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April 3, 2019

## VIA eFILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.  
and Aqua Pennsylvania Wastewater, Inc.  
Docket Nos. R-2018-3003558 and R-2018-3003561**

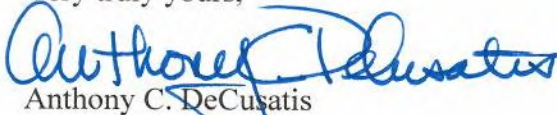
**Re: Joint Application of Aqua Pennsylvania, Inc. and Its Subsidiary,  
Superior Water Co., Inc.  
Docket Nos. A-2018-3004108 and A-2018-3004109**

Dear Secretary Chiavetta:

Enclosed please find the **Reply of Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Superior Water Company, Inc. to the Exceptions of The Treasure Lake Property Owners Association and Robert Curtius to the Recommended Decision of Administrative Law Judges Angela T. Jones and F. Joseph Brady** (the "Reply Exceptions"), in the above-referenced proceedings.

As evidenced by the enclosed **Certificate of Service**, copies of the Reply Exceptions are being served on Judge Jones, Judge Brady, the Office of Special Assistants, and all parties of record.

Very truly yours,

  
Anthony C. DeCusatis

Enclosures

c: Per the Certificate of Service (w/encls.)  
The Office of Special Assistants (via e-mail only)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	<b>DOCKET NOS. R-2018-3003558</b>
	:	<b>R-2018-3003561</b>
	:	
<b>v.</b>	:	
	:	
<b>AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JOINT APPLICATION OF AQUA PENNSYLVANIA, INC. AND ITS SUBSIDIARY, SUPERIOR WATER CO., INC.</b>	:	<b>DOCKET NOS. A-2018-3004108</b>
	:	<b>A-2018-3004109</b>
	:	

**REPLY OF AQUA PENNSYLVANIA, INC.,  
AQUA PENNSYLVANIA WASTEWATER, INC. AND  
SUPERIOR WATER COMPANY, INC.**

**To The Exceptions Of  
The Treasure Lake Property Owners Association and Mr. Robert Curtius  
To The Recommended Decision Of  
Administrative Law Judges Angela T. Jones and F. Joseph Brady**

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Dated: April 3, 2019

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## I. INTRODUCTION AND OVERVIEW

On March 11, 2019, Administrative Law Judge Angela T. Jones and Administrative Law Judge F. Joseph Brady (the “ALJs”) issued a 101-page Recommended Decision (the “R.D.”) that approved without modification the settlement (“Settlement”) memorialized in the Joint Petition for Settlement (“Joint Petition”) filed on February 8, 2019.<sup>1</sup> Acceptance of the ALJs’ recommendation by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) will resolve, and terminate, three cases that were consolidated in this proceeding<sup>2</sup>: (1) Aqua Pennsylvania, Inc.’s (“Aqua PA”) proposed increase in base rates for water service (Docket No. R-2018-3003558); (2) Aqua Pennsylvania Wastewater Inc.’s (“Aqua Wastewater”) proposed increase in base rates for wastewater service (Docket No. R-2018-3003561);<sup>3</sup> and (3) the unopposed Joint Application of Aqua PA and its wholly-owned subsidiary, Superior Water Company, Inc. (“Superior”), to formally merge Superior into Aqua PA and, relatedly, to grant the necessary authority for Aqua PA to furnish water service, and Superior to abandon water service, in Superior’s service territory (Docket Nos. A-2018-3004108 and A-2018-3004109).

As more fully explained in the Joint Petition, the Settlement resolves all of the issues raised on the record in this proceeding. In particular, the Settlement provides that Aqua should be permitted to file, effective for service on and after May 24, 2019, the Tariffs attached as Appendices A (water) and B (sewer) to the Joint Petition to implement the new base rates (“Settlement Rates”) set forth therein. The Settlement Rates are designed to increase Aqua PA’s total operating revenue by \$42.3 million (9.8%), in lieu of the \$66.3 million (15.39%) it initially

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<sup>1</sup> R.D., p. 62: “Considering the Joint Settlement in its totality . . . we find that the Joint Parties sustained their burden to prove by substantial evidence that the Joint Settlement is in the public interest.”

<sup>2</sup> Prehearing Order #3 (Oct. 12, 2018) (granting an unopposed Motion to Consolidate). *See also* R.D., p. 5.

<sup>3</sup> Aqua PA and Aqua Wastewater will be referred to collectively as “Aqua” or the “Company.”

requested, and to increase Aqua Wastewater's total operating revenue by \$4.7 million (34.6%), in lieu of the \$5.4 million (40.14%) it initially requested.<sup>4</sup> The rates set forth in Appendices A and B to the Joint Petition incorporate the Joint Petitioners' agreement as to cost of service, allocation of revenues among rate divisions and customer classes, rate structure and rate design.<sup>5</sup> The Joint Petition also provides that, as authorized by Section 1311(c) of the Pennsylvania Public Utility Code,<sup>6</sup> the Joint Petitioners agreed to Settlement Rates that reflect the allocation to water customers of \$7,087,745 of wastewater revenue requirement.<sup>7</sup>

The Settlement was achieved after a comprehensive and detailed investigation that included: (1) extensive formal discovery (Aqua responded to 594 interrogatories containing numerous subparts); (2) informal discovery; (3) the submission of direct, rebuttal and surrebuttal testimony covering a wide range of issues;<sup>8</sup> (4) public input hearings; and (5) negotiations among the Joint Petitioners as to the appropriate revenue level, rate structure, rate design, and other matters. Additionally, the level of the increases in Aqua's water and wastewater revenues and the allocation of those increases among rate divisions and customer classes are fully supported by the record evidence in this case, as explained in detail in the Company's Statement in Support attached as Statement A to the Joint Petition and the Statements in Support of the other Joint Petitioners (Statements B through H to the Joint Petition). Moreover, the Joint Petitioners represent a wide array of stakeholder interests, including representatives of residential, commercial, industrial and resale customers and an organization dedicated to representing the

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<sup>4</sup> See R.D., p. 1 and Joint Petition, Appendix C.

<sup>5</sup> See Joint Petition, pp. 13-15.

<sup>6</sup> 66 Pa.C.S. § 1311(c).

<sup>7</sup> Joint Petition ¶ 16.

<sup>8</sup> See R.D., pp. 7-9 and n.6, listing all of the testimony and exhibits submitted for the record in this case.

interests of low-income customers,<sup>9</sup> which also establishes that the Settlement achieves an appropriate balancing of interests and is in the public interest.<sup>10</sup>

All active parties in this case except Pennsylvania-American Water Company (“PAWC”) and the Treasure Lake Property Owners Association (“TLPOA”) executed the Joint Petition. Although not a signatory, PAWC does not oppose the Settlement. TLPOA indicated that it objected to the level of increases under the Settlement Rates for water and wastewater service in the Company’s Treasure Lake rate division. The Joint Petition was served on the formal complainants who had elected inactive party status. In the weeks that followed, comments opposing the Settlement were submitted by twenty of the inactive parties, including Robert Curtius, who is the only inactive party that filed Exceptions to the R.D.

Aqua’s Treasure Lake rate division encompasses the Treasure Lake community, which is a residential and recreational subdivision that includes homes and unimproved lots<sup>11</sup> and consists of approximately 2,200 customers.<sup>12</sup> Aqua acquired the Treasure Lake water and wastewater systems in 2013 from Total Environmental Solutions, Inc. (“TES”). As the Company’s witnesses explained, Treasure Lake’s water and wastewater facilities were troubled systems when Aqua acquired them, which required Aqua to invest over \$27 million to replace and rehabilitate those systems’ seriously degraded water and wastewater infrastructure in order to

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<sup>9</sup> In addition to Aqua and Superior, the Joint Petitioners are the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Aqua Large Users Group (“Aqua LUG”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Masthope Mountain Community Property Owners Council (“Masthope”) and The Links at Gettysburg Master Association (“LGMA”).

<sup>10</sup> See also R.D., p. 62 (finding that the statutory advocates’ full and unqualified support for the Settlement is “strong evidence that the terms and conditions are just and reasonable and in the public interest.”).

<sup>11</sup> See TLPOA Exceptions, p. 1.

<sup>12</sup> AP Statement No. 8-R, p. 6 and AP Statement No. 10-R, p. 10. Customers receive both water and wastewater service from Aqua.

restore reasonable water and wastewater service to the residents of that community.<sup>13</sup> Moreover, water and wastewater customers in Treasure Lake had not received any increase in base rates since Aqua acquired ownership of the Treasure Lake systems in 2013. And, even under TES's ownership, Treasure Lake customers' water and wastewater rates had not increased since 2011.<sup>14</sup>

TLPOA did not submit any testimony or exhibits, did not file a brief, and did not lodge any objection to the Joint Petition when it had the opportunity to do so.<sup>15</sup> Consequently, when the R.D. was issued, all that the ALJs (or anyone else) knew about TLPOA's position was its desire that the increases in water and wastewater rates for Treasure Lake should be less (by some unspecified amount) than the increases the Joint Petitioners had agreed upon in the Settlement.

Thus, all of the record evidence on TLPOA's issue was submitted by the Company, I&E, OCA and OSBA, and that evidence fully supports increases in water and wastewater rates for Treasure Lake that are at least as high as those in the Settlement Rates. Consequently, the ALJs, after summarizing the legal mandate that a Commission decision, to be lawful, must be supported substantial evidence,<sup>16</sup> properly concluded as follows:

TLPOA has provided no record evidence to sustain its burden to persuade that the proposed Joint Settlement is unjust and unreasonable.

\* \* \*

TLPOA has not provided substantial evidence to support its position to object to the proposed Joint Settlement. TLPOA's

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<sup>13</sup> AP Statement Nos. 8, 8-R and 10-R. This testimony is also discussed in Section III.A, *infra*.

<sup>14</sup> *Pa. P.U.C. et al. v. Total Environmental Solutions, Inc. – Water and Wastewater Divisions*, Docket Nos. R-2010-2171918, R-2010-2171924 *et al.*, 2011 Pa. PUC LEXIS 81 (Final Order entered Mar. 17, 2011).

<sup>15</sup> *See* R.D., p. 10. All parties were notified of the filing of the Joint Petition, were provided a summary and a website where the entire Joint Petition was available (TLPOA, as an active party, was served with the Joint Petition), and were informed that their objections (if any) to the Joint Petition had to be submitted to the ALJs and the Commission no later than February 25, 2019, as evidenced by the postmark on their submission.

<sup>16</sup> R.D., p. 63.

objection to the proposed Joint Settlement is overruled as it is not supported and is not based on substantial evidence, which is required for a Commission decision. *Id.*<sup>17</sup>

## II. SUMMARY OF EXCEPTIONS

### A. TLPOA

Notwithstanding its failure to participate actively – indeed, its failure to participate at all – in this proceeding up to this point, TLPOA filed Exceptions to the R.D. on March 28, 2019. Notably, TLPOA does not contend that the Company’s costs to furnish water and wastewater service in Treasure Lake are less than the revenues the Settlement Rates will produce.<sup>18</sup> Instead, attempting to explain (for the first time) why it objects to the Treasure Lake Settlement Rates, TLPOA claims the ALJs should have found (presumably *sua sponte*, since this argument was not raised before now) that those rates do not adhere to the principle of “gradualism” and, if implemented, could produce “rate shock.”<sup>19</sup> As the purported basis for this claim, TLPOA contends that: (1) Treasure Lake customers are peculiarly sensitive to “rate shock” because they enjoyed a prolonged period (nine years) when they received no rate increases and paid low rates;<sup>20</sup> and (2) the *percentage* increases in their water and wastewater bills are higher than the *percentage* increases in the water and wastewater bills of certain other rate divisions under the Settlement Rates.<sup>21</sup>

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<sup>17</sup> *Id.* at pp. 63-64.

<sup>18</sup> Furthermore, such a contention, had it been made, would be demonstrably incorrect. The revenues the Settlement Rates will produce for Treasure Lake are well below the total-Company average per-unit costs to provide water and wastewater service. And, as explained in Section III.A, *infra*, given the large investments Aqua made in the Treasure Lake systems, its per-unit costs to furnish water and wastewater service in that community are, if anything, much higher than its Company-average costs.

<sup>19</sup> *See generally*, TLPOA Exceptions, pp. 2-7.

<sup>20</sup> *Id.* at pp. 2 and 7.

<sup>21</sup> *Id.* at pp. 3-7.



TLPOA's Exceptions are meritless and should be rejected. A prolonged period of low, stable rates – particularly when accompanied by substantial, previously uncompensated utility investments that significantly improved customer service – does not warrant denying rate increases that make an appropriate, meaningful movement toward the cost of service. In short, and contrary to the premise at the heart of TLPOA's Exceptions, a long history of receiving subsidies from other customers does not justify Treasure Lake customers' expectation that they are entitled to an indefinite period of future subsidization. That expectation is particularly unreasonable where, as in Treasure Lake, customers were – or should have been – well aware of the extensive improvements and large attendant investments Aqua made to assure they receive safe, reliable and reasonable service.

Additionally, comparisons of customer bills that focus only on *percentage* increases, as TLPOA has attempted, are misleading. Even modest increases expressed in dollars and cents will produce what appear to be large increases, if expressed as percentages, when customers' existing rates are relatively low. That is certainly the case with Treasure Lake. As demonstrated in Section III.C., *infra*, after applying the *percentage* increases TLPOA finds objectionable, the average water and wastewater bills of residential customers in Treasure Lake will be substantially below those of the vast majority of Aqua customers, who are paying rates that reflect the Company's cost of service and do not benefit from the subsidies (albeit somewhat lower subsidies) that Treasure Lake customers will still receive under the Settlement Rates.

## **B. Mr. Robert Curtius**

Mr. Curtius, a customer complainant and inactive party, filed Exceptions to the R.D. that were received by the Commission after the March 28, 2019 due date.<sup>22</sup> In his Exceptions, Mr. Curtius reiterates his unsubstantiated contention that Aqua’s proposal to allocate a portion of wastewater revenue requirement to water customers is unlawful “double billing” of the wastewater service he receives from a municipality. However, the Legislature and the Commission have made it clear that they believe it is in the public interest for large, well-run companies like Aqua to acquire and rehabilitate small, troubled wastewater systems. To that end, Section 1311(c) of the Public Utility Code<sup>23</sup> explicitly authorizes the allocation that Mr. Curtius opposes. As discussed below, substantial record evidence supports the Settlement Rates, including the Section 1311(c) allocation, and Mr. Curtius has not provided any valid reason to overturn the Joint Petitioners’ evidence-based consensus that those rates are reasonable. The Commission should also reject Mr. Curtius’ Exceptions to the extent they offer procedural recommendations that are not relevant to this proceeding.

## **III. REPLIES TO EXCEPTIONS OF TLPOA**

### **A. TLPOA’s Unjustified Reliance On “Gradualism” And Unsubstantiated Claims Of Possible “Rate Shock” Do Not Provide A Valid Basis To Increase The Subsidy That Treasure Lake Customers Will Continue To Receive Even Under The Settlement Rates**

As previously explained, the base rates for water and wastewater service in Treasure Lake were last increased in March 2011. Consequently, Treasure Lake customers enjoyed a prolonged period of unchanged rates even though Aqua invested over \$27 million in new and

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<sup>22</sup> See 52 Pa. Code § 5.533(e) (Exceptions are *not* deemed “filed” when deposited in first class mail or an overnight delivery service.).

<sup>23</sup> 66 Pa.C.S. § 1311(c).

replacement water and wastewater plant and equipment to improve service to Treasure Lake's 2,200 customers and to rehabilitate the seriously troubled systems it acquired from TES in 2013. Due in large part to that prolonged period without any increases, Treasure Lake customers have paid, and continue to pay, relatively low rates. To illustrate, an average residential Treasure Lake water customer currently pays a monthly bill of \$27.20, while an average residential customer of Aqua PA's Main Division (to be denominated Rate Zone 1 under the Settlement Rates) currently pays \$59.85 per month including its distribution system improvement charge ("DSIC").

When customers in a rate division pay rates materially less than their cost of service and are exempted from any rate increase for a prolonged period, sound rate design principles and fundamental fairness justify imposing increases larger – frequently much larger – than the company average for the same class of customers. Unless that approach is taken, the below-cost divisions would never achieve parity with the majority of customers who pay rates that reflect the Company's cost of service. Thus, the Joint Petitioners – including all the statutory parties – have agreed that it is both reasonable and fair for rate divisions with current rates below the cost of service to receive larger increases (i.e., to make meaningful progress toward catching-up with their cost of service). In fact, some of those rate divisions would receive increases in their monthly bills that are larger in both dollars-and-cents and on a percentage basis than the increases the Settlement Rates will produce for Treasure Lake.<sup>24</sup>

TLPOA rejects the common-sense approach described above, which fairness, sound rate-design principles and the carefully-crafted consensus of the Joint Petitioners fully support.

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<sup>24</sup> As shown by the bill comparisons in Appendix D to the Joint Petition, the residential customers in the Bunker Hill, Bristol and Beech Mountain divisions of Aqua PA will receive increases in their monthly water bills under the Settlement Rates of \$13.48 (104.66%), \$14.16 (58.42%) and \$10.28 (47.93%), respectively, as compared to Treasure Lake, which would see an increase in its average residential monthly bill of \$12.95 or 47.61%.

Incredibly, TLPOA argues that Treasure Lake is entitled to even larger subsidies than the Settlement Rates would provide precisely *because* it has one of the largest disparities between revenues and cost of service and has enjoyed one of the longest periods without an increase of any rate division. Specifically, TLPOA contends that the Settlement Rates are inconsistent with the principle of “gradualism” because “Treasure Lake customers have experienced nearly ten years of consistent and reliable water and wastewater rates,”<sup>25</sup> “have grown accustomed to their water and wastewater rates”<sup>26</sup> and, therefore, are entitled to harbor the expectation that they can “rely upon the consistency of their bills.”<sup>27</sup> TLPOA gets it wrong.

Contrary to TLPOA’s assertions, customers have no rational basis to expect that a long period with no rate increases should exempt them from future rate increases necessary to move their revenues closer to cost of service. Such an expectation is particularly unreasonable for Treasure Lake customers, who had ample opportunity to witness the extensive and costly construction Aqua has undertaken to rehabilitate and improve their water and wastewater systems. And, Treasure Lake customers certainly experienced the substantial improvements in their service that Aqua’s investments produced. In short, Treasure Lake customers – no less than the leadership of TLPOA itself – had to know that Aqua’s large investments in new plant and equipment could not be sustained without rate increases of the magnitude needed to make reasonable progress in moving Treasure Lake’s rates closer to their cost of service. While TLPOA does not even acknowledge the large investments Aqua has made in the Treasure Lake water and wastewater systems, the extent of those investments and the improvements in service they produced have been detailed in the evidentiary record of this case, as explained below.

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<sup>25</sup> TLPOA Exceptions, p. 7.

<sup>26</sup> *Id.* at p. 2.

<sup>27</sup> *Id.*

## 1. Water Investments

When Aqua acquired the Treasure Lake water system, the system suffered from significant water supply, storage and water quality issues.<sup>28</sup> Aqua witness Patrick R. Burke explained that the water system was constructed with substandard materials and had insufficient water supply to meet the demands placed on the system.<sup>29</sup> The supply issues were coupled with inadequate storage on the system and undersized distribution mains.<sup>30</sup> Customers were experiencing water quality issues because the Treasure Lake system was not meeting secondary water quality standards for iron and manganese.<sup>31</sup>

Since its acquisition of Treasure Lake in 2013, the Company has invested approximately \$18 million in the water system.<sup>32</sup> The Company's investments included constructing a new well to ensure that adequate supply would be available to meet general service and fire protection demands.<sup>33</sup> The Company focused intensely on distribution main replacements using ductile iron cement-lined pipe and copper services to improve flows for general service customers, provide adequate flows for fire protection and maintain good water quality.<sup>34</sup> The Company also replaced the meters of all the Treasure Lake customers and will place a new storage tank in service in 2019, which will provide needed storage capacity and will enable Aqua PA to

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<sup>28</sup> AP Statement No. 10-R, p. 11.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

temporarily remove the existing tank from service to make badly needed repairs and refurbishment.<sup>35</sup>

## **2. Wastewater Investments**

Aqua witness Mark J. Bubel, Sr. explained that the Treasure Lake wastewater system was in a general state of disrepair and was violating its operating and discharge permits when Aqua Wastewater acquired it from TES.<sup>36</sup> In fact, the Pennsylvania Department of Environmental Protection (“DEP”) itself determined, following a site visit made shortly after the acquisition occurred, that Treasure Lake’s East Plant was “overall ... an environmental and safety concern.”<sup>37</sup> The DEP’s report highlighted other egregious examples of impaired and defective facilities, such as pipes that were wrapped in duct tape or heating tape to try (unsuccessfully) to maintain their structural integrity and tanks, stairs, railings and walkways that were completely rusted out.<sup>38</sup>

Since acquiring the Treasure Lake wastewater system, the Company has invested approximately \$9 million in improvements.<sup>39</sup> The Company has cleaned the wastewater mains and inspected them via closed-circuit television – neither form of maintenance had been done in many years under TES’s ownership.<sup>40</sup> To ensure proper access to underground wastewater facilities, the Company cleared approximately 1/3 of the total system manholes that had been paved over.<sup>41</sup> The Company also replaced underground aeration piping that was corroded and

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<sup>35</sup> *Id.*

<sup>36</sup> *See* AP Statement No. 8-R, pp. 8-9.

<sup>37</sup> AP Statement No. 8-R, p. 8 (citing AP Exhibit No. 8-A).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

leaking extensively, replaced air piping within the treatment tanks and installed new aeration diffusers to increase the air supply to the biological process, which improved the treatment process and, in so doing, addressed a number of DEP permit violations.<sup>42</sup> To address potential Occupational Safety and Health Administration (“OSHA”) issues, the Company made safety improvements to treatment tank walkways, stairs, and catwalk railings.<sup>43</sup> Finally, the Company invested approximately \$1.3 million in rehabilitating all five of the Treasure Lake wastewater system’s existing pump stations.<sup>44</sup>

### **3. TLPOA’s Unjustified Reliance On *Lloyd v. Pa. P.U.C.***

Treasure Lake’s current rates do not come close to covering the fixed costs of only the *improvements* Aqua made since 2013. Based on their total overall costs, Treasure Lake customers pay far less than their cost of service. And, they will continue to pay less than their cost of service under the Settlement Rates – although the magnitude of the subsidy will be reduced. Consequently, and contrary to TLPOA’s protests, the Joint Petitioners agreed to Settlement Rates for Treasure Lake that are below cost of service specifically to adhere to the principle of gradualism. At the same time, the Joint Petitioners had to balance another important interest, namely, to avoid requiring other customers to bear unreasonable subsidies simply to moderate the increase to Treasure Lake’s below-cost rates.

TLPOA, however, refuses to acknowledge that every dollar of subsidy that would flow to Treasure Lake customers to implement its distorted concept of “gradualism” is a dollar that must be borne by other customers of Aqua, who are already paying their full cost of service. For this reason, the Commonwealth Court, in *Lloyd v. Pa. P.U.C.*, held that a material difference in rates

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

between classes of customers that does not correspond to the difference in costs to serve those customers cannot be justified based solely on claims of “gradualism and rate shock.”<sup>45</sup>

Accordingly, the Court vacated a PUC final order approving a non-cost based rate structure the Commission tried to support based on “gradualism” and held that, on remand, it expected the Commission to adhere to the Court’s directive that the “cost of providing service” is the “polestar” of a reasonable rate structure.<sup>46</sup>

Thus, TLPOA’s reliance on *Lloyd*<sup>47</sup> is entirely misplaced. By arguing to reject the Treasure Lake Settlement Rates based solely on the principle of “gradualism” and claims of alleged “rate shock,” TLPOA is urging the Commission to follow the same course the Commonwealth Court rejected in *Lloyd*. As previously explained, *Lloyd* did not give the Commission unbounded discretion to perpetuate disparities between rates and cost of service based on “gradualism.” It held exactly the opposite. Simply stated, the *Lloyd* decision does not support TLPOA’s position, it actually contradicts it.

**B. TLPOA’s “Gradualism” Argument Was Presented For The First Time In Its Exceptions Based On Non-Record Facts And Should Be Rejected For That Reason Alone**

In its Exceptions, TLPOA belatedly, and in the absence of record evidence, contends that the Treasure Lake Settlement Rates do not adhere to the principle of “gradualism.”<sup>48</sup> TLPOA’s claims are based entirely upon its superficial comparison of the percentage increases in Treasure Lake customers’ average water and wastewater bills under the Settlement Rates to those of certain other rate divisions.

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<sup>45</sup> 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006).

<sup>46</sup> *Id.*

<sup>47</sup> See TLPOA Exceptions, p. 2.

<sup>48</sup> *Id.* at, pp. 3-6.



Significantly, the bill comparisons TLPOA calculated, and its arguments based on those calculations, were presented for the first time in TLPOA's Exceptions and are not in the record in this case.<sup>49</sup> Consequently, the Joint Petitioners did not have an opportunity to address TLPOA's non-record calculations or its unorthodox "gradualism" argument through discovery, cross-examination and the presentation of countervailing evidence, which is their entitlement under basic principles of due process<sup>50</sup> and directly applicable Pennsylvania administrative law.<sup>51</sup> TLPOA's Exceptions should be rejected for that reason alone.

**C. TLPOA's Exclusive Focus On Percentage Increases In Customer Bills Is Misleading And Conceals The Objectively Verifiable Fact That Treasure Lake Customers Will Pay Far Less Than Other Customers Despite Receiving Higher Percentage Increases Under The Settlement Rates**

While TLPOA shows the dollars-and-cents increases under present and Settlement Rates for Treasure Lake customers (in addition to their percentage increases), it studiously avoids doing the same for other Aqua rate divisions in its comparison group.<sup>52</sup> Not surprisingly, comparing increases in actual monthly bills tells a much different story from the one TLPOA's Exceptions try to spin based on their selective use of only percentage data. In fact, comparing

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<sup>49</sup> TLPOA cannot claim that, because its objections are directed to the Settlement Rates, it could not have voiced its objections on the record previously by presenting testimony or other evidence when all other parties did so in accordance with the approved procedural schedule. Both the absolute and percentage increases in Treasure Lake customers' bills under the Company's *proposed* rates were higher than those under the Settlement Rates. See AP Exhibit 5-A, Part II, Schedule 8, p. 18; AP Exhibit 5-B, Part II, WW-5, p. 27. Consequently, accepting at face value the concerns TLPOA expressed in its Exceptions, TLPOA would have had an even greater incentive to object to the *proposed* increases in Treasure Lake customers' bills. Nonetheless, TLPOA did not present its "gradualism" argument (or any calculation of purported bill comparisons) for consideration by the parties on the record when it had a full and fair opportunity to do so.

<sup>50</sup> *E.g., Lyness v. State Bd. of Med.*, 529 Pa. 535, 605 A.2d 1204 (1992). (The basic elements of procedural due process consist of adequate notice, opportunity to be heard, and the chance to defend claims and arguments advanced against a party; "due process is fully applicable to adjudicative hearings." *Id.* at 542, 605 A.2d at 1207.).

<sup>51</sup> 2 Pa.C.S. § 504. ("No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings.").

<sup>52</sup> See *Id.* at pp. 3-6, n.1-n.4.

actual bills shows that the Aqua rate divisions TLPOA claims would have lower *percentage* increases are, in all but one instance,<sup>53</sup> paying bills that are *higher* than those of Treasure Lake under present rates and, in all but one instance,<sup>54</sup> will also pay bills *higher* than those of Treasure Lake under Settlement Rates.<sup>55</sup> The untold story – and the significant distortion that results from focusing *only* on percentage increases – is clear from reviewing the dollars-and-cents monthly bills for Treasure Lake and TLPOA’s comparison groups, which were provided in Appendix D<sup>56</sup> to the Joint Petition and are set forth in the tables below:

**WATER BILL COMPARISON  
Treasure Lake and Rate Divisions Cited In TLPOA Exceptions**

	<b>Present Rates (\$)</b>	<b>Settlement Rates (\$)</b>	<b>Increase (\$)</b>	<b>Increase (%)</b>
<b>Treasure Lake</b>	<b>27.20</b>	<b>40.15</b>	<b>12.95</b>	<b>47.61</b>
Main Division	59.85	65.52	5.67	9.47
Superior	57.02	65.52	8.50	14.91
Eagle Rock Fawn Lake Tanglewood Thornhurst Woodledge Vill. Western & Pinecrest	59.85	65.52	5.67	9.47
Oakland Beach & Lakeside	57.04	65.52	8.48	14.87
Kratzerville	52.29	65.52	13.23	25.30
East Cameron	57.02	65.52	8.50	14.91

<sup>53</sup> Under present rates, the sole exception is Aqua Wastewater’s Eagle Rock division, where an average residential customer pays a current monthly bill of \$39.67 compared to \$40.52 for Aqua Wastewater’s Treasure Lake division.

<sup>54</sup> Under Settlement Rates, the sole exception is also Aqua Wastewater’s Eagle Rock division, where an average residential customer would pay a monthly bill of \$45.44 under Settlement Rates compared to \$49.90 for Aqua Wastewater’s Treasure Lake division.

<sup>55</sup> Notably, except for Aqua PA’s Treasure Lake rate division, all the water divisions TLPOA compared itself to were brought up to the rates of Aqua PA’s Main Division, which serves approximately 90% of Aqua PA’s general service customers. *See* AP Exhibit 1-A, Schedule A-2 (total water customers) and Joint Petition, Appendix C, Schedule 5, pp. 5-7 (Main Division customers).

<sup>56</sup> The bill comparisons in Appendix D have been agreed to by all the Joint Petitioners, are based on actual record evidence, were filed with the Joint Petition, and were made available for review and comment by all parties when the notice of the Joint Petition was served.

**WASTEWATER BILL COMPARISON**  
**Treasure Lake and Rate Divisions Cited In TLPOA Exceptions**

	<b>Present Rates (\$)</b>	<b>Settlement Rates (\$)</b>	<b>Increase (\$)</b>	<b>Increase (%)</b>
<b>Treasure Lake</b>	<b>40.52</b>	<b>49.90</b>	<b>9.38</b>	<b>23.15</b>
Links at Gettysburg	63.58	68.95	5.37	8.45
Twin Hills	70.15	101.90	31.75	45.26
White Haven	47.07	59.49	12.42	26.39
Eagle Rock	39.67	45.44	5.77	14.54
Stony Creek	54.86	67.25	12.39	22.58

As the data above clearly show, viewed in relation to the actual water and wastewater bills Treasure Lake customers would pay, the increases under the Settlement Rates do not violate the principle of gradualism, are not out of line with the Settlement Rates for other water and wastewater divisions, and will not induce “rate shock.” Furthermore, and unmentioned in TLPOA’s Exceptions, even the *percentage* increases in Treasure Lake residential customers’ water (47.61%) and wastewater (23.15%) bills are materially less than the **58.4%** increase the Commission approved for Treasure Lake water customers in Treasure Lake’s last base rate case.<sup>57</sup> Thus, the Commission has already determined, in a prior proceeding and with specific reference to Treasure Lake customers, that an increase of 58.4% does not violate the principle of “gradualism.” TLPOA’s claim that the percentage increases for Treasure Lake under the Settlement Rates that are well below 58.4% are somehow inconsistent with the principle of “gradualism” is, therefore, contradicted by directly-applicable prior Commission precedent and should be rejected.

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<sup>57</sup> *Pa. P.U.C. et al. v. Total Envntl. Sols., Inc. – Water and Wastewater Divisions*, Docket Nos. R-2010-2171918, R-2010-2171924 *et al.*, 2011 Pa. PUC LEXIS 1053 at \*21 (Rec. Dec. issued Jan. 3, 2011). In that case, the increase to the residential wastewater class was 16.6%. *Id.* at \*24.

**D. While Claiming That The Settlement Rates For Treasure Lake Are Inconsistent With the Principle of “Gradualism,” TLPOA Did Not Specify, Or Support, The Level Of Increase It Believes Would Represent The Correct Degree Of “Gradualism”**

TLPOA does not contend that Aqua failed to establish the need for a substantial increase in the rates for water and wastewater in Treasure Lake based on the detailed revenue requirement studies it presented in this case. Similarly, and as previously noted, TLPOA does not contend that the Settlement Rates would recover more than the cost to serve Treasure Lake. In fact, the opposite is true; even under the Settlement Rates, Treasure Lake customers will not pay their full cost of service and will receive subsidies from other customers. Nonetheless, TLPOA contends that the Settlement Rates do not adhere to the principle of “gradualism.” That contention is wrong for the reasons discussed previously in this Reply.

Furthermore, TLPOA has not specified what level of increase it believes would represent, under the facts of this case, the proper degree of “gradualism.” Thus, TLPOA’s Exceptions simply express TLPOA’s general dislike for the increases the Settlement Rates would produce without providing any concrete, evidenced-based alternative proposal. In short, TLPOA has given the Commission nothing to act upon except a generalized request that the PUC approve increases for Treasure Lake that are less, by some unspecified amount, than those under the Settlement Rates. In so doing, TLPOA is asking the Commission to simply ignore the well-considered and carefully balanced rate structure and revenue allocation that the Joint Petitioners collectively agreed, based on the extensive record evidence presented in this case, are just and reasonable.<sup>58</sup> There is no valid basis for the Commission to arbitrarily reduce the increases to

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<sup>58</sup> In this regard, it is particularly significant that the statutory advocates fully support the Settlement Rates and, therefore, implicitly agree that the principle of “gradualism” has been properly observed in developing the consensus position embodied in those rates. As the ALJs correctly stated, the full support of the statutory advocates is “strong evidence that the terms and conditions [of the Settlement] are just and reasonable and in the public

Treasure Lake under the Settlement Rates as TLPOA urges, and doing so would be a clear violation of the Commission's obligation to make findings and conclusions based on the evidence of record in the case it is asked to decide.<sup>59</sup>

#### IV. REPLIES TO EXCEPTIONS OF MR. CURTIUS

##### A. Section 1311(c) Of the Pennsylvania Public Utility Code Permits The Commission To Allocate A Portion Of Wastewater Revenue Requirement To Water Customers

Mr. Robert Curtius filed Exceptions to the R.D. that were received by the Commission after the March 28, 2019 due date specified in the Secretarial letter that accompanied the R.D.<sup>60</sup> In his first exception, Mr. Curtius contends that the Settlement is unreasonable, against Commission Policy and not in the public interest because allocating a portion of Aqua's wastewater revenue requirement to water customers results in an alleged "double billing" for customers, like Mr. Curtius, who do not receive wastewater service from Aqua.

As explained in the R.D., Section 1311(c) of the Public Utility Code expressly authorizes the Commission to allocate a portion of wastewater revenue requirement to water customers.<sup>61</sup> In fact, the Commission has previously approved water rates that reflect a portion of the utility's wastewater revenue requirement.<sup>62</sup>

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interest." R.D., p. 62 (citing *Pa. P.U.C. v. T. W. Phillips Gas and Oil Co.*, Docket No. R-2010-2167797 (Final Order entered Nov. 4, 2010)).

<sup>59</sup> See 2 Pa.C.S. § 504 discussed *infra*. See also R.D., p. 63 (summarizing relevant authority establishing the PUC's obligation to make decisions only on the basis of substantial evidence in the record before it.).

<sup>60</sup> Mr. Curtius' Exceptions are, therefore, out of time despite being dated and postmarked March 26, 2019. The applicable Commission regulation provides that Exceptions are *not* deemed "filed" when deposited in first class mail or an overnight delivery service. 52 Pa. Code § 5.533(e).

<sup>61</sup> See R.D., p. 67 (citing 66 Pa.C.S. § 1311(c)).

<sup>62</sup> See, e.g., *Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket No. R-2017-2595853, Joint Petition for Settlement ¶ 35.d. (approved by Final Order entered Dec. 7, 2017); *Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket No. R-2013-2355276, Joint Petition for Settlement ¶¶ 10(c)-10(d) (approved by Final Order entered Dec. 19, 2013).

Mr. Curtius has not presented a valid basis to overturn the Joint Petitioners' agreement, embodied in the Settlement, to allocate a relatively small portion of wastewater revenue requirement to water customers. As discussed in Section II, *supra*, the Settlement Rates, which include the Section 1311(c) allocation, are fully supported by the record evidence in this case. In addition, the support of the Settlement Rates by a diverse array of stakeholders, including all the statutory parties, is evidence that such rates are in the public interest. For all these reasons, the Exception of Mr. Curtis should be rejected by the Commission.

**B. Mr. Curtius' Recommendation Regarding Notice To Complainants In Future Proceedings Has No Impact On This Case**

The prehearing conference for this proceeding was held on September 28, 2018. Mr. Curtius filed his complaint on October 22, 2018, and, therefore, did not participate in the prehearing conference. Mr. Curtius argues, based on his experience as an active party in a prior Aqua base rate proceeding, that participation in a prehearing conference is "a necessity" and states he feels "somewhat cheated" because he was not able to participate in the prehearing conference for this case. He recommends that steps be taken to correct this issue "in future cases."

The procedural changes Mr. Curtius urges the Commission to adopt in future cases have no impact on this proceeding or upon the Commission's consideration of the Settlement. While it is not necessary to address Mr. Curtius' recommendation here, it is noteworthy that Mr. Curtius received appropriate communications from both the Company and the ALJs in this case that would have enabled him, with reasonable vigilance, to have participated fully in this proceeding if he truly desired to do so. Like other Aqua customers, Mr. Curtis received a customer notice describing the Company's requested increase in base water rates, explaining how a customer could review a full copy of the Company's filing, and explaining how a

customer could challenge the requested increase. In the R.D., the ALJs properly dismissed as unfounded Mr. Curtius' concerns about communication with complainants by explaining that he "was provided all of our letters and Orders and all Commission Hearing Notices."<sup>63</sup>

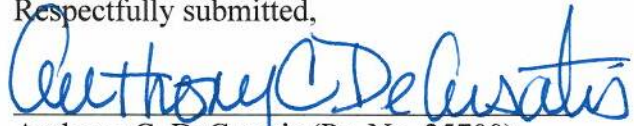
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<sup>63</sup> R.D., p. 68.

## V. CONCLUSION

For the foregoing reasons, the Commission should deny the Exceptions of TLPOA and Mr. Curtius and adopt, without modification, the ALJs' Recommended Decision.

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