OCA St. 5-SR at 7-8). As such, the OCA argues that the Commission should approve the OCA's proposed design modifications to Aqua's water and wastewater discount and arrearage forgiveness programs. OCA Exc. at 29 (citing OCA M.B. at 117-75; OCA R.B. at 73-82, 91-96).

In its Exception No. 1, CAUSE-PA avers that the ALJ erred as a matter of law and sound public policy by concluding that issues involving the design of Aqua's rate discount and arrearage forgiveness programs are not properly considered in the context of this rate proceeding. First, CAUSE-PA argues that an evaluation of the justness and

reasonableness of any proposed rate increase must necessarily analyze the effect of the rate increase on the ability of residential consumers to afford service and, consequently, the adequacy and design of rate assistance programming. CAUSE-PA Exc. at 4. CAUSE-PA states that the rules, regulations, and practices for Aqua's universal service programs affect the charges to both program participants and non-participants, and, therefore, they fit squarely within the definition of rates that must be just and reasonable and must be evaluated in this rate proceeding. *Id.* at 5 (citing *Pa. PUC v. PGW*, Docket No. R-2020-3017206 (Order on PGW's Motion *in Limine* dated July 8, 2020) at 3). CAUSE-PA notes the testimony of Mr. Geller, who explained that it is not appropriate "to raise rates for water and wastewater service without first ensuring that low and moderate income customers are able to receive affordable service under just and reasonable terms." CAUSE-PA Exc. at 5 (citing CAUSE-PA St. 1 at 10). CAUSE-PA asserts that universal accessibility is a polestar principle of ratemaking for essential, life-sustaining services like water and wastewater. CAUSE-PA Exc. at 5-6.

CAUSE-PA submits that low-income customers represent a significant portion of Aqua's residential customers, as Aqua estimates that nearly one in four households in its service territory have income below 200% of the FPL and has identified approximately 5% of its total residential customers as low-income. CAUSE-PA argues that in order to meaningfully conduct an investigation of proposed and existing rates, it is necessary to examine the lawfulness, justness, and reasonableness of rates for all consumers, including low-income consumers, and such an investigation necessarily includes an examination of the design and delivery of Aqua's universal service programs. CAUSE-PA Exc. at 6.

CAUSE-PA notes the concerns it has raised throughout the proceeding related to rate affordability for low-income customers and the inadequacy of Aqua's proposed CAP to ensure reasonable rate affordability for low-income CAP participants.

CAUSE-PA also notes that based on these concerns, it recommended that Aqua be required to: (1) implement the improved discount levels and adjusted income tiers recommended by the OCA expert witness, Mr. Colton, and supported by Mr. Geller; (2) closely monitor and analyze water/wastewater burdens of CAP participants; and (3) transition to a PIP structure if participants are not reaching acceptable levels of affordability. *Id.* at 7. CAUSE-PA further notes the testimony and evidence its witness presented that Aqua's Helping Hand arrearage forgiveness program is inadequate to address high levels of arrears accrued by low-income customers and further exacerbates rate unaffordability faced by these customers. *Id.* at 7-8. CAUSE-PA states that it has recommended that Aqua should be required to revise the structure of Helping Hand so that: (1) when entering the program, pre-program arrears are frozen and no longer accrue late fees or charges; and (2) for each in-full payment that a customer makes while enrolled in Helping Hand, 1/36th of the customer's frozen arrears, or \$25, whichever is greater, should be forgiven. *Id.* at 8.

CAUSE-PA avers that by precluding meaningful consideration of universal service issues in the context of this rate proceeding, the ALJ has disregarded the statutory mandate to ensure that all rates are just and reasonable and contradicted past precedent considering universal service issues. CAUSE-PA requests that the Commission clarify that examination of the structure and affordability of universal service programs is properly addressed in the context of this rate case. CAUSE-PA Exc. at 9-10.

Second, CAUSE-PA argues that the informal universal service stakeholder process is not a substitute for consideration of the impact a rate increase will have on low-income customers in this rate proceeding and the need to make corresponding adjustments to the rates charged through universal service programming. CAUSE-PA supports using universal service stakeholder meetings to provide a forum for parties and stakeholders to discuss issues surrounding the design and delivery of universal service programming and to reach consensus where possible. CAUSE-PA Exc. at 11.

Nevertheless, CAUSE-PA avers that informal stakeholder meetings are not an adequate substitute for a formal examination of rates produced by universal service programming in the context of a rate proceeding, because CAUSE-PA believes that informal stakeholder processes lack the tools necessary to meaningfully investigate universal services, including the use of discovery and evidentiary hearings. *Id.* at 11-12. CAUSE-PA submits that informal processes do not provide for a mechanism to require Aqua to implement, or even consider, parties' proposals and if Aqua fails to implement recommended improvements, parties would not have a clear path to take exception to or appeal Aqua's decisions. *Id.* at 12.

Third, CAUSE-PA argues that the continued need to address water and wastewater affordability on a statewide level does not preclude review of the adequacy of Aqua's low-income programs in the context of this rate proceeding. CAUSE-PA states that all rates must be just and reasonable and that the absence of a statewide affordability standard does not eliminate this requirement. CAUSE-PA Exc. at 12. CAUSE-PA supports the initiation of a statewide proceeding to establish formal Commission policy on water and wastewater affordability and applicable standards and guidelines to help ensure that all Pennsylvanians can afford water and wastewater services. *Id.* at 12-13. However, CAUSE-PA asserts that the absence of formal, statewide policy does not bar consideration of program improvements critical to ensuring low-income customers can reasonably afford to connect to and maintain water and wastewater services in the context of this or other rate proceedings. CAUSE-PA takes issue with the ALJ reaching a conclusion on several aspects of Aqua's universal service programming, such as the verification process and other program rules, while declining to reach conclusions about the overall design and benefits provided through the program. *Id.* at 13.

In its Replies to Exceptions, Aqua avers that both the OCA and CAUSE-PA's Exceptions regarding its proposed USP lack merit. Aqua R. Exc. at 15. Aqua states that the ALJ properly recognized that the Company's proposed USP will

improve affordability and benefit customers, while also balancing the implementation of this new program as a part of this base rate case with the fact that Aqua will convert its existing customer information system (CIS) to SAP in 2023. *Id.* (citing R.D. at 113-14). Aqua submits that it demonstrated that the additional income tiers, changes to benefits, and other proposed modifications that the OCA and CAUSE-PA propose are incompatible with the Company's existing CIS and would increase the costs of implementing the USP. Aqua R. Exc. at 15-16 (citing Aqua M.B. at 148-155; Aqua R.B. at 56-67).

Aqua continues that CAUSE-PA's claims regarding the use of the informal stakeholder process misread the Recommended Decision, as the ALJ did not "relegate" the evaluation of the impacts of base rate increases to the informal stakeholder process. Aqua states that, rather, the ALJ recognized that in the context of this base rate case, the informal stakeholder process could be used to further present and discuss possible modifications to the program before Aqua's next base rate case, or another case involving modifications to the USP, is initiated. Aqua R. Exc. at 16. Aqua also states that CAUSE-PA's claim that addressing affordability concerns in a statewide proceeding should not preclude an evaluation of low-income impacts and that the USP in this base rate case misses the point, because the ALJ properly found that an "affordability" determination should be made at the statewide level since it will involve all water and wastewater utilities. *Id.* (citing R.D. at 113).

d. Disposition

Upon review, we agree with the ALJ that certain modifications and determinations regarding Aqua's proposed CAP are not appropriately considered in the context of this base rate proceeding. For instance, we do not have sufficient information in this proceeding to require Aqua to propose a PIP in its next base rate proceeding, as the OCA proposes. It is unclear at this time what the cost, benefits, and overall effectiveness

of such a program would be for a water/wastewater public utility. As the ALJ stated, this complex issue would be better reviewed in a universal service stakeholder process that would allow the parties to review data from the current program and its associated costs through a more flexible discussion. The OCA itself acknowledged that before Aqua could move to a PIP design, a series of policy decisions by the Commission would first be needed, including what water and wastewater burden should be deemed affordable, and such decisions are best addressed in a statewide proceeding involving all water and wastewater utilities and related stakeholders and would involve additional analysis and data than is available in this rate proceeding. OCA M.B. at 135-36; OCA St. 5 at 31.¹³⁸

Similarly, we agree with the ALJ that the structural changes the OCA and CAUSE-PA proposed to the CAP design regarding bill discount and arrearage forgiveness benefits should be more fully considered at a later time, particularly because Aqua explained that many of these recommendations cannot be efficiently implemented until the Company converts its current CIS to SAP in 2023. *See* R.D. at 113. Aqua has presented evidence in this proceeding to demonstrate that its proposed CAP, which includes its Helping Hand arrearage forgiveness program and tiered bill discount benefits similar to the structure in place at the Peoples Companies, is reasonable. Aqua explained in its testimony that it performed an affordability analysis and considered bill affordability as part of the development of its proposed USP. Aqua St. 10 at 6-7.

¹³⁸ The Commission engaged in a holistic review of universal service and energy conservation programs of electric distribution companies (EDCs) and natural gas distribution companies (NGDCs), including a thorough examination of the effects of the Commission's current energy burden thresholds, focusing on whether existing CAP pricing was affordable for low-income customers. The Commission's review and examination resulted in the adoption of CAP policy changes and amendments to the Commission's existing CAP Policy Statement at 52 Pa. Code § 69.261–69.267. *See Amendments to Policy Statement on Customer Assistance Program, Final Policy Statement Order*, Docket No. M-2019-3012599 (Order entered November 5, 2019). The Commission has not engaged in a similar review and examination concerning water and wastewater public utilities operating in Pennsylvania.

Ms. Black testified that consistent with the Aqua-Peoples Settlement, Aqua's proposed USP was presented to and vetted by stakeholders participating in its Helping Hand Collaborative, including CAUSE-PA and the OCA, before this proceeding. The Collaborative discussed aspects of the Company's proposal, including needs analysis, projected enrollment levels, proposed discounts, program designs, and estimated costs, and the participants noted the tiered benefits were an important part of the design by providing the highest amount of benefits to the most vulnerable. Ms. Black noted that the group did not recommend any changes to the proposal at that time. Aqua St. 10 at 13.

Ms. Black further testified that the OCA and CAUSE-PA's suggestions regarding discount structure and adjusted income tiers would require programmatic changes to the existing system, which currently maintains the Company's customer data. Ms. Black explained that changes to the existing system are not recommended, as Aqua will be converting its billing system to SAP in 2023, and development of the system is in the early stages. Aqua St. 10-R at 8. Ms. Black stated that Aqua's proposed CAP is intended to improve affordability while maintaining reasonable program costs for other ratepayers from whom discounts are recovered. Ms. Black testified that the Company's proposal decreases low-income customers' monthly bill responsibilities by offering discounts that are tiered to provide larger discounts to those with lower income. *Id.* at 10.

As proposed, we conclude that Aqua's program is reasonable under the circumstances as it takes affordability into account and balances the interests of low-income customers as well as the interests of ratepayers who are not low-income but bear the costs of universal service programs. Based on the record, we agree with the ALJ that the OCA and CAUSE-PA have not demonstrated that the costs to make their proposed changes while Aqua is using its current CIS are reasonable and that any such proposed enhancements can be considered during the process of evaluating the effectiveness of the design of Aqua's universal service program in the future.

Our decision on this issue is consistent with prior decisions in which we have determined that it was not appropriate to consider proposals relating to a public utility's energy burdens, CAP, and other universal service program issues within the context of a base rate proceeding, finding that such proposals are more properly considered in a public utility's Universal Service and Energy Conservation Plan (USECP) proceeding. *See PECO Gas* at 195; *Columbia Gas* at 160. While water and wastewater public utilities are not required to file USECPs with the Commission, any possible modifications to Aqua's universal service programs, including a move toward a PIP, can be discussed as part of Aqua's Helping Hand Collaborative or a larger, statewide stakeholder proceeding and presented to the Commission in a future proceeding appropriate for addressing Aqua's universal service programs, whether it be Aqua's next base rate case or another proceeding involving modifications to the Company's USP. For these reasons, we deny OCA Exception No. 17 and CAUSE-PA Exception No. 1.

2. Income Verification

a. Positions of the Parties

I&E generally agreed with the Company's proposed USP. However, I&E's witness, Ms. Wilson, recommended that the Company be required to verify enrollees' income for CAP eligibility to ensure the legitimacy of applicants and prevent misuse or abuse of the program. I&E M.B. at 60-62 (citing I&E St. 1 at 45-47).

Aqua currently allows participants to self-attest to their income. Aqua explained that discount water programs "do not typically require income documentation for participation" and that "[p]roviding income documentation can be a barrier to enrollment for eligible households." Aqua stated that the Commission has previously encouraged self-attestation of income. Aqua noted that its witness, Ms. Black testified that during the periods where self-attestation was used, Peoples Companies "did not see a

spike in enrollment levels as a result of this flexibility and participation levels, year over year, are relatively flat.” Aqua also noted Ms. Black’s testimony that as with any income-based programs, there may be individuals that attempt to perpetrate fraud, but customers who are genuinely low-income customers are generally those that seek assistance. Aqua M.B. at 150 (citing Aqua St. 10-R at 3-4).

The OCA agreed that the Company should be permitted to use self-attestation of income and that income verification should not be required for participation in the program. The OCA recommended, however, that the Company review the income qualifications for randomly selected CAP participants and report error rates to the Commission’s Bureau of Consumer Services (BCS). The OCA stated that to the extent error rates are not reasonable, BCS and Aqua should develop appropriate remedial action. OCA M.B. at 144.

Similarly, CAUSE-PA opposed the imposition of stringent income documentation requirements for Aqua’s universal service programs, including its proposed CAP. CAUSE-PA argued that I&E did not present any evidence to support its contention that such income documentation would prevent fraud or that fraud was occurring in the first instance. CAUSE-PA also argued that restrictive income documentation requirements would be a barrier to low-income customers successfully enrolling in CAP and hinder the success of the proposed CAP at its outset. CAUSE-PA R.B. at 18. CAUSE-PA further argued that I&E’s proposal lacked critical details for how income documents will be collected and evaluated, what income documents will be accepted, and how applicants will be informed if the documentation submitted is not received or is deemed unacceptable. *Id.* at 19.

b. Recommended Decision

The ALJ agreed with Aqua that I&E's recommendation regarding income verification should be rejected. The ALJ reasoned that based on Ms. Black's experience, the benefit of removing a barrier to low-income customers outweighs the risk of abuse or harm to paying customers. R.D. at 115.

c. I&E Exception No. 3 and Replies

In its Exception No. 3, I&E argues that the ALJ erred in rejecting I&E's recommended income verification proposal for CAP eligibility. I&E avers that the ALJ erroneously accepted Aqua's position that the benefit of removing a barrier to low-income customers outweighs the risk of harm to paying customers. I&E Exc. at 6. I&E points out that when asked about Peoples' CAP during discovery, Aqua stated that "Peoples' CAP requires income documentation from an interested customer to certify income eligibility for participation" and upon recertification. *Id.* (citing I&E St. 1 at 46). I&E also points out that the ALJ acknowledged its concern that as with other income-based programs, there may be individuals who attempt to perpetrate fraud. I&E Exc. at 6 (citing R.D. at 115).

I&E contends that the Commission should accept its recommendation regarding income verification for CAP eligibility. I&E Exc. at 7. I&E states that it explained that the program Aqua proposed will be a full-scale USP funded by ratepayers. I&E also notes that it argued that the program as proposed is based on a specific level of benefits matched to a specific percentage of the FPL and, as such, logic dictates that incomes must be verified to properly administer and award the graduated program benefits. *Id.* (citing I&E M.B. at 62). I&E believes that if the Company does not perform income verifications, this would subject the USP to potential abuse that would harm responsible customers that pay their bills. I&E Exc. at 7. I&E further argues that support

for income verification is set forth in the Code and the Commission's Regulations and that in enacting Chapter 14 of the Code, 66 Pa. C.S. §§ 1401-1419, the Pennsylvania General Assembly intended to protect responsible bill paying customers from rate increases attributable to other customers' delinquencies. I&E Exc. at 7 (citing I&E M.B. at 62). I&E avers that any abuse of the CAP programs through income self-attestation by ineligible customers would have the same negative affect on the responsible, paying customers and may also harm eligible customers. I&E Exc. at 7. Moreover, I&E points out that as stated in Aqua's rejoinder testimony, Aqua's provider of administrative services, Dollar Energy Fund, already has the cost of income verification built into its proposal. *Id.* (citing I&E M.B. at 62).

In its Replies to Exceptions, Aqua avers that the ALJ correctly rejected I&E's recommendation that CAP enrollees be required to verify their income. Aqua states that its proposal is based on experience showing that income documentation can be a barrier to enrollment. Aqua R. Exc. at 17. Aqua notes that this concern must be balanced against the risk of fraud; however, Aqua stresses that when Peoples used self-attestation, it did not experience a rise in enrollment levels that was indicative of a serious effort to defraud the program. *Id.* (citing Aqua M.B. at 150). Aqua submits that the CAP is a new program for its low-income customers, and barriers to participation should be avoided when possible. Aqua R. Exc. at 18 (citing Aqua M.B. at 150; Aqua R.B. at 62).

In its Replies to Exceptions, the OCA avers that the ALJ correctly denied I&E's income verification proposal. OCA R. Exc. at 23. The OCA's position is that Aqua should be permitted to use self-attestation of income for its program. *Id.* (citing OCA M.B. at 143-144). In response to I&E's reliance on Chapter 14 in support of its proposal, the OCA states that Chapter 14 does not specifically address income verification for any CAP. The OCA also argues that the evidence does not support the idea that abuse or fraud will occur without income verification but, instead, supports the

opposite conclusion. OCA R. Exc. at 23. The OCA explains that water companies do not typically require income documentation for participation and requiring income documentation can be a barrier to enrollment. *Id.* (citing R.D. at 115; Aqua St. 10-R at 4). The OCA notes that the Commission has also previously supported the use of self-attestation of income. OCA R. Exc. at 23. The OCA further notes that during the pandemic, Peoples allowed customers to enroll using self-attestation of income and did not see a spike in enrollment levels. *Id.* (citing Aqua St. 10-R at 4; OCA R.B. at 80).

In its Replies to Exceptions, CAUSE-PA states that the ALJ properly found that I&E's recommendation to impose additional income verification requirements should be rejected. CAUSE-PA R. Exc. at 3. CAUSE-PA avers that Aqua is, in fact, proposing a verification process for its CAP, which the ALJ approved, as Aqua proposes to use self-declared income to verify CAP eligibility and for recertification purposes. CAUSE-PA points out that Aqua is not, however, proposing to require applicants to submit physical documentation of income because such a requirement would pose burdensome obstacles for low-income customers most in need of assistance. *Id.* at 4 (citing CAUSE-PA R.B. at 17-18).

CAUSE-PA additionally contends that I&E has not presented any evidence to support its contention that failure to impose income documentation requirements will cause universal service application processes to be abused and will ultimately harm other ratepayers and residential customers. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 18). CAUSE-PA states that its witness, Mr. Geller, testified that imposing more restrictive income documentation requirements, as I&E recommends, will act as a barrier to low-income customers successfully enrolling in universal service programs and hinder the success of the proposed CAP. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 18-19). CAUSE-PA submits that Aqua's low-income programs have historically had low enrollment levels, particularly when measured against the number of low-income customers Aqua estimates are eligible for assistance. *Id.*

CAUSE-PA also opposes I&E's proposal to require Aqua to implement income documentation requirements for households to recertify enrollment in Aqua's universal service programs. As discussed in CAUSE-PA's Reply Brief, Mr. Geller extensively described how periodic recertification requirements pose difficulties for vulnerable low-income customers, including seniors or individuals with disabilities, because these households more often lack access to transportation and struggle to gather and submit formal income documentation. CAUSE-PA continues that these vulnerable households are also more likely to rely on fixed income sources that tend not to change from year to year, making recertification requirements unnecessary and administratively burdensome. As Mr. Geller noted, available independent evaluations of USECPs of other regulated Pennsylvania utilities have shown that requiring submission of income documentation through program recertification is a significant cause of high program attrition. CAUSE-PA R. Exc. at 7 (citing CAUSE-PA R.B. at 19).

Further, CAUSE-PA argues that I&E's reliance on Chapter 14 to support its income documentation proposal is misplaced because I&E fails to recognize that Chapter 14's declaration of policy expressly recognizes that Chapter 14 was enacted to improve payments for those "*capable of paying*," rather than to unfairly penalize those who cannot afford services. CAUSE-PA R. Exc. at 8 (citing 66 Pa. C.S. § 1402(2)). CAUSE-PA asserts that ensuring robust access to Aqua's universal service programs is consistent with the intent of Chapter 14 to provide greater equity among all customers. CAUSE-PA R. Exc. at 8.

Moreover, CAUSE-PA is concerned that I&E's proposal continues to lack critical details for how income documents will be collected, what income documents will be accepted, how income documents will be evaluated, and how applicants will be informed if their submitted documentation is not received or is considered unacceptable. CAUSE-PA believes that failing to provide these details has the potential to lead to widespread ambiguities in program requirements that will further impede low-income

customers from successfully enrolling in Aqua's universal service programs. Accordingly, CAUSE-PA supports the income verification process Aqua proposes and opposes I&E's recommendations to impose additional income documentation requirements. *Id.* Nevertheless, CAUSE-PA states that if the Commission decides to require additional income verification for Aqua's universal service programs, including the proposed CAP, such process should be implemented on a pilot basis to allow Aqua, the Parties and stakeholders, and the Commission to monitor how CAP enrollment, retention, and costs are impacted and to determine if there is any evidence of abuse of the universal service process. *Id.* at 8-9.

d. Disposition

Upon review, we conclude that Aqua should require income documentation from an interested customer to certify income eligibility for participation in its CAP and upon recertification in a manner similar to that of the Peoples Companies.¹³⁹ I&E's witness, Ms. Wilson, testified that while the Helping Hand program has historically been funded through voluntary donations and shareholder contributions, Aqua's proposed program would be funded through the proposed Universal Service Rider and would be fully ratepayer funded. I&E St. 1 at 44; I&E Exh. 1, Sch. 8.¹⁴⁰ While as some of the Parties note, this Commission took some steps in response to the COVID-19 pandemic to reduce barriers to participation, such as encouraging self-attestation of income for enrollment and encouraging utilities to halt the process of removing customers for failure to recertify income (*see, e.g.*, Aqua St. 10-R at 4), we are not otherwise aware that this Commission has approved a ratepayer-funded low-income program that does not include

¹³⁹ See Peoples Natural Gas Company LLC Universal Service and Energy Conservation Plan 2015-2018, Docket No. M-2014-2432515, at 8-10.

¹⁴⁰ As set forth in XI.E.3, *supra*, we are rejecting the Company's proposed reconcilable USR and requiring that the Company continue to recover its low-income program costs through base rates.

some form of documented income-verification. EDC and NGDC's CAPs require participating households to document their income eligibility periodically. Given the size and nature of Aqua's proposed program, which is larger and more robust than most of the other water utilities' programs, it makes sense to implement income eligibility processes similar to those of the EDCs and NGDCs.

We addressed a similar issue in reviewing National Fuel Gas Distribution Corporation's (NFG) 2017-2020 USECP.¹⁴¹ During that proceeding, NFG disclosed that it did not require its CAP participants to reverify income eligibility after enrollment, and that during recertification, NFG was accepting the household's verbal declaration of income. *NFG* at 34-35. We directed NFG to ensure that CAP households reverify income eligibility at least once every two years, stating:

Although we recognize accepting a verbal declaration of income is less burdensome for both the customer and the CAP administrator, utilities have the responsibility to ensure that their CAPs – which are primarily funded by non-CAP residential customers – help only those customers that qualify for these programs.

Id. at 36.

Applying similar reasoning in this case, we agree with I&E that program benefits contingent on a poverty level should be based on a verified percentage of income, as the costs of these programs can have a significant impact on ratepayer bills. *See* 2020 Report on Universal Service Programs and Collections Performance of the Pennsylvania Electric Distribution Companies and Natural Gas Distribution Companies, Appendix 7, at 89. We have provided some flexibility to EDCs and NGDCs

¹⁴¹ *See National Fuel Gas Distribution Corporation's Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4*, Docket No. M-2016-2573847 (Order entered March 1, 2018) (NFG).

concerning the manner in which these utilities document income and what forms of documentation are acceptable, and these matters are not necessarily addressed in each utility's USECP. We believe that these issues and other related issues are best addressed in a utility's low-income program committee, and, in this case, may be addressed as part of Aqua's Helping Hand Collaborative. In the meantime, Aqua can use the income documentation standards that the Peoples Companies currently use. For these reasons, we shall grant I&E's Exception No. 3, modify the ALJ's recommendation on this issue, and direct Aqua to require income documentation from an interested customer to certify income eligibility for participation in its CAP and upon recertification in a manner similar to that of the Peoples Companies. Within sixty days of the entry date of this Opinion and Order, Aqua shall submit a written plan describing the process it will use for certification and recertification of income eligibility for participation in its CAP. Such plan shall be filed with the Commission at this base rate proceeding Docket, with a copy served on BCS.

3. Application Process: Transitioning Helping Hand Customers to the New Customer Assistance Program

a. Positions of the Parties

The OCA recommended that current participants in the existing Helping Hand program be automatically enrolled in the new bill discount program. OCA M.B. at 168-73, 173-75. Similarly, CAUSE-PA recommended that Aqua develop a streamlined process for enrolling existing Helping Hand customers in CAP so the existing Helping Hand customers are not required to provide duplicative information to enroll in CAP. CAUSE-PA M.B. at 26 (citing CAUSE-PA St. 1 at 47).

Aqua explained that the lack of an automatic enrollment in CAP for existing Helping Hand customers is necessary to ensure customers are eligible. Aqua

also explained that the application process for these customers is simple and does not require additional income documentation and, therefore, does not impose an incremental burden on CAP enrollees. Aqua states that it will notify Helping Hand customers by mail of the replacement and expansion of the existing program, which will detail the benefits of the CAP and encourage the customers to participate. Aqua notes that these customers can confirm their income through self-attestation and enroll over the telephone, online, or through a participating agency. Aqua M.B. at 149 (citing Aqua St. 10-R at 3). The Company believes that while it will encourage participation in the new program, existing Helping Hand customers should have the right to make an affirmative choice about whether to enter the new CAP. Aqua M.B. at 149.

b. Recommended Decision

The ALJ agreed with Aqua that the proposed application process to transition Helping Hand customers who qualify for the new CAP is reasonable and rejected the modification proposed by the OCA and CAUSE-PA. R.D. at 116.

c. OCA Exception No. 18 and Replies

In its Exception No. 18, the OCA argues that the ALJ erred in her decision to adopt Aqua's proposed application process for the new CAP. OCA Exc. at 29. The OCA avers that Aqua's existing Helping Hand customers should be automatically migrated to the new discount program, as the OCA's witness, Mr. Colton, and CAUSE-PA's witness, Mr. Geller, recommended. *Id.* at 30 (citing OCA St. 5 at 62-63; CAUSE-PA St. 1 at 46-48). The OCA states that the ALJ may not have appreciated the fact that the existing Helping Hand customers will lose their existing program benefits if the customers do not apply for the new combined discount/arrearage forgiveness program, because the existing Helping Hand program will no longer exist. OCA Exc. at 30 (citing Aqua St. 10-R at 2). As such, a group of customers that have not had their

arrears completely forgiven and who do not apply to the new CAP, will no longer have the program forgiveness to complete reducing their arrearage balance. OCA Exc. at 30 (citing OCA St. 5-SR at 3). The OCA explains that arrearage forgiveness and the discount are designed to work together to address affordability, and separate enrollments and applications mean that not all low-income customers currently enrolled in the arrearage forgiveness program will continue to receive assistance either through the to-be-discontinued arrearage forgiveness program or the new bill discount program. The OCA asserts that this problem can be avoided by automatic migration to the new programs. OCA Exc. at 30.

In its Replies to Exceptions, Aqua avers that contrary to the OCA's claims, the enrollment process involves a single application, is simple, does not require additional income documentation and, therefore, presents no incremental burden. Aqua R. Exc. at 16-17. Aqua explains that existing Helping Hand customers will be asked to submit the application to ensure they are eligible for the new USP. Additionally, Aqua avers that it will actively encourage existing Helping Hand customers to enroll in the new program. *Id.* at 17.

d. Disposition

Given our determination, above, directing Aqua to require income documentation in order to certify income eligibility for participation in its CAP, it would not be feasible for Aqua to automatically migrate its existing Helping Hand customers into its new program. Aqua should implement its proposed application process to transition Helping Hand customers who qualify for the new CAP, subject to the modification that Aqua will now require income documentation for certification purposes rather than permitting potential program participants to confirm their income through self-attestation. Accordingly, we shall deny OCA Exception No. 18 and modify the ALJ's Recommended Decision consistent with this discussion.

4. Community Education and Outreach Plan

a. Positions of the Parties

The OCA witness, Mr. Colton, recommended that Aqua be directed to develop a Community Education and Outreach Plan (CEOP) that is directed toward areas within the Company's service territory with identified concentrations of low-income need. OCA M.B. at 162 (citing OCA St. 5 at 49-50). Mr. Colton specifically proposed that the CEOP incorporate the following elements:

- (1) the outreach should focus on community-based outreach;
- (2) the outreach is best implemented through "trusted messengers" that are part of the community toward which outreach is directed;
- (3) the outreach should be focused through boots-on-the-ground grassroots strategies. This boots-on-the-ground grassroots outreach out-performs outreach such as that provided through mass media, social media, utility-sponsored efforts, and top-down sponsored events; and
- (4) the outreach should be focused on efforts to go to where the community is rather than making the community come to the utility.

OCA M.B. at 162 (citing OCA St. 5 at 49). Mr. Colton stated that Aqua's CEOP should be designed to "identify the community partners with which it proposes to work," "identify the grassroots community organizations that will provide boots-on-the-ground efforts," and identify those times and places Aqua proposes to meet the community members where they "live, work, pray and play." OCA M.B. at 162-163 (citing OCA St. 5 at 49-50).

CAUSE-PA's witness, Mr. Geller, noted the low enrollment rates in Aqua's Helping Hand and Hardship Fund and concluded that as a result, there was a critical need for "enhanced, more concerted efforts to reach and enroll low-income consumers in Aqua's service territories in assistance programs." CAUSE-PA M.B. at 37 (citing

CAUSE-PA St. 1 at 64). Accordingly, CAUSE-PA recommended that Aqua should be required to develop and implement a comprehensive and coordinated consumer outreach and education plan that should:

- (1) be developed with input from the parties and interested stakeholders through Aqua's Helping Hand Collaborative;
- (2) set forth how Aqua will specifically promote each of its low income assistance programs;
- (3) be tailored to the demographics of Aqua's service territory;
- (4) include how Aqua will target outreach to specific communities, including those communities that have faced pervasive utility insecurity such as Black and Latinx communities;
- (5) specifically identify efforts to educate and enroll eligible customers at or below 50% FPL who represent those customers with the lowest incomes who struggle most profoundly to make ends meet;
- (6) translate all promotional and education materials into, at minimum, Spanish; and
- (7) identify resources and translation services for [limited English proficient/proficiency] LEP customers.

CAUSE-PA M.B. at 38 (citing CAUSE-PA St. 1 at 64).

Aqua agreed that a CEOP is an important component of universal service programs. Aqua M.B. at 150 (citing Aqua St. 10-R at 5). Aqua noted that its witness, Ms. Black, explained that Aqua's anticipated outreach and education will be similar to the CEOP that she developed for the Peoples Companies and will use the multiple touchpoints that utilities have with low-income customers and other entities, and that Aqua "plans to seek collaboration with other utilities to cross-promote its low-income programs with the goal of reducing barriers to participation and encouraging customers to avail themselves of all beneficial programs." Aqua M.B. at 151 (citing Aqua St. 10-R at 5-6). Aqua stated that its proposed CAP will include broad outreach and collaboration to ensure customers are made aware of the benefits available to them and are given significant opportunities to take advantage of the available benefits. Aqua M.B. at 151.

b. Recommended Decision

The ALJ recommended that Aqua continue to work to develop a CEOP in the manner that Ms. Black described in her testimony. The ALJ also stated that because Aqua does not appear to oppose CAUSE-PA and the OCA's recommendations for the development of the CEOP, Aqua should consider their input and incorporate their reasonable recommendations into the Company's outreach program. The ALJ reasoned that if Aqua does not adopt the OCA and CAUSE-PA's recommendations, the OCA and CAUSE-PA may seek appropriate relief from the Commission. R.D. at 118.

c. OCA Exception No. 19 and Replies

In its Exception No. 19, the OCA avers that the ALJ erred by not requiring Aqua to adopt the OCA and CAUSE-PA's recommendations for a CEOP. OCA Exc. at 30 (citing R.D. at 118; OCA M.B. at 161-64; OCA R.B. at 90-91). The OCA submits that the ALJ's recommended approach is not sufficient to address the problems that the OCA and CAUSE-PA identified regarding the development of a CEOP, and it is also not clear in what forum either the OCA or CAUSE-PA could seek appropriate relief. OCA Exc. at 30-31.

The OCA posits that while Aqua agrees that a CEOP is an important component of a universal service plan, the Company does not appear to adopt the OCA's recommendations regarding what that outreach should look like. OCA Exc. at 31. The OCA explains that it recommends that the Company incorporate a strategy of reaching low-income customers "where the community lives, works, plays and prays to be present at those locations rather than to sponsor 'events' that community members must attend." *Id.* (citing OCA St. 5 at 47-50). The OCA states that while the ALJ indicated that the OCA and CAUSE-PA may seek appropriate relief from the Commission if their recommendations are not adopted, there is not an appropriate alternative forum in which

to seek relief. The OCA submits that unlike with energy utilities, Aqua would not need to submit a plan for approval of its CEOP, and there are not any Commission policy statements, applicable regulations, or statutory requirements specifically regarding what effective outreach and education for Aqua's discount and arrearage forgiveness programs should look like. The OCA avers that the instant proceeding is the forum in which the Company's proposed approach to education and outreach should be addressed. OCA Exc. at 31.

In its Replies, Aqua maintains its position in this proceeding that it has worked, and will continue to work, with the OCA and CAUSE-PA in the development of a CEOP, consistent with the Recommended Decision. As such, Aqua states that the OCA's concern is unfounded and its Exception should be denied. Aqua R. Exc. at 17.

d. Disposition

Upon review, we conclude that Aqua should continue to develop a comprehensive and coordinated CEOP with input from the Parties, including the OCA and CAUSE-PA, and from interested stakeholders through Aqua's Helping Hand Collaborative. Within six months of the entry date of this Opinion and Order, Aqua is required to file its CEOP with the Commission at this base rate proceeding Docket, with a copy served on the Commission's BCS and Office of Communications. As the CEOP is an evolving process, the Company must continue to work collaboratively with its Helping Hand Collaborative and the Commission's Office of Communications on any potential improvements and/or changes to its outreach and education initiatives after filing its first CEOP. We will also require Aqua to file annually, after its first CEOP filing, an updated CEOP at this base rate proceeding Docket until either its next base rate proceeding or another proceeding addressing its universal service programs. This will enable us to ensure that the Company is working with the collaborative to address stakeholder concerns or whether a separate proceeding is necessary to address

outstanding matters. As such, we shall grant, in part, OCA Exception No. 19 and modify the ALJ's Recommended Decision consistent with our discussion on this issue.

B. Quality of Service

1. Unaccounted for Water

Unaccounted for water (UFW) is "Total Water Delivered for Distribution & Sale" minus "Total Sales" minus "Non-Revenue Usage and Allowance." R.D. at 119; OCA M.B. at 204; OCA St. 7 at 3-4. "Non-Revenue Usage and Allowance" includes "Main Flushing," "Blow-off Use," "Unavoidable Leakage," "Located & Repaired Breaks in Mains & Services" and "Other." Calculating UFW determines the amount of non-revenue water in a distribution system, helping to identify leaks and inaccurate meter readings. When UFW is measured, non-revenue water can be reduced which reduces chemical and power costs, provides for water conservation, and helps improve operational efficiency. *Id.* Levels of UFW above 20% are considered excessive by the Commission. 52 Pa. Code § 65.20(4).

a. Positions of the Parties

Aqua stated that its UFW is 20%, despite operational challenges of recently acquired water systems, and that no Party challenged its UFW. R.D. at 119; Aqua M.B. at 162. However, the OCA argued that Aqua should modify its reporting of UFW by being required to submit a Section 500 UFW calculation for each of its water systems and that the information submitted should be based on the same data that is required for American Water Works Association (AWWA) Audits and the annual Chapter 110

Reports submitted to the PADEP.¹⁴² OCA M.B. at 206; OCA St. 7 at 6. Aqua opposed the modified reporting of UFW because Aqua's Section 500 Report is prepared on a consolidated basis and contains financial and operating data regarding operating the entire company. Aqua contended that it should not be treated differently by requiring it to prepare separate reports for operating divisions, that Section 500 Reports require different information than Chapter 110 Reports submitted to PADEP, and that AWWA Water Audits are a different measurement from UFW measurements prepared for the Section 500 Reports. In addition, Aqua noted that on November 18, 2021, the Commission issued a Notice of Proposed Rulemaking (NOPR) concerning proposed language for a regulation at 52 Pa. Code § 65.20(a), relating to water conservation measures. Aqua argued that committing to file separate Schedule 500 reports for each operating division while that NOPR is pending is redundant, time consuming and inefficient. R.D. at 120; Aqua M.B. at 162-63.

b. Recommended Decision

The ALJ found that the OCA did not demonstrate that its modification will result in a significant benefit to Aqua's customers. Therefore, the ALJ concluded that the OCA's proposed modification to the reporting of UFW should be rejected. R.D. at 120.

c. OCA Exception No. 24 and Replies

In its Exception No. 24, the OCA argues that the ALJ erred in concluding that Aqua should not be required to submit Section 500 reports for each of its distribution systems. The OCA disagrees that it has not demonstrated that its modification will result in a significant benefit to Aqua's customers and avers that requiring Aqua to submit a

¹⁴² The Section 500 Forms are filed as part of the Company's PUC Annual Reports, and the Chapter 110 Reports are filed pursuant to the Company's requirements in its Annual Department of Environmental Protection (DEP) reports.

Section 500 Report for each of its distribution systems would identify levels of UFW which is a localized issue. The OCA contends that the identification and reduction of UFW benefits all water customers by reducing non-revenue water, which reduces chemical and power costs. OCA Exc. at 35.

In reply, Aqua asserts that Section 500 Reports are filed by utilities on a consolidated basis, and the OCA has offered no reason why Aqua should be singled out to prepare separate reports for operating divisions. Furthermore, Aqua avers that reporting on water loss in the annual Section 500 Report should not be revised while the Commission's NOPR, discussed above, which provides for AWWA water audit reports on an annual basis, remains pending. Aqua R. Exc. at 21.

d. Disposition

Upon review, we agree with the ALJ that the OCA's proposed modification to the reporting of UFW should be rejected. No significant benefits to Aqua's customers have been identified to treat Aqua differently by requiring it to prepare separate reports for operating divisions with different information than the financial and operating data that is currently provided in the Section 500 Report on a consolidated basis for the entire Company. In addition, we agree with Aqua that revising reporting requirements on water loss in the annual Section 500 Report should not be done at this time while the Commission's NOPR on this issue is pending. Therefore, we shall deny the OCA's Exception No. 24.

2. Pressure Measurements

The Commission's Regulations at 52 Pa. Code § 65.6(d) require a water utility to conduct pressure surveys by measuring pressures at "representative" points on its system:

(d) *Pressure surveys.* At regular intervals, but not less than once each year, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the pressures maintained at representative points on its system. The surveys should be made at or near periods of maximum and minimum usage. Records of these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained by the utility for a period of at least three years and shall be made available to representatives, agents, or employees of the Commission upon request.

52 Pa. Code § 65.6(d).

With respect to variations in pressure levels, the Commission's Regulations require that a water utility shall maintain normal operating pressures between 25 pounds per square inch (psi) and 125 psi at the main, except that during periods of peak seasonal loads, the pressures at the time of hourly maximum demand may be between 20 psi and 150 psi, and that during periods of hourly minimum demand the pressure may not be more than 150 psi. 52 Pa. Code § 65.6.

a. Positions of the Parties

With respect to pressure surveys, the OCA argued that Aqua is not in compliance with 52 Pa. Code § 65.6(d) regarding the placement of the measurement point to track water pressure within Aqua's system because appropriately "representative points" means readings taken "at only a low and high pressure point." OCA M.B. at 210.

Aqua disagreed with the OCA's interpretation of 52 Pa. Code § 65.6(d) and maintained that its method of conducting pressure surveys on its system is compliant with the regulation. Aqua noted that it records pressures annually at more than 24,000 hydrants in its systems, and it described its operational procedures to monitor pressures

by using local recordings as proxy checks for system performance. If an abnormality from the standard is observed, or if a customer reports a pressure problem, Aqua will conduct a follow-up investigation and address the issue. Aqua M.B. at 166-67; Aqua St. 9-R at 6.

In addition, the OCA recommended that Aqua should reduce pressures to all customers below 125 psi or be responsible for any damages resulting from higher pressures. Further, the OCA argued that Aqua should install pressure reducing valves for customers experiencing high pressures or be responsible for damages if it fails to reduce pressures to all customers below 125 psi. OCA M.B. at 210; OCA St. 7 at 13. The OCA cited an example of a water customer from Chesterbrook who testified at the public input hearing and described that he had experienced extremely high pressures, some as high as 200 psi, which caused damage to his home and neighborhood. Tr. at 230-43.

Aqua argued that the Commission recently considered and rejected a similar argument presented by the OCA in *Pa. PUC v. Pennsylvania-American Water Co.*, Docket No. R-2020-3019371 (Order entered February 25, 2021) (*PAWC*).¹⁴³ Aqua M.B. at 169-70. Aqua averred that, like *PAWC*, Aqua provides pressure in excess of 125 psi in situations where it is needed to serve customers in challenging terrain and to flow water between operating districts with different pressures. Aqua contended that the OCA's recommendation should be rejected. *Id.*

¹⁴³ In *PAWC*, the OCA recommended that PAWC should either provide a pressure reducer protecting a customer's service line or provide an insurance policy covering repair or replacement of the service as protection to service lines and inside plumbing in situations where PAWC elected to provide service at higher than 125 psi. The Commission concluded that it was not reasonable to "impose the requirement of insuring the customer service line upon the distribution utility." *PAWC* at 127.

b. Recommended Decision

Regarding the pressure surveys, the ALJ concluded that 52 Pa. Code § 65.6 does not define what is meant by “representative points” on a water system, and that if the Commission intended to limit pressure surveys to those taken at “one high and one low pressure point” on a system to be sufficiently “representative,” the regulation would include that language. The ALJ found that there is no evidence that Aqua’s current system is not reasonable for maintaining generally normal operating pressures between the range of 25 psi and 125 psi or that the points where measurements are taken are not sufficiently “representative.” R.D. at 121-22.

The ALJ concluded that Aqua should not be directed to reduce upstream water pressures or install additional pressure valves in this proceeding. Noting that the Commission has repeatedly held that public utilities are not required to render perfect service, the ALJ found that a handful of customer experiences are not sufficient for the Commission to mandate operational changes on Aqua’s distribution system at this point in time. However, the ALJ stated that as Aqua tracks pressure complaints more closely, it may be able to target areas that may require system improvements. R.D. at 123-24.

c. OCA Exception No. 25 and Replies

In its Exception No. 25, the OCA argues that the ALJ erred in concluding that Aqua should not be required to conduct pressure surveys at one high and one low pressure point on its system and that Aqua should not be required to reduce upstream water pressures or install additional pressure valves. The OCA contends that the intent of 52 Pa. Code § 65.6 is to ensure that water utilities are providing water service with pressures in reasonable ranges, and it is only logical and consistent with expert opinion that pressures be surveyed at a minimum at one high and one low point to get a fully comprehensive and useful understanding of the pressure reading of a system.

Furthermore, the OCA avers that allowing Aqua to continue providing service to customers at levels above 125 psi is not consistent with Aqua's obligation to provide safe, adequate and reliable service under 66 Pa. C.S. § 1501. OCA Exc. at 35-37.

In reply, Aqua argues that its system of pressure measurements satisfies the requirements of 52 Pa. Code § 65.6(d) and that the ALJ correctly rejected the OCA's arguments that Aqua's processes violate the regulation. In addition, Aqua states that the Recommended Decision recognizes that there are places in its system where higher pressures are necessary to ensure adequate water service to downstream customers. Aqua asserts that in the customer example from Chesterbrook offered by the OCA, this customer's property is located close to one of Aqua's largest treatment plants and pressures in excess of 200 psi are necessary to serve customers at higher elevations. Aqua references the Commission's decision in *PAWC* in arguing that it is not reasonable in certain situations to require Aqua to reduce pressures or to insure the customer against damages if the customer's required reducing valve fails. Aqua R. Exc. at 21-22.

d. Disposition

With respect to the pressure surveys, we agree with the ALJ's conclusion that, in promulgating the regulation at 52 Pa. Code § 65.6(d), if the Commission intended to limit pressure surveys in any way to define the meaning of "representative points," *e.g.*, to those taken at one high and one low pressure point, the regulation would include such language. Without such a requirement, the ALJ found that there is no evidence that Aqua's current system is not reasonable for maintaining generally normal operating pressures or that the points of measurement are not sufficiently representative. Therefore, we agree that Aqua's system of pressure measurement satisfies the requirements of 52 Pa. Code § 65.6(d).

Additionally, we agree with the ALJ that Aqua should not be directed to reduce upstream water pressures or install additional pressure valves based upon this proceeding. While we are sympathetic to the experience of the customer from Chesterbrook of failing pressure valves and property damage, the Commission has repeatedly held that public utilities are not required to render perfect service. *Rounce v. PECO Energy Co.*, Docket No. C-2015-2506941 (Order entered December 9, 2016); *Bertsch v. PPL Elec. Util. Corp.*, Docket No. C-2011-2251784 (Order entered April 2, 2012). Although a few customer experiences are not sufficient for the Commission to mandate operational changes on Aqua's distribution system at this point in time, we encourage Aqua to identify and explore ways to target areas that may benefit from system improvements as it investigates and tracks individual pressure complaints. We shall deny the OCA's Exception No. 25.

3. Isolation Valves

Isolation valves are installed on water mains so that the flow of water can be shut off in sections of the distribution system in case of a water main break or for other main repairs and replacements. Aqua M.B. at 170. Exercising an isolation valve means operating the valve through complete full open and close cycles until it operates with little resistance. Exercising isolation valves prevents them from seizing up and getting stuck due to corrosion or other deposits. An isolation valve that cannot be fully closed will increase water loss during a water main break. Inoperable valves will need to be replaced or repaired. OCA M.B. at 211-12; OCA St. 7 at 14.

a. Positions of the Parties

With respect to critical isolation valves, Aqua stated that all of its 270 such valves have been identified and currently have an exercising schedule within Aqua's work order management system, and that it exercises these valves at least once every four

years. Aqua M.B. at 171. The OCA determined that Aqua's exercising schedule for its critical isolation valves is reasonable and recommended that any critical isolation valves that could not be exercised should be repaired or replaced as soon as practicable after they are found to be inoperable. OCA M.B. at 212.

For non-critical isolation valves, Aqua operates according to a twelve-year inspection and exercising program. Aqua averred that it has committed to various non-critical valve inspection measures as part of its 2020 management audit with the Commission. Aqua M.B. at 171-172. The OCA argued that Aqua's schedule to inspect non-critical isolation valves is too long and that they should be inspected on a five-year cycle. OCA M.B. at 213. Aqua contended that the cost of the OCA's recommendation, for which the OCA did not provide any estimates, may exceed any operational benefit due to the amount of time and additional workforce needed to implement it, and that the proposed timeline is inefficient and redundant. Aqua M.B. at 172; Aqua St. 9-R at 13-14.

b. Recommended Decision

The ALJ found that the OCA did not meet its burden of proving that requiring a five-year inspection cycle for non-critical valves is necessary or will derive a benefit to Aqua's system commensurate with the cost of the program. However, the ALJ recommended that the Commission direct Aqua to develop an isolation valve inspection and exercise program, to be implemented no later than 180 days from the effective date of rates resulting from this proceeding, which establishes a defined schedule to exercise each of its non-critical isolation valves within a set inspection cycle and, subsequently, maintain records of its attempts to inspect and exercise its isolation valves noting whether it was successful. R.D. at 125.

c. Aqua Exception No. 13, OCA Exception No. 26, and Replies

In its Exception No. 13, Aqua argues that the ALJ erred by requiring the Company to develop an isolation valve inspection and exercise program, because it has already developed an appropriate inspection and exercise program. Further, Aqua contends that it has made commitments through its 2020 management audit relating to the inspection of non-critical valves, and it committed to ensure the exercising of these valves is completed over a twelve-year period. Aqua asserts that the ALJ's recommendation is duplicative of Aqua's existing program and commitments and should be rejected. Aqua Exc. at 38-39.

In reply, the OCA agrees with the ALJ's recommendation that Aqua must develop an isolation valve inspection and exercise program. The OCA disagrees with Aqua that it has already developed such a program and that the ALJ's recommendation is duplicative of such program. Rather, the OCA contends that certain findings in Aqua's 2020 management audit state that "several aspects of a comprehensive critical valve testing program are missing or in progress, and the company should expand the program to track testing and operation of non-critical valves..." and Aqua's operating procedure "does not include information on valve inspection, scheduling, or valve criticality – all of which would be critical components of a valve inspection manual or program." OCA R. Exc. at 24 (citing *Aqua Pennsylvania, Inc., Peoples Natural Gas Company LLC, Peoples Gas Company LLC, Management and Operations Audit*, Docket Nos. D-2020-3018771, D-2020-3018773, and D-2020-3018774 (issued April 2021) (*Aqua 2020 Management Audit Report*)). Furthermore, the OCA argues that a specific replacement time for non-critical valves has not been approved by the Commission and Aqua has not provided support for the longer twelve-year exercising schedule. The OCA asserts that the Commission should adopt the ALJ's recommendation to direct Aqua to develop an isolation and inspection exercise program to be implemented no later than

180 days from the effective date of rates resulting from this proceeding. OCA R. Exc. at 24-25.

In its Exception No. 26, the OCA argues that the ALJ erred in concluding that Aqua should be required to inspect non-critical isolation valves every twelve years instead of five years. The OCA avers that it demonstrated that a five-year inspection cycle would provide a benefit to Aqua and its customers. OCA Exc. at 37-38.

In reply, Aqua contends that the ALJ correctly denied the OCA's recommendation that Aqua implement the OCA's proposed five-year inspection cycle for non-critical valves. Aqua reiterates that it has made commitments through its 2020 management audit to exercise its non-critical valves over a twelve-year period, and that it has identified all valves in its system and is developing a schedule for exercising the non-critical isolation valves. Also, Aqua avers that the OCA's proposal is not supported by cost estimates for the amount of time and additional workforce that would be needed. Aqua R. Exc. at 22.

d. Disposition

Upon review of the record, we conclude that the OCA did not meet its burden of proving that requiring a five-year inspection cycle for non-critical isolation valves is necessary or will be cost-beneficial to Aqua's system. The OCA did not provide any cost estimates for the implementation of its recommended five-year program. Without any cost estimates, it is not possible to determine whether any benefits from the accelerated program will be commensurate with its costs. The costs associated with any additional time and workforce needed for the program could exceed its operational benefit and render it inefficient and redundant. For these reasons, we will not require Aqua to implement a five-year inspection cycle for non-critical isolation valves. Accordingly, the OCA's Exception No. 26 shall be denied.

We will, however, adopt the ALJ's recommendation and direct Aqua to develop an isolation valve inspection and exercise program, to be implemented no later than 180 days from the effective date of rates resulting from this proceeding, which establishes a defined schedule to exercise each of its non-critical isolation valves within a set inspection cycle and requires Aqua to maintain records of its attempts to inspect and exercise its isolation valves noting whether it was successful. Although Aqua contends that such a directive is duplicative because it has already developed an appropriate inspection and exercise program and made commitments through its 2020 management audit relating to the inspection of non-critical valves, we agree with the ALJ that the development of a non-critical isolation valve inspection and exercise program at this time is reasonable. The findings referenced by the OCA from the Commission's 2020 Aqua management audit that Aqua should expand its valve inspection program to track testing and operation of non-critical valves and that its operating procedure should include information on valve inspection, scheduling, or criticality, along with the fact that a specific replacement time for non-critical valves has not been approved by the Commission, support the ALJ's recommendation to develop a more formal valve inspection program. *See* OCA R. Exc. at 24 (citing *Aqua 2020 Management Audit Report*). Therefore, Aqua's Exception No. 13 will be denied.

4. Fire Hydrants

Aqua has over 21,000 public fire hydrants throughout its systems. In response to discovery, Aqua identified sixteen public fire hydrants on its systems that cannot provide the minimum fire flow of 500 gallons per minute (gpm) at 20 psi. Aqua M.B. at 172.

a. Positions of the Parties

The OCA recommended that each of the sixteen fire hydrants that cannot provide the minimum fire flow should be marked as such so that they will only be used for flushing and blow-offs and Aqua should provide confirmation to the OCA and other parties when this is completed. OCA M.B. at 213; OCA St. 7 at 17. Aqua stated that it has planned main replacement projects to address these hydrants within the next three years and, during this time, Aqua will attempt to either find alternative locations for the hydrants or remove them. Aqua M.B. at 172; Aqua St. 9-R at 15. The OCA agreed with this approach, so long as the hydrants will be marked and only used for flushing and/or blow-offs until they are moved or replaced. OCA M.B. at 213-14; OCA St. 7SR at 8.

b. Recommended Decision

The ALJ stated that the OCA and Aqua largely resolved their disputes regarding Aqua's plan to address the sixteen fire hydrants in its system that cannot provide the minimum fire flow of 500 gpm at 20 psi. Given the limited number of fire hydrants at issue and the importance to fire companies to know that these hydrants are not reliable for fire protection, the ALJ found that the OCA's recommendation that Aqua should mark the hydrants for only flushing and/or blow-offs until they are moved or replaced, and report to the OCA and other Parties when this is completed, is reasonable and should be adopted. R.D. at 125.

c. Disposition

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

5. Flushing

Flushing addresses sediments that build up in pipes that may affect the taste, clarity, and color of water. There are no Commission or PADEP requirements for main flushing. In a discovery response, Aqua indicated that all systems were flushed in 2020 under its main flushing program, but six systems were not flushed in 2019 due to staffing issues. OCA M.B. at 214; OCA St. 7 at 17.

a. Positions of the Parties

The OCA recommended that Aqua improve its flushing program in its Southeast Pennsylvania (SEPA) division by flushing the system once every three years because there are a substantial number of complaints regarding flushing-related issues which would likely be eliminated under a regular flushing program. OCA M.B. at 214.

Aqua disagreed with the OCA's recommendation. Aqua argued that the OCA offered no evidence, and that there is no industry standard, supporting a three-year flushing schedule. Also, Aqua averred that flushing is labor-intensive, somewhat disruptive and can result in significant non-revenue water volume. Aqua stated that certain factors, including water quality samples, customer issues, system geometry, daily water volume in an area, and proximity to wells and tanks, dictate how and when flushing occurs. Aqua contended that it should retain flexibility regarding flushing its distribution system and a three-year schedule is not warranted. Aqua M.B. at 174-175; Aqua St. 9-R at 17-18.

b. Recommended Decision

The ALJ noted that a three-year flushing program may eliminate customer complaints and the need for Aqua to assess certain factors in determining whether and

when to flush the system. However, the ALJ found that, based on Aqua's witness testimony that flushing can be labor intensive and result in UFW, it is not possible to conclude that it is reasonable to impose the costs on ratepayers for a three-year flushing program which may or may not result in the benefits identified by the OCA. R.D. at 126.

c. OCA Exception No. 27 and Replies

In its Exception No. 27, the OCA argues that the ALJ erred in concluding that Aqua should not be required to flush its SEPA system every three years. The OCA asserts that Aqua did not offer support for its position that flushing a system can be labor intensive and result in UFW, and it contends that a three-year flushing program is reasonable and consistent with industry standards. OCA Exc. at 38.

In reply, Aqua contends that the OCA's proposal "is an expensive and a wasteful solution in search of a problem." Aqua avers that the number of customer complaints does not suggest a serious water quality issue requiring a change to its flushing procedures. Furthermore, Aqua argues that the OCA's proposal would result in additional lost water from increased flushing and add to labor and water treatment costs. Aqua R. Exc. at 22-23.

d. Disposition

Upon review of the record, we agree with the ALJ that it is not possible based on the record to determine whether any benefits of a three-year flushing program will outweigh the costs associated with it. While such a program may reduce customer complaints and provide for a pre-determined flushing frequency, as the OCA argues, flushing the system can be labor intensive, disruptive and result in UFW, according to Aqua. Without any additional evidence or a clear industry standard supporting a

three-year flushing program, we find that requiring Aqua to flush its SEPA system every three years is not warranted. Therefore, we shall deny the OCA's Exception No. 27.

6. Per- and Polyfluoroalkyl Substances (PFAS)

Aqua maintains a website, www.waterfacts.com, with information about its testing and treatment for PFAS contamination in its water supplies. The most recent test results for some water sources were from 2016, 2017 and 2018, without explanation why more recent test results were not provided. Aqua M.B. at 175; OCA M.B. at 215; OCA St. 7 at 19.

a. Positions of the Parties

The OCA indicated that its understanding that testing was stopped at certain sites was because the test results indicated less than 13 parts per trillion for PFAS, which is Aqua's standard, and that Aqua ceases testing for sources that test below 13 parts per trillion. The OCA recommended that Aqua should add a statement to its website explaining why testing was stopped for water sources that it no longer tests for PFAS. Aqua agreed to implement the OCA's recommendation and stated it will include clarifying comments on its website regarding the reasons testing ceased at certain sites. Aqua M.B. at 175-76; Aqua St. 9-R at 19; OCA M.B. at 215; OCA St. 7 at 19.

b. Recommended Decision

The ALJ found that as no other party presented testimony on this issue, and Aqua agreed to the OCA's recommendation regarding PFAS reporting, Aqua's PFAS procedures should be accepted by the Commission.

c. Disposition

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

C. Customer Service

Under the *Aqua-Peoples Settlement*, the settling parties agreed that Aqua would commit to the following "Customer Service" improvement metrics:

83. Aqua commits to improve Aqua's call center performance to meet or exceed the same performance standards that the Peoples Companies agreed to meet in the 2013 Settlement concerning the acquisition of Equitable Gas Company (Docket No. A-2013-2353647 et al.) for the following three metrics in each of the five calendar years (2020-2024) following closing:

- i. percent of calls answered within 30 seconds of at least 82%,
- ii. busy-out rate of no more than 0.25%,
- iii. average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no higher than 2.5% for 2024.

Aqua-Peoples Settlement at 146-147.

In this proceeding, the OCA and CAUSE-PA asserted that Aqua failed to comply with certain of the customer service related commitments made by Aqua in the *Aqua-Peoples Settlement*. R.D. at 127-131. As will be discussed more fully below, the OCA challenged Aqua's compliance with Paragraph No. 83, above, of the settlement commitments. In this regard, the OCA challenged Aqua's compliance with: (1) percent of calls answered within 30 seconds of at least 82%; and (2) average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no

higher than 2.5% for 2024. *See* OCA M.B. at 188-193. The OCA stated that Aqua met the busy-out rate standard, but for reasons argued in its OCA St. 6, Aqua had not met the standards for calls answered and average call abandonment rate.

The OCA also challenged Aqua's compliance with Paragraph 85 of the *Aqua-Peoples Settlement*, *infra*, regarding the Company's commitment to complete a root cause analysis (RCA) of customer complaints. *See* OCA M.B. at 193-94. In addition, the OCA argued that Aqua's failure to comply with customer service related issues, in addition to other considerations, were an additional reason to reject the Company's request for a management performance adjustment to its ROE, discussed, *supra*. *See* OCA MB at 75-77; 181-82; 204.

1. Calls Answered Commitment Under the *Aqua-Peoples Settlement*

a. Positions of the Parties

The OCA asserted that Aqua was not in compliance with the calls answered commitment under the *Aqua-Peoples Settlement*. The OCA proffered its calculation of the utility's percentage of calls in which a customer affirmatively seeks to talk to a live representative. OCA M.B. at 190 (citing OCA St. 6 at 10); *also*, OCA Exh. BA-2 for calculation of annual average results for each of the performance standards using monthly information provided by Aqua. According to the calculations of the OCA witness Ms. Barbara A. Alexander, as measured by the calls in which the customer selects the option to speak with a representative, the annual calls answered average for 2019 was 70.56%, for 2020 was 72.86%, and for 2021 through July was 50.64%. *Id.*

Based on the foregoing, the OCA witness, Ms. Alexander, pointed out that Aqua has never met the 82% call answering standard as measured by the typical

measurement of the percentage of calls in which the customer affirmatively seeks to talk to a live representative.

Additionally, the OCA took issue with Aqua's calculation of the percentage of calls answered within 30 seconds based on the Company's use of "aggregated" data. Aqua used data from a combination of the results for customers seeking to speak to a representative with all calls handled without that request through its automated menu, Interactive Voice Response (IVR), system. Use of data from the IVR system was described as an "aggregate" of data. The OCA found use of aggregate data to be objectionable as it would, in its view, skew the data results.¹⁴⁴ OCA St. 6 at 10.

In response to the position of the OCA concerning Aqua's compliance with the percentage of calls answered, Aqua noted that OCA witness Ms. Alexander acknowledged that the Company's percentage exceeded the 82% threshold for both 2019 and 2020. Aqua M.B. at 184. Consequently, the disagreement between Aqua and the OCA regarding this metric centered upon the inclusion of calls handled by Aqua's IVR system in calculating the calls answered percentage. *Id.*

Aqua explained that the IVR is an automated way to service customers that call in with questions or concerns. *See* Aqua St. 10-R at 15-16. Aqua cites to the applicable terms of the *Aqua-Peoples Settlement*, Paragraph No. 83, and argues that the Peoples Companies include IVR contacts in calculating service level performance. Aqua continues that the use of IVR contacts data is a standard calculation in measuring contact

¹⁴⁴ In response to discovery, Aqua stated that it utilizes two call centers located in Illinois and North Carolina which handle calls from Pennsylvania customers. OCA St. 6 at 9. The Merger Settlement requires annual average performance standards in the three areas mentioned above [Aqua-Peoples Settlement Paragraph No. 83] that can be measured to reflect the performance provided to Pennsylvania customers. Since both call centers handle calls from all of Aqua's customers in several states, the performance standards reflect the average of all calls at both call centers. *See* OCA St. 6 at 9.

center performance. Based on the foregoing, Aqua submits that the position of the OCA, that the IVR system should not be “aggregated” with the Company’s person-to-person telephonic contacts, should be rejected.

b. Recommended Decision

The ALJ agreed with Aqua that the Company met its commitment under the *Aqua-Peoples Settlement* to answer 82% of customer calls within 30 seconds. The ALJ rejected the position of the OCA that use of the IVR data to calculate the Company’s performance related to the call center standards metric, made Aqua’s data unreliable and, therefore, not in compliance with the terms of the settlement. The ALJ agreed that use of aggregate data was consistent with the settlement and reasonable because it is the standard used by the Peoples Companies. R.D. at 128.

c. OCA Exception No. 20 and Replies

In its Exception No. 20, the OCA disagrees with the ALJ that use of aggregate data is reasonable. The OCA argues that the calls answered standard should be measured only by the number of customers who choose to speak with a representative because use of aggregate data, which also includes customers who use the IVR system (and do not attempt to reach a representative), skews the results. OCA Exc. at 31-32. The OCA notes that these calls are clearly “answered” within less than thirty seconds, but the calls are irrelevant to the issues discussed and agreed to in the *Aqua-Peoples Settlement*. OCA Exc. at 32.

Therefore, based on its position that use of the IVR data (or aggregated data) is not reasonable under the *Aqua-Peoples Settlement*, the OCA argues that the Commission should adopt its recommendation. *See, i.e.*, OCA M.B. at 204, pertaining to the directive for Aqua to issue a compliance document. The OCA submits that due,

inter alia, to Aqua's failure to meet the obligations of the *Aqua-Peoples Settlement*, the Commission should reject Aqua's claim for exemplary management performance.

OCA Exc. at 32

In its Replies to Exceptions, Aqua distinguishes the contentions asserted by the OCA about what may be "reasonable." According to Aqua, the OCA's position disregards the clear language of the commitment of the *Aqua-Peoples Settlement*. In this regard, Aqua argues the express language of the settlement commits the Company to improve its call center performance to meet or exceed the same performance standards that the Peoples Companies are under. Aqua continues that this is the result of the metric - - percentage of calls answered within 30 seconds of at least 82%. Because the Peoples Companies include IVR contacts in calculating service level performance, which is a standard calculation in measuring contact center performance, Aqua argues that it should be permitted to do so and that it is reasonable to do so in its calculation. Aqua R. Exc. at 18-20.

d. Disposition

On consideration of the record evidence, we shall deny the OCA's Exception No. 20, consistent with the discussion herein and adopt the recommendation of the ALJ. There is no dispute that the analogue for this metric is the performance metric adopted by the Peoples Companies. Based on the use of aggregated data for the calculation as used to measure the performance of the Peoples Companies, we agree with the recommendation of ALJ Long that use of this data is acceptable for Aqua. When viewed in this light, it appears that Aqua has complied with its commitments.

Based on the foregoing, we will deny the OCA's Exception No. 20 in full recognition that, in any future proceeding, where the metric is shown to inaccurately reflect Pennsylvania-specific conditions, its calculation may be revisited.

2. Calls Abandonment Commitment Under the *Aqua-Peoples Settlement*

a. Positions of the Parties

Under the *Aqua-Peoples Settlement*, Aqua committed to: “[an] average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no higher than 2.5% for 2024.” The OCA noted that Aqua’s annual call abandonment rate metric had not been met. *See* OCA St. 6 at 10. The OCA, through its witness Ms. Alexander, observed that the call abandonment rates were: 4.56% in 2019, 4.32% in 2020, and 13.15% in 2021, through July. *Id.*

The OCA also, as noted, objected to Aqua’s measure of the call abandonment rate by combining the performance when customers affirmatively seek to speak with a customer service representative with all calls handled via the IVR system. The OCA argued that use of the IVR system data results in an inaccurate measurement of customer experience for those attempting to reach a customer service representative. OCA St. 6 at 10.

Aqua conceded that it had not, for the applicable period, met the percentage of average call abandonment metric commitment of the *Aqua-Peoples Settlement*. Aqua explained, however, that unanticipated circumstances outside of its control were substantial factors in preventing the Company from express compliance. *See* Aqua M.B. at 185-86.

Aqua, through its witness, Ms. Black, explained that the failure to meet the metric was primarily attributed to unanticipated United States Postal Service (USPS) delays. Aqua explained that the unanticipated USPS delivery delays caused many customer bills to be delivered late and resulted in higher-than-normal call volumes.

The impact of the postal service delay and severe weather events in meeting this metric was identified in an annual report filed on February 1, 2021.

Aqua noted that the *Aqua-Peoples Settlement* contemplated a situation where the Company may miss a benchmark and such failure would be addressed in collaboratives as contemplated by the terms of the *Aqua-Peoples Settlement*. Under the terms of the settlement, Aqua is required to compile an annual report to apprise stakeholders of its compliance with the settlement terms.

b. Recommended Decision

On consideration of the position of the Parties, the ALJ agreed with Aqua. The ALJ noted that the *Aqua-Peoples Settlement* contemplated a situation where events outside of the Company's control that prevent compliance with the literal terms of the settlement commitments could occur. She found that Aqua transparently explained in the February 1st report the reason for its failure to meet the call abandonment benchmark for 2020-21. The events resulting in Aqua's failure to meet the settlement commitment were viewed as an isolated situation and did not, in her opinion, equate to a failure to comply with the settlement. R.D. at 128.

c. OCA Exception No. 21 and Replies

In its Exception No. 21, the OCA disagrees with and, therefore, excepts to, the ALJ's conclusion that Aqua "[s]hould be excused from its obligation to reduce its average call abandonment rate to 4% or less." OCA Exc. at 32.

The OCA argues that the evidence shows that as of July 2021, the call abandonment rate was 13.15%, compared to a rate of 4.56% in 2019. The OCA argues that, in the year before and in the partial year following the unusual circumstances in

late 2020, Aqua never met the “no higher than 4%” metric for its call abandonment rate, even when calculated using the aggregate calls that included IVR data. OCA Exc. at 32-33 (citing OCA St. 6SR at 5; OCA M.B. at 192-93).

The OCA, contrary to the conclusion of the ALJ, takes the position that Aqua’s failure to achieve its commitment level was not an isolated event that happened because of unforeseen circumstances. The OCA points out that the Company has not met the 4% abandonment rate in any of the last two and one half years. OCA Exc. at 33.

In its Replies to Exceptions, Aqua stresses two points: (1) the settlement commitment did not become effective until after the merger was approved by the Commission in 2020, and thus prior performance data under this metric is not relevant to assess its compliance with the commitment; and (2) the ALJ concluded that the *Aqua-Peoples Settlement* contemplated that unexpected circumstances could prevent compliance. Based on the foregoing, the Company maintains that the failure to meet this metric is, in fact, an isolated situation which does not equate to a failure to comply with the settlement commitment. Aqua R. Exc. at 19.

d. Disposition

On consideration of the positions of the Parties, we shall deny the Exceptions of the OCA in this matter. We note that there is a substantial disparity in the percentage of calls abandoned for year 2021 (as of July 2021, 13.15 %; *see* OCA Exc. at 32). While we find the substantial difference in the target percentage under the metric and the actual performance of Aqua to be a concern, we accept the reasoning of the presiding ALJ that the Company provided a reasonable basis to account for the disparity. On balance, we agree that the substantial difference in the abandoned call percentage for the calendar year 2021 resulted from unanticipated conditions and is an isolated event. While the OCA notes that the Company has never met its target prior to the periods of

time of the 2021 report, the Company notes that the approval of the merger conditions in 2020 renders this data not material to our consideration of the year at issue, 2021.

Based on the foregoing, the OCA's Exception No. 21 is denied consistent with the discussion in this Opinion and Order. We advise the Parties that the annual report will provide a basis for cooperation between interested stakeholders should further concerns arise regarding compliance.

3. Commitment to Complete a Root Cause Analysis (RCA) of Customer Complaints

a. Positions of the Parties

The OCA explained that this area of concern arises pursuant to Paragraph No. 85 of the *Aqua-Peoples Settlement*. Paragraph No. 85 is reprinted below:

85. Aqua PA will develop a system to track Aqua PA customer complaints in a live Excel spreadsheet, consistent with Paragraph 47 in the Joint Petition for Settlement submitted in Aqua PA's recent base rate case (Docket Nos. R-2018-3003558 and R-2018-3003561). Aqua PA will review this information and conduct a root cause analysis [(RCA)] of adverse trends at least annually.

Aqua-Peoples Settlement at 147.

The OCA took the position that Aqua failed to comply with the development of a RCA.¹⁴⁵ *See* OCA M.B. at 193-94. The OCA asserted that Aqua has not provided requested information on the methodology and timetable for the completion of the RCA contemplated by the *Aqua-Peoples Settlement*. The OCA further stated that Aqua has not indicated a methodology for tracking whether its responses to customer disputes or complaints were incorrect or improper, which, we are advised, is a key component of any RCA of customer complaints.¹⁴⁶ *Id.*

Aqua, through its witness, Ms. Black, acknowledged that the RCA has not been completed. Aqua referenced a “live spreadsheet” that has not yet been finalized. Aqua M.B. at 187. Aqua attributed the lack of finalization to the fact that it has been working with the OCA to develop the spreadsheet based upon the OCA’s requested parameters. *Id.* (citing Aqua St. 10-R at 17).

b. Recommended Decision

The ALJ concluded that Aqua sufficiently demonstrated its good faith efforts to come into compliance with the benchmarks set forth in the *Aqua-Peoples*

¹⁴⁵ A RCA requires a fundamental review of the policies and practices that resulted in an informal customer complaint and the internal evaluation of how to prevent the complaint or fix the underlying cause. *See* OCA St. 6 at 12. The OCA acknowledged that Aqua provided a confidential spreadsheet of complaints and their “root cause,” but did not provide an actual analysis of the root cause. OCA M.B. at 193-194.

¹⁴⁶ As the OCA witness, Ms. Alexander, noted, “[t]his lack of analysis of customer complaint trends and identification of the root cause for any complaint trends is also troubling in light of the volume of ‘justified’ complaints and ‘notices of infractions’ from the Commission’s [BCS] after that office’s handling of informal complaints submitted by Aqua customers.” OCA St. 6 at 13.

Settlement concerning the development of a RCA. R.D. at 129. The ALJ acknowledged that the development of a RCA is an ongoing process.¹⁴⁷

c. OCA Exception No. 22 and Replies

In its Exception No. 22, the OCA argues that Aqua has not complied with the commitment to conduct a RCA of customer complaint data consistent with the *Aqua-Peoples Settlement*. The OCA stresses that the terms of the settlement required Aqua to develop a system to track Aqua customer complaints in a live Excel spreadsheet and to review this information and conduct a RCA of adverse trends at least annually. The OCA takes the position that Aqua has failed to do this, and it disagrees with the ALJ's conclusion that Aqua's compliance with this settlement obligation should not be determined based upon "good faith efforts." OCA Exc. at 33.

The OCA further argues that, based on a comparison of Aqua's performance compared to other utilities, such comparison shows why it is "critical" for Aqua to comply with this term of the *Aqua-Peoples Settlement* in this regard.¹⁴⁸ The OCA points out that Aqua had a high number of customer complaints and, in order to address Aqua's high percentage of justified complaints, it asserts that the Company should be required to conduct a RCA of customer complaint data to spot issues and concerns that require attention and potential changes in policies or processes as soon as practicable. OCA Exc. at 33.

¹⁴⁷ The ALJ further noted that, upon the conversion to SAP, Aqua's witness, Ms. Black, stated that the Company's RCA efforts can be enhanced by increasing the visibility of case trends through enhanced reporting of case types. R.D. at 129.

¹⁴⁸ In 2020, Aqua had the highest number of "justified" complaints compared to other Pennsylvania water utilities; 16% of the closed and evaluated customer complaints were justified compared to 5% for other major water utilities. *See* OCA Exc. at 33 (citing 2020 Utility Consumer Activities Report and Evaluation at 12; OCA M.B. at 180; OCA R.B. at 110). In October 2021, Aqua's justified average complaint percentage was 13%. OCA Exh. BA-5; OCA R.B. at 111. *Id.*

For these reasons, the OCA submits that Aqua is not in compliance with this term of the settlement. Therefore, the Commission should modify the Recommended Decision and adopt the OCA's recommendation. OCA Exc. at 33-34.

In its Replies to Exceptions, Aqua explains that it has been attempting to work collaboratively with the OCA to develop the spreadsheet's parameters. Aqua R. Exc. at 20. With respect to the RCA, Aqua further explains that the RCA occurs on an on-going basis. The Company states that, if an isolated employee error is identified, coaching on compliance is provided. If multiple similar complaints are received, the issue is escalated to the customer contact team for review. *Id.*

Aqua concludes its Replies by noting that it is working to "enhance" and "formalize" the RCA process, which will be facilitated by Aqua's upcoming conversion to the SAP operating system. Based on this representation, Aqua asserts that the OCA's contentions regarding its RCA efforts are without merit and that the OCA's Exception should be denied. Aqua R. Exc. at 20.

d. Disposition

On consideration of the record, we shall grant the OCA's Exception No. 22, in part, and deny it, in part. The Parties appear to have little to no disagreement concerning the "live" spreadsheet data. The controversy appears to surround the use of the spreadsheet data in development of the RCA. We do not, therefore, dismiss, out of hand, the concerns expressed by the OCA in the development of the RCA.

The Company's commitment, as memorialized in Paragraph No. 85 of the *Aqua-Peoples Settlement*, cross-references Paragraph No. 47 of the 2018 Settlement, which was approved by the Commission in the *Aqua 2018 Rate Case*. Paragraph No. 47 of that 2018 Settlement reads as follows:

47. The Company shall continue to provide water and wastewater customer complaints in a live Excel spreadsheet that shall be made available in future general rate proceedings. The water and wastewater customer complaint logs shall contain separate searchable columns for date of complaint, street number, street name, city (zip code is preferable), and code for the type of complaint. The Company and OCA agree to continue to discuss how to incorporate into a live Excel spreadsheet the following additional information regarding whether a Company employee made a site visit, if the problem was the responsibility of the Company or the customer, and the date the complaint was resolved. The Company and the OCA agree to have that discussion within 90 days after the entry of a final order in this proceeding. Additionally, the Company agrees to provide a legend explaining the abbreviations used in the complaint logs.

Our review of the cross-referenced language connotes a more collaborative process between the OCA and Aqua was intended for the development of the RCA that goes beyond the submission of live spreadsheet data. Based on our review, we direct Aqua, the OCA and I&E to engage in collective exchanges regarding the spreadsheet data and cooperatively apprise each of how this data will be developed into a RCA that can reflect meaningful trends so as to, potentially, reduce contested issues in future proceedings. Accordingly, we shall grant the OCA's Exception No. 22, in part, and deny it, in part.

4. Management Performance Adjustment to Aqua's ROE Based Upon Asserted Levels of Customer Satisfaction

a. Positions of the Parties

The OCA's overall position was in vigorous opposition to the base rate increase request of Aqua. *See, e.g.*, OCA M.B. at 1-16. In addition to its objection to any increase in rates due to the adverse economic impact of the COVID-19 pandemic on the

service territory of Aqua, the OCA also took the position that Aqua's customer service performance was below that of comparable utilities. The OCA, through its witnesses, Ms. Alexander and Mr. Colton, addressed areas where Aqua was alleged to have failed to meet basic standards of utility performance pursuant to Sections 526 and 1501 of the Code, 66 Pa. C.S. §§ 526, 1501.

Based on the foregoing, as well as other factors discussed in Section X.D.2 of this Opinion and Order, *supra*, the OCA opposed Aqua's request for a management performance adjustment to its ROE. The OCA noted that the request was not supported but was refuted by the testimony of its witness Mr. David J. Garrett, who provided specific analyses of customer service and customer assistance measures. Namely, as noted in Section X.D.2, *supra*, the OCA, through its witness Mr. Garrett, testified that the Company has not conducted any comparative analyses to determine if Aqua's management performance is any different than other regulated utilities, in or out of its proxy group. OCA M.B. at 75-76.

The OCA, as a remedy for Aqua's alleged failure to implement the commitments agreed to in the *Aqua-Peoples Settlement*, and for other areas in which the OCA contended were inadequate, requested:

. . . that Aqua be held accountable for these previously agreed-to performance standards. OCA St. 6 at 23.
[OCA witness Alexander] recommends that Aqua develop and submit a compliance plan to the stakeholders that, after review, should be submitted to the Commission for approval and implementation. *Id.* The plan should include specific action steps and deadlines for achieving compliance. *Id.*

OCA M.B. at 204.

Accordingly, the OCA reinforced its argument that there was no basis for awarding a rate of return higher than Aqua's estimated cost of equity. *See* OCA St. 3SR at 10.

As discussed, in detail, under Section X.D.2 of this Opinion and Order, Aqua requested an upward adjustment to its ROE for superior management performance. Aqua argued that in accordance with Section 523 of the Code, 66 Pa. C.S. § 523, the Commission is required to consider management effectiveness when setting rates. Aqua insisted that it has provided extensive evidence to demonstrate that it provides high quality service and has implemented numerous programs designed to enhance the service it provides to customers and that this evidence supports an addition to the allowed ROE. Aqua M.B. at 128-37.

b. Recommended Decision

As previously noted, the ALJ recommended that the Commission reject the Company's request for an upward adjustment to its ROE for superior management performance. R.D. at 79-81.

For different reasons, however, the ALJ was not persuaded that in rejecting the Company's request, the Commission should rely on the evidence proffered by the OCA and CAUSE-PA regarding the provision of poor customer service. In particular, the OCA argued for its persuasive evidentiary value, that a customer satisfaction survey indicated that 73% of Aqua customers with recent telephone call center transactions rated satisfaction as "excellent" or "very good." R.D. at 129 (referencing OCA St. 6 at 11; OCA M.B. at 191). The OCA argued that this level of customer satisfaction is low compared to Pennsylvania electric and gas companies where over 80% of customers typically express that they are "very satisfied" with their interaction with the utility's representative. R.D. at 120-30. In considering this testimony, the ALJ agreed with Aqua

that its customer satisfaction survey indicating only 73% of customers rated their satisfaction as “excellent” or “very good” is not, in and of itself, indicative of poor customer service, particularly during the COVID-19 pandemic in which certain customer interactions have had to be limited. *Id.*

Accordingly, the ALJ recommended that in rejecting the Company’s request for a management performance adjustment the Commission should instead rely on the findings the ALJ made on pages 79-81 of her Recommended Decision, discussed, *supra*.

c. OCA Exception No. 23 and Replies

In its Exception No. 23, the OCA argues that the ALJ properly recommended that the Commission reject Aqua’s claim for an upward adjustment to its ROE for superior management performance. Nonetheless, the OCA submits that in recommending that the Commission reach this conclusion, the ALJ erred in finding that the Commission should not rely on the evidence proffered by the OCA and CAUSE-PA that demonstrates that the Company provides less than adequate customer service. The OCA points to the testimony of its witnesses Ms. Alexander and Mr. Colton that Aqua’s call center performance level in comparison to other utilities was not a good indicator regarding Aqua’s customer satisfaction. OCA Exc. at 34 (citing OCA St. 6 at 9-11; OCA St. 6SR at 5).

For purposes of ensuring that all of the evidence rebutting Aqua’s claim for a management performance adder is reviewed, in addition to the evidence adopted by the ALJ, the OCA submits that Aqua’s lower customer satisfaction level should be considered as one of many instances of Aqua’s lack of evidence to support a management performance adjustment. Therefore, the OCA argues that the Commission should consider Aqua’s poor satisfaction ratings, including the fact that Aqua’s customer survey

indicated that only 73% of customers rated their satisfaction as “excellent” or “very good” as further support for the OCA’s recommended ROE and as additional support for rejecting the management performance adder. OCA Exc. at 34-35 (citing OCA St. 6 at 8-22).

In its Replies to Exceptions, the Company refers the Commission to its prior evidence and argument in support of a management performance adder, and discussed in Section X.D.2 of this Opinion and Order, *supra*. Aqua R. Exc. at 20.

In its Replies to Exceptions, I&E explains that although it did not file any testimony regarding the Company’s customer service satisfaction levels, it does not oppose the OCA’s assertions, as set forth in OCA Exception No. 23. I&E R. Exc. at 19.

d. Disposition

As set forth in our disposition of Section X.D.2, *supra*, we have determined that Aqua has exhibited extraordinary effort in aiding and protecting Pennsylvania water and wastewater customers and the environment. Thus, we have awarded the Company a management performance adjustment of twenty-five basis points to its ROE. For this reason, we shall decline to address the additional arguments of the OCA, as set forth in its Exception No. 23, for rejecting the Company’s requested management performance adjustment. Accordingly, the OCA’s Exception No. 23 is denied.

D. Masthope Allegations of Inadequate Wastewater Service

1. Positions of the Parties

Masthope contended that the Commission should deny Aqua's requested rate increase for Masthope's water and wastewater customers because the Company has provided unreasonable service. In this regard, Masthope alleged that there have been unreasonable systematic and unresolved instances of hydraulic overload conditions affecting the Masthope Wastewater Treatment Plant (WWTP) dating back to 2018, which resulted in restrictions upon Aqua's ability to make new wastewater connections. Masthope submitted that Aqua's insufficient planning, investment, maintenance, and operation solely caused the hydraulic overload conditions and ensuing building restrictions within Masthope. Masthope contended that any additional rate increase for Masthope's customers would be unjust and unreasonable given Aqua's failure to provide reasonable service over a period of years. Masthope M.B. at 9-24.

Aqua rebutted that it has adequately planned for the capacity needs of Masthope and has taken reasonable and appropriate measures to improve the wastewater system and service facilitates in its provision of service to the Masthope community. . The Company completed an evaluation of the capacity needs at the Masthope community as part of its 2018 Chapter 94 Report. Based on the evaluation, Aqua implemented the project known as the "Treatment Train Project" to address the system's increasing capacity needs and to avoid future hydraulic exceedance. Aqua St. 9-R at 36-37. Aqua asserted that based upon its evaluation of both the capacity and connection needs of the Masthope community, the Company's "Treatment Train Project," as expanded, would address both the system's need for increased capacity to prevent future hydraulic overload, as well as connection needs of the system. The Company noted that the Treatment Train Project was subsequently expanded to a long-term capital upgrade project based on an evaluation of the remaining connection needs of the system. The

Company also asserted it has demonstrated it is taking proactive steps to reduce inflow and infiltration (I&I) in the collection system as described in its 2020 Chapter 94 Report. Aqua M.B. at 195-200; Aqua R.B. at 84-89; Aqua St. 9-R at 36-37; Aqua St. 9-R at 37.

While maintaining it has taken affirmative steps, Aqua asserted that two events beyond its control led to hydraulic overloads on the system. The Company alleged that elevated precipitation levels and shifts to more full-time use of the residences at Masthope, because of the COVID-19 pandemic, caused hydraulic overloads on the system. As a result of the overloads, Aqua explained, PADEP issued a moratorium on new connections to the system. In response to the moratorium, Aqua submitted a Corrective Action Plan to PADEP, which was designed to restore or otherwise make available connection capacity at Masthope. At that time, the Company noted that the Corrective Action Plan was approved by PADEP, and consequently, PADEP also granted a sewer connection allocation of 60 Equivalent Dwelling Units (EDUs) to Aqua, which modified the prior total moratorium on sewer connections. *See* Aqua St. 9-R at 33-36; Aqua St. 9-R at 37; Aqua Post-Hearing Exh. 1.

2. Recommended Decision

As a procedural matter, the ALJ noted that the issues presented by Masthope were in the context of a complaint *against a utility's rate increase based on the unreasonable provision of service*, rather than a complaint based on the unreasonable provision of service. As such, the ALJ noted that the question was not:

...whether Aqua's wastewater service to Masthope is adequate and reasonable given the persisting hydraulic overload conditions and resulting moratorium on new connections to the Masthope WWTP. Instead, the Commission must determine *whether Aqua's alleged failure to provide reasonable service is so pervasive that the Company should be punished for this failure by refusing to*

grant its request for increased revenue, and whether it is necessary and appropriate to direct service changes or the installation of additional facilities.

R.D. at 133 (citing Masthope R.B. at 4 (quotations omitted, emphasis added)).

The ALJ noted the steps taken by Aqua to rectify the issues related to the Masthope system, including the Company's Treatment Train project, and the Company's Corrective Action Plan submitted to PADEP. Under the Corrective Action Plan, which was recently approved by the PADEP, the ALJ noted that the Company would restore and otherwise make connection capacity available for the Masthope community.

Id. at 132.

The ALJ acknowledged "[t]he Masthope community is clearly experiencing challenges due to hydraulic overload at the WWTP." *See* R.D. at 133. However, the ALJ concluded that Aqua has taken affirmative steps to address the problem, and "[a]ppears to be working with PADEP to address the sewage planning and regulatory issues within that agency's purview."¹⁴⁹ Accordingly, the ALJ did not recommend that the Commission deny Aqua's request for a rate increase, decline to increase rates attributable to the cost of providing service to Masthope, or direct additional service changes or the installation of additional facilities. *Id.*

3. Masthope Exception No. 1 and Replies

In its Exception No. 1, Masthope challenges the grant of Aqua's requested rate increase based upon, *inter alia*, inadequate provision of service by Aqua where hydraulic overload conditions have persisted at the Masthope WWTP since at least 2018,

¹⁴⁹ R.D. at 133. The ALJ also noted that Masthope may file an appeal to the Environmental Hearing Board if it believes that PADEP's response to the sewage planning issues are inadequate. *Id.* (citing, Aqua Post-Hearing Exh. 1).

and the resulting moratorium on new connections imposed by the PADEP in 2020, notwithstanding PADEP's recent modification to allow additional connections. Masthope remains of the opinion that a rate increase under these circumstances is unwarranted. Namely, Masthope emphasizes that the Masthope community experienced a substantial rate increase in 2019. Masthope Exc. at 4 (citing Masthope M.B. at 9-19; Masthope Exc. at 4-10).

Masthope asserts that the ALJ erred by: (1) failing to conclude that Aqua has rendered inadequate and unreasonable wastewater service; (2) concluding that the Commission lacks jurisdiction over the hydraulic overload issues facing the Masthope system; (3) making an unsubstantiated finding that increased precipitation levels and shifts from part-time to full-time residencies during the COVID-19 pandemic caused hydraulic overloads; and (4) failing to consider whether to impose conditions upon any rate increase granted in this proceeding. Masthope Exc. at 5-10.

Masthope reemphasizes its position that Aqua's requested rate increase is unjust and unreasonable for Masthope ratepayers, particularly since Masthope residents experience ongoing and unresolved service issues. Masthope notes that Aqua acknowledges that it may take five years to implement the plans to fully resolve the hydraulic overload conditions at the Masthope WWTP. Masthope Exc. at 4.

Masthope asserts the Commission has jurisdiction, pursuant to its authority under Section 523 of the Code, *supra*, to consider the adequacy of Aqua's service to Masthope customers in determining just and reasonable rates. Masthope argues that the Commission should find that Aqua failed to provide its Masthope customers with adequate, efficient, safe, and reasonable service and facilities, and therefore deny all or part of Aqua's requested rate increase. Masthope Exc. at 5-7 (citing, *e.g.*, *Sutter v. Clean Treatment Sewage Company*, Docket No. C-20078197, (Order entered May 15, 2009) (*Sutter*) at 14).

Masthope notes that while the ALJ acknowledged the Company's failure to provide adequate service, she should have recommended an adjustment to Aqua's requested rate increase to reduce the impact on Masthope wastewater customers. Masthope Exc. at 6-7 (citing R.D. at 29-30, Findings of Fact Nos. 11[2]-1[4]¹⁵⁰). Masthope also argues that it was error for the ALJ to conclude that because PADEP has granted limited approval of Aqua's proposed Corrective Action Plan, the Commission lacks jurisdiction to address those matters as part of the rate proceeding. Masthope Exc. at 6 (citing R.D. at 133). Masthope asserts that the Commission has previously drawn a distinction of PADEP jurisdiction over hydraulic overloads which involve strictly environmental protection issues and the Commission's jurisdiction over adequate service in the context of rate proceedings. Masthope Exc. at 6-7 (citing *Sutter*).

Next, Masthope argues that it was error for the ALJ to acknowledge any factors "beyond Aqua's control" as mitigating Aqua's responsibility for hydraulic overload conditions. Specifically, Masthope asserts that there is no evidence of record to support the impact of the COVID-19 pandemic, including shifts from part-time to full-time residency, and elevated precipitation levels as impacting hydraulic overloads. Masthope Exc. at 8-9 (citing R.D. at 132).

¹⁵⁰ These Findings of Fact state, as follows:

112. Aqua submitted a Corrective Action Plan to Pennsylvania Department of Environmental Protection (PADEP), which is targeted at restoring or otherwise making available capacity to current and future connections at Masthope Mountain community.

113. This Corrective Action Plan was recently approved by PADEP.

114. As part of the approved Corrective Action Plan, PADEP also granted a sewer connection allocation of 60 Equivalent Dwelling Units (EDUs) to Aqua, modifying the sewer connection moratorium.

R.D. at 29-30 (citations omitted).

Finally, Masthope asserts that it was error for the ALJ to fail to impose any conditions on Aqua's proposed rate increase to assure the future provision of adequate and reasonable wastewater service for Aqua's Masthope customers, consistent with the Commission's authority to deny a rate increase *in part* where the Commission finds a public utility fails to render adequate service. Masthope Exc. at 9 (citing Masthope M.B. at 9-19; Masthope R.B. at 2-5).

Masthope requests that, if the Commission approves an increase in Masthope rates, the Commission should impose conditions and deadlines on Aqua to assure that the Company timely resolves the hydraulic overload conditions and permanently eliminates building restrictions that detrimentally affect the community. Further, Masthope argues the existence of Aqua's Corrective Action Plan in response to the PADEP does not preclude the Commission's authority to impose further such conditions. Masthope Exc. at 2, 6.

Specifically, Masthope requests that the Commission impose conditions to resolve the hydraulic overload conditions and eliminate building restrictions by directing Aqua to:

- coordinate with Masthope and local officials regarding the Corrective Action Plan;
- report to Masthope and the Commission on the status of corrective actions;
- seek additional requests or an amendment to the Corrective Action Plan to increase the number of connections to the Masthope WWTP pending completion of the Corrective Action Plan;
- assure that Aqua's "Project 15088006258 – Masthope WWTP Add Treatment Train" results in eliminating the building restrictions currently affecting the Masthope WWTP;

- timely complete Act 537 planning and related improvements to eliminate building restrictions in Masthope; and
- at a minimum, in light of PADEP's recent modifications to Aqua's Corrective Action Plan, require that Aqua meet and confer with Masthope and Lackawaxen Township officials to discuss the 60 permitted connections to determine areas of priority and maximize the benefit to the Masthope community.

Masthope Exc. at 9 (citing Masthope M.B. at 9-19; Masthope R.B. at 2-5).

Accordingly, Masthope asserts that the Commission should reject the ALJ's recommendation, grant Masthope's Exception No. 1, impose a reasonable reduction in Aqua's requested rate increase as it pertains to the Masthope community, and otherwise impose reasonable conditions upon Aqua to ensure timely resolution of the hydraulic overload conditions and elimination of building restrictions. Masthope Exc. at 10.

In its replies, Aqua asserts that the ALJ properly recommended that the Commission deny Masthope's claims of poor quality of service as a basis for challenging the Company's requested rate increase. Aqua notes that the ALJ correctly concluded that Aqua has taken affirmative steps to resolve problems facing this system, and proactively identify improvements to address "sewage planning and regulatory issues within...[PADEP's] purview." Aqua asserts that its affirmative steps taken to improve the system, which led to PADEP's lifting of the ban on new housing in Masthope, based upon Aqua's detailed Treatment Train Project, as expanded to a long-term capital upgrade project, and other steps taken by the Company to reduce I&I in the collection system, demonstrate Aqua's reasonable provision of service in the circumstances. Aqua R. Exc. at 23-25 (citing R.D. at 133; Aqua M.B. at 195-96). Aqua concludes that,

as found by the ALJ, Aqua has provided reasonable service and taken reasonable steps to address the problems facing this system. Aqua R. Exc. at 25.

Aqua further asserts that Masthope misconstrues the Commission's decision in *Sutter*, which Aqua asserts is distinguishable from the present circumstances. Specifically, Aqua claims that, unlike the utility in *Sutter*, Aqua has taken prompt and significant steps to resolve the hydraulic overloads facing the Masthope system, including the recently approved Corrective Action Plan submitted to PADEP. Aqua Exc. at 24 (citing Aqua R.B. at 85-86).

Aqua asserts that, contrary to Masthope's position, the record fully supports the ALJ's conclusion regarding the impact of circumstances beyond Aqua's control upon the occurrence of hydraulic overloads, including increased precipitation levels and shifts from part-time to full-time residencies during the COVID-19 pandemic. More specifically, Aqua notes that its witness, Mr. Duerr, testified to the steps taken by Aqua beginning in 2018 to address the system's issues, and the intervening events in 2020 that resulted in these overloads. Aqua Exc. at 24-25 (citing Aqua M.B. at 196-97).

Finally, Aqua contends that the Commission should reject Masthope's request that the Commission condition Aqua's requested rate increase. Aqua asserts that Masthope's proposed conditions relate to items identified in Aqua's Chapter 94 Reports and the Corrective Action Plan which was approved under the purview of the PADEP. Aqua Exc. at 25 (citing Aqua R.B. at 87-88).

Accordingly, Aqua asserts that the Commission should deny Masthope's Exception No. 1 and adopt the ALJ's recommendation dismissing Masthope's Complaints at Docket Nos. C-2021-3028992 and C-2021-3028996. Aqua Exc. at 25.

In its replies, I&E asserts its support for what it describes as the ALJ's well-reasoned recommendation as it pertains to Masthope. I&E R. Exc. at 24.

Finally, in its Replies, the OCA asserts that if the Commission grants Masthope's request to reduce the rate increase for Masthope customers, the remedy should not shift or impose corresponding costs on other Aqua water or wastewater customers. The OCA asserts that the revenue requirement associated with the rates set for Masthope should not be reallocated to other Aqua customers, based on Masthope's claim of inadequate service. Rather, if inadequate service is found, the OCA maintains that Aqua should bear the cost by reduction in the return on equity because the revenue requirement for Masthope would not be fully reflected in rates. OCA R. Exc. at 18 (citing OCA R.B. at 50; Masthope Exc. at 4-10).

4. Disposition

Upon review, as discussed more fully, *infra.*, we agree with the ALJ's recommendation to grant Aqua's proposed rate increase as applicable to Masthope, and we decline to impose any additional conditions upon Aqua related to the reduction of hydraulic overload conditions and elimination of building restrictions.

As a preliminary matter, we agree with the ALJ that our disposition of this issue turns on whether Aqua's alleged failure to provide reasonable service is so pervasive that the Company should be punished for this failure by refusing to grant its request for increased revenue, and whether it is necessary and appropriate to direct service changes or the installation of additional facilities.

Further, we agree with the general principles argued by Masthope that it is within the Commission's discretion pursuant to our authority under Section 523 of the Code, to consider the adequacy of Aqua's service to Masthope customers in determining

just and reasonable rates. Should we determine that Aqua's provision of service was *inadequate in the circumstances*, it is within our discretion to deny or reduce Aqua's requested rate increase, and/or impose further conditions as deemed reasonable and necessary in the circumstances. However, under the circumstances, we do not conclude that Aqua's provision of service to Masthope may be found to be unreasonable, or so inadequate as to justify a reduction in the proposed rate increase or warrant imposition of additional conditions upon Aqua's provision of service.

In the present circumstances, it is acknowledged that the Masthope community has experienced serious customer service issues regarding hydraulic overloads and the inability to meet the needs for new connections. However, in the context of a requested rate increase, our recognition of the serious allegation of issues regarding the provision of service must also include consideration of the Company's response to those issues. Where the Company's response is untimely and/or inadequate, we may be persuaded that the Company's proposed rate increase should be denied in total or reduced by some measure, and/or that certain conditions should be attached to the rate increase approval. *See Sutter, supra.*

Here, however, we conclude that the facts of the present case reflect that Aqua has taken prompt, reasonable and affirmative steps to rectify the problems associated with hydraulic overloads and the connection needs of the Masthope community. As noted by the Company, Aqua's detailed Treatment Train Project, as expanded to a long-term capital upgrade project, and other steps taken by Aqua to reduce I&I in the collection system, demonstrate Aqua's reasonable provision of service in the circumstances. Aqua R. Exc. at 23-25 (citing, R.D. at 133; Aqua M.B. at 195-96).

Further, we disagree with Masthope's argument that the Commission's prior decision in *Sutter* is applicable in the present circumstances. We note that *Sutter* is an example of the exercise of the Commission's discretion on a case-by-case basis, in the

circumstances involving a rate increase which did not establish a mandatory standard or ruling. Although *Sutter* did involve the Commission's exercise of jurisdiction where a utility had matters pending before the PADEP, the facts in *Sutter* are distinguishable in material respect to the facts presently before us. Foremost, the utility in *Sutter* did not demonstrate the prompt and affirmative steps to rectify the service deficiencies at issue in the proceeding. See, generally, *Sutter*, at 14. . In contrast here, the record reflects Aqua's prompt, reasonable and affirmative steps to rectify the problems and needs of the Masthope community.

Accordingly, we shall deny Masthope's Exceptions No. 1, and adopt the ALJ's recommendation, dismissing the Complaints at Docket Nos. C-2021-3028992 and C-2021-3028996.

E. COVID-19 Uncollectible Deferral

1. Positions of the Parties

Rather than requesting recovery of its existing COVID-19 deferral amounts in this current rate case, Aqua proposed to continue recording amounts in its COVID-19 deferral account and to seek recovery in a future rate case. In support, Aqua explained that the Commission previously authorized utilities to create regulatory assets for incremental uncollectible expenses related to COVID-19 above those already embedded in base rates. Aqua M.B. at 200 (citing Aqua St. 1 at 22-24).

Aqua noted increased levels of unpaid billings or "bad debt," due to the service termination moratorium, citing *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency COVID-19*, Docket No. M-2020-3019244 (Emergency Order ratified March 26, 2020) (*Emergency Order*). According to Aqua, this increased the Company's uncollectible accounts expense above the amount currently