

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 14, 2024

Shelah Cisneros, Commission Counsel

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-24-15740.WS; PUC Docket No. 55577;
Application of Aqua Texas, Inc. to Amend its System Improvement
Charges under 16 TAC § 24.76**

Dear Parties:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

The Commission will place this case on an open meeting agenda for the Commissioners' consideration. The Commission will notify the Administrative Law Judges and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF AQUA TEXAS, INC. TO AMEND ITS
SYSTEM IMPROVEMENT CHARGES UNDER 16 TAC § 24.76**

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**BEFORE THE
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HEARINGS**

**APPLICATION OF AQUA TEXAS, INC. TO AMEND ITS
SYSTEM IMPROVEMENT CHARGES UNDER 16 TAC § 24.76**

PROPOSAL FOR DECISION

Aqua Texas, Inc. (Aqua) seeks to amend its system improvement charges to recover \$86 million in capital expenditures, an increase in annual revenues of approximately \$4.7 million for water and approximately \$4.1 million in for sewer. With minor adjustments, Staff of the Public Utility Commission of Texas recommends the application be approved. Several intervenors, including the Office of Public Utility Counsel (OPUC), recommend that the amendment be denied. Having considered the evidence and argument, the administrative law judges (ALJs) recommend the application be denied.

I. APPLICABLE LAW

This application involves alternative ratemaking. Section 13.183 of the Water Code authorizes the Commission to adopt “alternative ratemaking methodologies for water or sewer rates to allow for more timely and efficient cost recovery,” including “system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment.”¹ The Water Code further states that, “[i]n determining to use an alternative ratemaking methodology, the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.”²

Pursuant to this authority, the Commission adopted Rule 24.76,³ whereby a utility may begin recovering the costs for plant installed since its last comprehensive rate case by way of a system improvement charge, or a SIC. This is a charge per connection, paid in addition to the utility’s normal monthly rate.⁴

Rule 24.76 sets out specific parameters for a system improvement charge. A utility may have no more than one system improvement charge in effect for water and one for sewer for each of its rate schedules at any time.⁵ A utility may not apply to establish or amend a system improvement charge while it has a comprehensive rate

¹ Tex. Water Code (TWC) § 13.183(c).

² TWC § 13.183(e).

³ The rules of the Public Utility Commission of Texas are found in Title 16, Part 2, of the Texas Administrative Code.

⁴ 16 Tex. Admin. Code (TAC) § 24.76(e); *see* WWT Ex. 100 (Stannard Dir.) at 10.

⁵ 16 TAC § 24.76(c)(1).

proceeding pending before the Commission.⁶ A system improvement charge application may be filed only in a specific quarter of the calendar year based on the last two digits of a utility's certificate of convenience and necessity (CCN).⁷ If a utility has more than one CCN, it may file an application during any quarter for which anyone of its CCNs is eligible.⁸

Such applications are intended to proceed rapidly to a final order: either within 120 days of the application being determined to be *sufficient* if no hearing is requested, or within 120 days of *referral* to SOAH if a hearing is requested.⁹ These deadlines may be extended for good cause or agreement of the parties.¹⁰

Discovery response times are accordingly truncated: the applicant has 10 days to respond to discovery; failure to timely respond constitutes good cause to extend the deadline for final action.¹¹ The scope of the proceeding is similarly limited: questions of whether costs are prudent, reasonable, or necessary are deferred until the next comprehensive rate case, when the system improvement charge costs are reconciled with existing rate base and subject to refund.¹² Moreover, recovery of costs

⁶ 16 TAC § 24.76(c)(3).

⁷ 16 TAC § 24.76(c)(5).

⁸ 16 TAC § 24.76(c)(5).

⁹ 16 TAC § 24.76(g)(5); *see also Alternative Ratemaking Mechanisms for Water and Sewer Utilities*, Project No. 50322, Order Repealing Existing §24.75 and Adopting New §24.75 and §24.76 as approved at the November 30, 2021 Work Session at 6 (Dec. 2, 2021).

¹⁰ 16 TAC § 24.76(g)(1), (5).

¹¹ 16 TAC § 24.76(g)(2); *cf.* 16 TAC § 22.144(c)(1) (providing for 20-day response times).

¹² 16 TAC § 24.76(h)-(i).

through a system improvement charge is limited to “the portion of the cost of a utility’s eligible plant that is not already included in the utility’s rates.”¹³ The Commission has prescribed specific categories of plant that are eligible for recovery through this method and specific content for an application.¹⁴

Aqua has the burden of proof by a preponderance of the evidence.¹⁵

II. BACKGROUND

Aqua has only one system improvement charge in effect for water and one for sewer, approved by settlement in Docket No. 53428, and does not currently have a comprehensive rate proceeding pending before the Commission.¹⁶

That final order in Docket No. 53428 imposed certain requirements regarding future applications. Specifically, Ordering Paragraph No. 3 provides as follows:

For all future system improvement charges applications, Aqua Texas must only include in the application assets for which the applicant is seeking recovery of investment. Any listed assets for which the applicant seeks recovery of investment must be well organized by project and public water or sewer system, and data must be appropriately linked to the model used by the applicant.¹⁷

¹³ 16 TAC § 24.76(b)(2).

¹⁴ 16 TAC § 24.76(b), (d).

¹⁵ TWC § 13.184(c); 16 TAC § 24.12; Tex. Gov’t Code § 2003.049(g)(1)(B); *Sw. Pub. Serv. Co./Pub. Util. Comm’n of Tex. v. Pub. Util. Comm’n of Tex.*, 962 S.W.2d 207, 213 (Tex. App.—Austin 1998, pet. denied) (“[T]he standard of proof for any administrative agency finding can never be less than a preponderance of the evidence.”).

¹⁶ See *Application of Aqua Texas, Inc. for System Improvement Charges*, Docket No. 53428, Order (Sep. 28, 2023); 16 TAC § 24.76(c)(3).

¹⁷ Docket No. 53428, Order at Ordering Paragraph No. 3.

In Docket No. 53428, the Commission also required Aqua to file a comprehensive rate proceeding two years from the date of the final order, which was issued September 28, 2023.¹⁸

Aqua holds several water and sewer CCNs (13201, 13254, and 21065), which would allow it to file an application during the first, second, and third, but not fourth, quarters of the calendar year.¹⁹ Shortly before the order was signed in Docket No. 53428, Aqua requested a good-cause exception to file this application during the fourth quarter of 2023.²⁰

This request was granted and on October 26, Aqua filed this application.²¹ Aqua sent notice to every affected customer in its North, Southwest, and Southeast regions.²² Approximately 45 motions to intervene and over 700 protests were filed. Commission Staff recommended that notice be found sufficient,²³ and no other party commented or objected. The ALJs find that notice was sufficient.

¹⁸ Docket No. 53428, Order at 15; Staff Ex. 2 (Eiland Direct (Dir.)) at 9; Aqua Ex. 7 (Blanchette Dir.) at 9.

¹⁹ See 16 TAC § 24.76(c)(5)(A)-(C).

²⁰ Aqua Texas' Request for Good Cause Exception Finding (Sep. 22, 2023).

²¹ Office of Policy and Docket Management (OPDM) Order No. 2 (Oct. 3, 2023). Application of Aqua Texas, Inc. to Amend Its System Improvement Charges (Oct. 26, 2023). Intervenor Associations dispute whether there was good cause to file for this amendment outside the timing requirements in Rule 24.76(5). Intervenor Initial Brief at 14-15; Intervenor Reply Brief at 10-11. Intervenor argue that the good cause decision was made without input from any party except for Staff, and Aqua does not explain why good cause existed. A review of Aqua's request shows that it was prevented from filing this application in the third quarter only because of the timing of the Commission's approval in Docket No. 53428. The ALJs find no grounds to disturb the Commission ALJs' ruling on this issue.

²² Affidavit of Mailed Notice (Nov. 8, 2023); OPDM Order No. 8 (Jan. 30, 2024).

²³ Commission Staff's Supplemental Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule (Jan. 26, 2024).

However, the application was initially found administratively incomplete, and Aqua was ordered to cure certain deficiencies identified by Commission Staff member Gayatri Bitracanti.²⁴ After supplementation, the Commission ALJ found the application administratively complete on January 30, 2024.²⁵

A group of associations comprised of Wimberley Valley Watershed Association, Woodcreek Property Owners Association, and Trinity Edwards Springs Protection Association (collectively, Intervenor Associations),²⁶ as well as OPUC and ratepayer Karen Ricks, intervened.²⁷ Other intervenors were dismissed for failing to timely file statements of position or testimony.²⁸

The Intervenor Associations and OPUC timely requested a hearing.²⁹ They also requested a good-cause exception to consider prudence in this proceeding, which was later denied.³⁰ The Commission referred this matter to the State Office of Administrative Hearings (SOAH) on April 10, 2024,³¹ 120 days from which is

²⁴ OPDM Order No. 6 (Dec. 4, 2023); Commission Staff’s Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule (Nov. 27, 2023).

²⁵ OPDM Order No. 8 (Jan. 30, 2024).

²⁶ These associations functioned as a single party for purposes of the hearing. The Intervenor Associations’ exhibits are designated as “WWT Ex. __,” using the first letter of each association’s name.

²⁷ OPDM Order No. 6 (Dec. 4, 2023).

²⁸ SOAH Order No. 5 (July 17, 2024).

²⁹ See 16 TAC § 24.76(g)(3) (“A request by an intervenor for hearing must be filed within 25 days after the application is determined to be sufficient. A request for hearing must state with specificity the issues to be addressed.”).

³⁰ SOAH Order No. 2 at 3 (May 6, 2024).

³¹ Order of Referral (Apr. 10, 2024).

August 8. Aqua agreed to extend the deadline for a final order beyond 120 days of referral, and Staff and intervenors agreed to interim rates effective August 8.³² The parties further agreed that discovery on Aqua would be due within 20 days of receipt.³³ On May 9, the ALJs adopted a procedural schedule and set the matter for a hearing.³⁴ A hearing on the merits was held on August 7-8.

Aqua offered the testimony of Craig Blanchette, Rasool Ahmadibeni, and Cameron Alden.³⁵ Mr. Alden's testimony was later adopted by Brian Gresehover.³⁶ Staff offered the testimony of Kathryn Eiland, Emily Sears, and David Lopez. OPUC offered the testimony of Nelisa Heddin, and Intervenor Associations offered the testimony of William Stannard. The record closed on September 20, with submission of post-hearing briefs.

Mr. Blanchette, Aqua's President, addressed Preliminary Order Issues 1-12.³⁷ These issues are uncontested and therefore set out in the findings of fact and conclusions of law without further discussion.

³² See SOAH Order No. 2 at 2-3 (May 6, 2024); SOAH Order No. 3 (May 9, 2024).

³³ See 16 TAC § 24.76(g)(2) (imposing a 10-day deadline on the applicant).

³⁴ SOAH Order No. 3 (May 9, 2024).

³⁵ Aqua Ex. 7 (Blanchette Dir.); Aqua Ex. 8 (Ahmadibeni Dir.); Aqua Ex. 9 (Alden Dir.).

³⁶ Aqua Ex. 10 (Gresehover Dir.) (adopting the direct testimony of Cameron Alden).

³⁷ Aqua Ex. 7 (Blanchette Dir.); *see also* Preliminary Order (Apr. 11, 2024).

III. SCOPE

The scope of a proceeding under Rule 24.76 is expressly limited. “The issue of whether eligible costs included in an application for a SIC or an amendment to a SIC are prudent, reasonable, or necessary, will not be addressed in a proceeding under this section unless the presiding officer finds that good cause exists to address these issues.”³⁸ The ALJs did not find good cause to address those issues in this proceeding.³⁹ The issue of whether the costs are prudent, reasonable, or necessary are addressed in the utility’s next comprehensive rate case, when the system improvement charge is reconciled with base rates.⁴⁰

There is also an implicit limitation on the scope of this proceeding. A system improvement charge is defined as a “charge for recovery of the portion of the cost of a utility’s eligible plant that is *not already included in the utility’s rates*.”⁴¹ In reply brief, Intervenor Associations argue that certain plant being replaced should be credited to the system improvement charge because it is already in rates.⁴² However, the ALJs have ruled that the issue of credits against rate base for replacing retired assets, which

³⁸ 16 TAC § 24.76(h).

³⁹ SOAH Order No. 2 (May 6, 2024). In post-hearing briefing, OPUC urges the ALJs to reconsider that ruling. OPUC Initial Brief at 25-26. The ALJs decline to do so. Fidelity to the expedited nature of these proceedings requires that such a finding not be lightly made. *See also Application of Undine Development, LLC for System Improvement Charges*, SOAH Order No. 5 at 7 (Oct. 7, 2022).

⁴⁰ 16 TAC § 24.76(i).

⁴¹ 16 TAC § 24.76(b)(2) (emphasis added).

⁴² Intervenor Associations Reply Brief at 5-6.

would require the reconciliation, is beyond the scope of this proceeding.⁴³ The ALJs limit their review to plant not already included in rates.⁴⁴

Intervenor Associations and OPUC argue the Aqua must demonstrate in this proceeding that the rates are just and reasonable,⁴⁵ citing Water Code’s directive: “In determining to use an alternative ratemaking methodology, the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.”⁴⁶ But the plain language of that provision only requires the Commission to assure the rates are just and reasonable *in determining to use* alternative ratemaking. Assuring that the rates are just and reasonable is an overarching requirement of utility regulation.⁴⁷

As Intervenor Associations witness Stannard testified, “A foundational aspect of the ability of utility customers to know that the SIC is just and reasonable is *the process and procedure* set forth in Rule 24.76 of the Texas Administrative Code including the full and complete application submitted by the utility requesting an SIC.”⁴⁸ As noted above, the process is bifurcated. First, a utility must demonstrate that its plant investments are eligible for recovery through a system improvement charge and satisfy the constraints established in the Commission’s rules. Next, the

⁴³ SOAH Order No. 8 (Aug. 2, 2024); 16 TAC § 24.76(i).

⁴⁴ Transcript (Tr.) Vol. 1 at 8.

⁴⁵ Intervenor Associations Initial Brief at 4; OPUC Initial Brief at 57-58, 128.

⁴⁶ TWC § 13.183(e).

⁴⁷ TWC §§ 13.001(c), .182(a), .186.

⁴⁸ WWT Ex. 100 (Stannard Dir.) at 11 (emphasis added).

specific issue of whether the *rates* are just and reasonable—as with whether the *costs* are prudent, reasonable, or necessary—is preserved until the next comprehensive rate case. There, the customers are made whole through reconciliation, and the eligible costs are incorporated into base rates. Therefore, the ALJs do not address whether the resulting rates are just and reasonable.

IV. DISCUSSION

Aqua seeks to add to its existing system improvement charges the recovery of capital costs incurred during the 19-month period from January 1, 2022, through July 31, 2023. In total, Aqua seeks to recover more than \$86 million in capital expenditures, net of contributions in aid of construction, or CIAC, in its North, Southeast, and Southwest rate regions. Aqua proposes to collect approximately \$4.7 million in additional water revenue and approximately \$4.1 million in additional wastewater revenue annually from affected customers in those regions above current rates.⁴⁹ This would add \$8.8 million to Aqua’s annual revenue.⁵⁰

A. SUFFICIENCY OF THE APPLICATION

As a threshold issue, the ALJs address the sufficiency of the application, which is contested. OPUC and Intervenor Associations argue that the application is deficient. Aqua argues that Staff’s recommendation, and the Commission ALJ’s finding, shows that it is sufficient. The ALJs first address what the Commission ALJ

⁴⁹ Aqua Ex. 1 (Application) at 1.

⁵⁰ WWT Ex. 100 (Stannard Dir.) at 12.

“found” in finding the application administratively complete in Order No. 8. The ALJs then address the parties’ arguments regarding sufficiency.

1. Administrative Completeness

As noted above, Commission Staff member Gayatri Bitracanti initially identified certain deficiencies with the application that Aqua was asked to cure.⁵¹ Specifically, Ms. Bitracanti identified three deficiencies.⁵² Those deficiencies, and Aqua’s responses, are set out below:

- (1) “Accounts 301, 302, 303, 340 through 353 and 391 through 396 that do not meet the definition of eligible plant appear to be included in the reconcilable cost.”

Aqua responded that it did not identify any eligible plant from an improper account⁵³ but corrected a typographical error in the testimony of one of its witnesses, Mr. Ahmadibeni.⁵⁴

- (2) “In accordance with 16 TAC § 24.76(d)(1), please provide an explanation for each project regarding how each project has improved or will improve service.”

⁵¹ OPDM Order No. 6 (Dec. 4, 2023); Commission Staff’s Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule (Nov. 27, 2023).

⁵² Commission Staff’s Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule (Nov. 27, 2023) (Ms. Bitracanti’s findings are set forth in a memorandum attached to Staff’s filing).

⁵³ The account references are to the National Association of Regulatory Utility Commissioners (NARUC) system of accounts. *See* 16 TAC § 24.76(b)(1).

⁵⁴ Aqua Ex. 11 (Application Supplement) at 2.

In response, Aqua stated that its application already included sufficient description for how the projects included in its eligible plant costs have improved or will improve service, referencing the testimony of Cameron Alden and Schedules D and H of its application. Aqua further noted that “Aqua is also making all the supporting invoices referenced in those schedules available for review by Staff and other parties upon request, but they are too voluminous for inclusion in the Application filing itself.”⁵⁵

- (3) “Please provide a justification why the application is submitted as a SIC amendment application instead of a SIC application.”⁵⁶

Aqua responded by explaining that it sought an amendment because it already had an approved system improvement charge.⁵⁷

Satisfied with these responses, Staff recommended that the application be deemed administratively complete.⁵⁸ The Commission ALJ issued Order No. 8

⁵⁵ Aqua Ex. 11 (Application Supplement) at 2-3; *see also* WWT Ex. 132 (Bitracanti Deposition) at 34-35 (testifying that Aqua’s response did not provide the additional project descriptions requested in the Staff memo).

⁵⁶ Aqua Ex. 11 (Application Supplement) at 1-3.

⁵⁷ Aqua Ex. 11 (Application Supplement) at 3.

⁵⁸ Commission Staff’s Supplemental Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule (Jan. 26, 2024).

finding the application, as supplemented, “administratively complete.”⁵⁹ This finding, Aqua argues, established that its application is sufficient.⁶⁰

A determination that an application is *sufficient* is expressly contemplated by Rule 24.76. Under subsection (g), the date of that determination sets the deadlines governing the expedited process described above. However, the parties cite no guidance, and the ALJs have found none, regarding *how* that determination is to be made.

The *sufficiency* and the *administrative completeness* of the application appear interchangeably. Any application under chapter 24 of the Commission’s rules shall be reviewed for administrative completeness, and the application may be rejected until any deficiencies are corrected.⁶¹ This is akin to the Commission’s general rule on *Examination and Correction of Pleadings and Documents* for deficiencies,⁶² which, in turn, is akin to evaluating the sufficiency of pleadings in civil practice—construed to do substantial justice.⁶³ Civil practice is distinguishable in that pleadings need not be supported by “the evidence upon which [a party] relies to establish his asserted

⁵⁹ OPDM Order No. 8 (Jan. 30, 2024); *see also* Aqua Ex. 11 (Application Supplement); Aqua Ex. 17 (Staff’s Supplemental Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule); Aqua Ex. 18 (OPDM Order No. 8 Finding the Application, as Supplemented, Administratively Complete, and Establishing Procedural Schedule).

⁶⁰ Aqua Initial Brief at 12.

⁶¹ 16 TAC § 24.8 (Administrative Completeness). The review for administrative completeness should not be confused with *administrative review* under 16 TAC §§ 22.2(3), .32(a)(1), whereby an application is approved after referral to SOAH when there are no disputed issues.

⁶² 16 TAC § 22.75(b)(2).

⁶³ 16 TAC § 22.75(a); *see* Tex. R. Civ. P. 45.

cause of action,”⁶⁴ whereas applications must include the required contents to affirmatively show that the applicant is entitled to the relief sought.⁶⁵

Intervenor Associations expert witness Stannard testified that for an application at the Commission to be administratively complete, it “[m]eans that the materials submitted comply with the rules that have been established for the application and as defined in the Commission rules for such an application.”⁶⁶ There appear to be no standards for how this determination is made, though it appears to be a superficial review to ensure an application has all components needed for substantive review.⁶⁷

With this backdrop, the ALJs conclude that the *sufficiency* determination for purposes of triggering deadlines in Rule 24.76 bears only on the determination to advance the application to a substantive review.⁶⁸ This is consistent with the policy

⁶⁴ *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015) (citing *Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 494-95 (Tex. 1988)).

⁶⁵ See 16 TAC § 22.75.

⁶⁶ Tr. Vol. 1 at 228 (Stannard Cross (Cr.)).

⁶⁷ See, e.g., WWT Ex. 132 (Bitracanti Deposition) at 26 (“I glanced quickly through the entire application to make sure I have everything I need for my technical review. That’s the purpose of admin complete.”), 36, 38-39. Ms. Bitracanti’s use of “technical review” appears to refer to a substantive review and may have been borrowed from the application processing terminology at the Texas Commission on Environmental Quality, of which Ms. Bitracanti is a recent alumna. See WWT Ex. 132 (Bitracanti Deposition) at 12-13. Compare 30 TAC §§ 281.3 (Initial Review) with 281.19 (Technical Review).

⁶⁸ *Perez v. Briercroft Serv. Corp.*, 809 S.W.2d 216, 218 (Tex. 1991) (“[T]he purpose of pleadings is to give the adversary parties notice of each parties [sic] claims and defenses, as well as notice of the relief sought.”).

preference that cases be adjudicated on their merits and not summarily disposed of based on technicalities.⁶⁹

This gatekeeping sufficiency determination, however, cannot be relied upon in meeting a burden of proof and is not binding or prejudicial to subsequent challenge.⁷⁰ While the ALJs do not disturb the finding in Order No. 8 insofar as it bears on whether the application is sufficient to proceed to a substantive review, the issues referred by the Commission to SOAH include the following: “Is the application sufficient? 16 TAC § 24.76(d).”⁷¹ Accordingly, the ALJs conclude that the parties are not precluded from raising issues regarding the sufficiency of the application at this stage of the proceeding.

2. Sufficiency

Rule 24.76(d) requires a system improvement charge application to include the following:

- (1) a description of the eligible plant for which cost recovery is sought through the system improvement charge, including the project or

⁶⁹ See, e.g., *Sutherland v. Spencer*, 376 S.W.3d 752, 755-56 (Tex. 2012); *Application of El Paso Electric Company to Update its Generation Cost Recovery Rider Related to Newman Unit 6*, Docket No. 56225, OPDM Order No. 3 (finding application administratively complete over Staff’s objection).

⁷⁰ See, e.g., *Petition by Ratepayers Appealing the Water Rates Established by Red River Authority of Texas*, Docket No. 54576, Order No. 6 (May 24, 2023) (finding application administratively complete); Order No. 7 (June 27, 2023) (rescinding finding on administrative completeness); Order No. 11 (Nov. 29, 2023) (reinstating finding of administrative completeness); *Application of Southwest Liquids, Inc. for Authority to Change Rates*, Docket No. 55851, SOAH Order No. 3 (July 8, 2024) (setting aside prior determination of administrative completeness); see also *Application of Fort Davis Estates for Authority to Change Rates*, Docket No. 55128, OPDM Order No. 12 (Apr. 30, 2024) (rescinding prior finding that notice was sufficient).

⁷¹ Preliminary Order at Issue No. 16 (Apr. 11, 2024); see also Tex. Gov’t Code § 2003.049(e).

projects included in the request and an explanation of how each project has improved or will improve service;

- (2) a calculation of the system improvement charge in accordance with subsection (f)⁷² of this section and all supporting calculations and assumptions for each component of the system improvement charge;
- (3) information that sufficiently supports the eligible cost, such as invoices, receipts, and direct testimony, and that sufficiently addresses the exclusion of costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction;
- (4) a copy of the utility's most recent annual report filed with the commission, which must be the annual report most recently due for filing; and
- (5) an affidavit confirming that the application meets the requirements of this section.

Aqua asserts that all of this information was in its application.⁷³ This assertion is not disputed with respect to items (4) and (5), and Staff recommends some uncontested adjustments to the calculation required by (2). With respect to items (1) and (3), which this PFD will address at length, intervenors raise several challenges.

OPUC and Intervenor Associations argue the application is inadequate with respect to the information required by items (1) and (3). Mr. Stannard testified that Aqua's application contains nothing that approaches the level of detail required by

⁷² This reference to subsection (f) appears to be a typographic error, as the system improvement charge calculation is addressed in subsection (e), not (f) of Rule 24.76.

⁷³ See, e.g., Aqua Initial Brief at 5; Aqua Ex. 1 (Application); Aqua Ex. 2 (Filing Schedules); Aqua Ex. 3 (Certification of Application); Aqua Ex. 4 (Proposed Water and Sewer Tariffs); Aqua Ex. 6 (Aqua's 2022 Annual Report); Aqua Ex. 7 (Blanchette Dir.); Aqua Ex. 8 (Ahmadibeni Dir.); Aqua Ex. 9 (Alden Dir.).

those sections, and no invoices.⁷⁴ Additionally at issue is whether the application complies with the final order in Docket No. 53428, which as noted above, required an even greater level of detail from Aqua.⁷⁵

In support of its compliance, Aqua references Schedules H and D of the application.⁷⁶ Schedule D summarizes Schedule H.⁷⁷ Rasool Ahmadibeni, an accountant and Manager of Rates and Planning for Aqua,⁷⁸ explained that Schedule H “lists for review every eligible plant cost and a brief description of the asset included in the reconcilable costs for Aqua’s SIC calculations,” and Schedule D is a “more detailed asset and CIAC listing.”⁷⁹ Schedule D includes over 5,700 work order line items for the water systems and 1,400 work order transactions for the wastewater systems.⁸⁰

a) The Description and Explanation

Rule 24.76(d)(1) requires “a description of the eligible plant for which cost recovery is sought through the system improvement charge, including the project or projects included in the request and an explanation of how each project has improved or will improve service.” Thus, three types of information are needed: (1) “a

⁷⁴ WWT Ex. 100 (Stannard Dir.) at 14.

⁷⁵ Docket No. 53428, Order at Ordering Paragraph No. 3.

⁷⁶ Aqua Ex. 2, Schedules D, H.

⁷⁷ Tr. Vol. 1 at 52 (Ahmadibeni Cr.).

⁷⁸ Aqua Ex. 8 (Ahmadibeni Dir.) at 1, RA-1

⁷⁹ Aqua Ex. 8 (Ahmadibeni Dir.) at 5-6.

⁸⁰ OPUC Ex. 1 (Heddin Dir.) at 62.

description of the eligible plant for which cost recovery is sought through the system improvement charge;” (2) a description of “the project or projects included in the request;” and (3) “an explanation of how each project has improved or will improve service.” Presumably, if the eligible plant and the project are one and the same, the description of one could serve as a description of the other, so these two descriptions could be combined.

OPUC expert witness Nelisa Heddin reviewed Schedules D and H in depth and concluded that they did not provide the required information. By her account, Schedule D includes approximately 7,400 work order transactions, each with a description.⁸¹ This schedule includes a column for the work order number associated with the transaction (column D is titled “cpr_activity wo_number,” or continuing property record (cpr) activity work order (wo) number), and a column for the description (“cpr_activity wo_desc”).⁸² Schedule H includes approximately 20,600 transaction line items.⁸³ But both schedules total the same amount, which is the total amount of eligible cost claimed by Aqua.⁸⁴

Some work order numbers contain only numbers; others are alphanumeric, beginning with C.P, for example, C.P5600100125.00002.001.⁸⁵ The difference, Mr. Ahmadibeni explained in rebuttal, is the result of a change in financial reporting

⁸¹ OPUC Ex. 1 (Heddin Dir.) at 19.

⁸² OPUC Ex. 1 (Heddin Dir.) at 19.

⁸³ OPUC Ex. 1 (Heddin Dir.) at 20.

⁸⁴ OPUC Ex. 1 (Heddin Dir.) at 20.

⁸⁵ The record does not reflect what C.P stands for.

systems; Aqua's new system does not include the C.P identifier.⁸⁶ As discussed later, this distinction proved significant in the invoice review.

A cursory review of the descriptions shows that some are intelligible: Corrosion control treatment (line 18), Air compressor switch repair (line 77), run temporary line to fill tank (line 101), auto dialer communications problem (line 2051), replace engine belt on generator (line 2463), Manhole needs to be raised to match (line 4605), Chemical pump replacement (line 5411).⁸⁷ Others—thousands—are more arcane:

- Surface Wtr Plant - BartonCreekLake
- 2021 Winter Storm - ETX WTR
- (B)WWTP Repair/Replace
- (B)Wells&Pmps/MtrsBelowGrade
- (B)Wells&PumpsBelowGradePalmetto
- (B)WtrTreatPlnts,All Above Grade
- (B)WtrPlntsAboveGradeMoreland3&4
- Pump:Horsepower Unspecified:
- (B)WtrTreatPlnts,All Above Grade - Black Oak⁸⁸

An example from Schedule D is reproduced below:

⁸⁶ Aqua Ex. 12 (Ahmadibeni Rebuttal (Reb.)) at 15.

⁸⁷ Aqua Ex. 2, Schedule D, Column E.

⁸⁸ OPUC Ex. 1 (Heddin Dir.) at 21; OPUC Ex. 4 (Schedule H excerpt).

	A	B	C	D	E
1	Schedule D				
2	Aqua Texas, Inc - Detail Added Asset Report (Jan 2022- Jul 2023)				
3					
9					
10					
11	Rate Division	GL Account	NARUC	cpr_activity wo_number	cpr_activity wo_desc
12	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	31700043115	
13	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	5300876	(B)WtrTreatPlnts,All Above Grade
14	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	5301533	(B)WtrTreatPlnts,All Above Grade
15	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	5301545	(B)WtrTreatPlnts,All Above Grade
16	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	5301549	(B)WtrTreatPlnts,All Above Grade
17	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	C.P5600230126.000002.010	BLKT-Dist Main Repl:PWS#0370052
18	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100002064	Corrosion Control Treatment
19	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100002097	Replace Pump House; Saddleclub
20	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100002109	Replace Pump Station; Heritage Oaks
21	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100790832	Wells will not come on in hand
22	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100902772	light at plant new light
23	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100912606	CyberSecurity with Bill Teodecki
24	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100914699	leak on the header and parts
25	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100940475	Trim brush from fence and clean yar
26	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100940740	replace electric outlet in chlorine
27	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100953000	emergency preparation
28	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100953028	EMERGENCY PREPARATIONS
29	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100953029	EMERGENCY PREPARATIONS
30	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100953030	EMERGENCY PREPARATIONS
31	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100954465	fix frozen pipe going to the pressu
32	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	100965073	Booster pumps will not come on in h
33	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	400000070	transducer replacement at the plant
34	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	400000170	electrical issues found during new
35	Texas North Water	101-Utility Plant in Service	304000-Structures & Improvements	400000823	Office: Install an outdoor cover, C

Mr. Ahmadibeni explained that these are raw data descriptions from field technicians when they arrive to a site.⁸⁹ He further explained that “we are educating more operation to put better description, but as a human typing, you will see a lot of mistake here or a lot of mistyping here.”⁹⁰ However, he maintained that Aqua “cannot go back—nor should it—and rewrite initial descriptors made by on the ground field technicians when a project first originates.”⁹¹

(i) Description of Eligible Plant

The Intervenor Associations argue that Aqua has not defined what constitutes the eligible plant. They emphasize that Mr. Ahmadibeni did not check that each entry was assigned to the proper NARUC category “because it’s a report and it’s the time

⁸⁹ Aqua Ex. 12 (Ahmadibeni Reb.) at 11.

⁹⁰ Tr. Vol. 1 at 54 (Ahmadibeni Cr.).

⁹¹ Aqua Ex. 12 (Ahmadibeni Reb.) at 11.

period of 19 months and it's more than 7,000 work order and it comes by the raw data from the field.”⁹²

Intervenor Associations argue that Aqua thereby allows every individual expenditure to be its own eligible plant.⁹³ Intervenor Associations argue that there is nothing in the application—specifically, the supporting schedules—that distinguishes between expenditures that are themselves eligible plant or expenditures that must be combined with other expenditures to amount to eligible plant. Aqua’s approach, Intervenor Associations argue, results in thousands of “eligible plants,” with no way to discern what constitutes the eligible plant.⁹⁴ Ms. Heddin testified that the work order descriptions in the schedules do not provide enough detail to sufficiently support the eligible cost or determine what work was done.⁹⁵ The description examples above were listed for 184 of the first 222 lines in Schedule H and the “same issues and pattern of lacking detailed information persist for all 20,600 line items.”⁹⁶

⁹² Tr. Vol. 1 at 45 (Ahmadibeni Cr.).

⁹³ Tr. Vol. 1 at 47 (Ahmadibeni Cr.).

⁹⁴ Intervenor Associations Initial Brief at 8.

⁹⁵ OPUC Ex. 1 (Heddin Dir.) at 20-21.

⁹⁶ OPUC Ex. 1 (Heddin Dir.) at 21; OPUC Ex. 4 (Schedule H excerpt).

(ii) Project Description

OPUC and the Intervenor Associations next argue that Aqua failed to describe the specific projects included in the application. Ms. Heddin testified that a majority of project descriptions are vague and do not describe what was actually done.⁹⁷

Mr. Ahmadibeni testified that Aqua has major and minor projects and normal replacement activity typically called capital projects.⁹⁸ However, the application—by way of direct testimony of Mr. Alden—described only some of the major projects:⁹⁹ one water project in the North Region;¹⁰⁰ two water projects and one wastewater project in the Southeast Region;¹⁰¹ and one water and two wastewater projects in the Southwest Region.¹⁰² Others were described simply as “various other” projects or improvements that included “main, meter, and service line replacements” and “treatment plant and storage improvements.”¹⁰³

Mr. Alden lists five types of water projects: meter replacements; line repairs/replacements; storage improvements; booster pump improvements; water

⁹⁷ OPUC Ex. 1 (Heddin Dir.) at 70.

⁹⁸ Tr. Vol. 1 at 49-50 (Ahmadibeni Cr.).

⁹⁹ Aqua Ex. 9 (Alden Dir.), adopted by Brian Gresehover. Aqua Ex. 10 (Gresehover Dir.) at 2.

¹⁰⁰ Aqua Ex. 9 (Alden Dir.) at 4-5.

¹⁰¹ Aqua Ex. 9 (Alden Dir.) at 5-6 (Though Mr. Alden’s testimony mentions additional wastewater systems by name in the Southwest Region, it is not possible to tell what the *project* was that was associated with each system.).

¹⁰² Aqua Ex. 9 (Alden Dir.) at 7-8.

¹⁰³ Aqua Ex. 9 (Alden Dir.) at 5, 7.

source and treatment plant improvements.¹⁰⁴ In similar terms, Mr. Alden testified regarding wastewater projects that are “made to collection systems that include, but are not limited to, the replacement or rehabilitation of sewer mains, manholes and lift stations.”¹⁰⁵ Additionally, “[p]rojects varied from influent bar screens, equipment upgrades and replacements, a full plant rehabilitation, and replacement of expansion of facilities.”¹⁰⁶

Aqua did not provide any information, according to Ms. Heddin, that would allow for identification of how each line item on Schedule D correlates to these general categories.¹⁰⁷ Moreover, none of Mr. Alden’s testimony is tied to Schedules D and H. According to Mr. Ahmadibeni, the only way to know which expenditures are a part of the same project is to search the schedules by CPR (or continuing property record) activity work order description (or “cpr_activity_wo_desc” as it appears in Schedule D, column E).¹⁰⁸ Mr. Ahmadibeni admits, however, that this method is not 100% accurate, though “technically, you can find everything related to the asset location for the same project, for the capital project.”¹⁰⁹

Intervenor Associations argue that the work order description cannot be used to show the same project because the same description is used for different work

¹⁰⁴ Aqua Ex. 9 (Alden Dir.) at 3-4.

¹⁰⁵ Aqua Ex. 9 (Alden Dir.) at 4.

¹⁰⁶ Aqua Ex. 9 (Alden Dir.) at 4.

¹⁰⁷ OPUC Ex. 1 (Heddin Dir.) at 71 (water), 82-83 (wastewater).

¹⁰⁸ Tr. Vol. 1 at 53 (Ahmadibeni Cr.).

¹⁰⁹ Tr. Vol. 1 at 50-51 (Ahmadibeni Cr.).

orders. “Winterize plant,” for example, is used in multiple instances with no matching work orders. However, Aqua responds that Mr. Ahmadibeni’s testimony and Schedule D show that a work order description defines the *same project* within the *same district*,¹¹⁰ and one project can have the same work order or multiple work orders.¹¹¹

Intervenor Associations argue that Aqua’s failure is compounded by the instruction in Docket No. 53428.¹¹² Mr. Ahmadibeni acknowledged that in preparing the application, he followed the same format of the prior application and did not organize the application by project.¹¹³

Aqua responds that Intervenor Associations mischaracterize Mr. Ahmadibeni’s testimony regarding compliance with the prior order. Aqua points to testimony that he spoke with Staff regarding how to present the schedules with the application in the appropriate manner.¹¹⁴ Aqua argues that had intervenors used Schedule C to review the application, they would then have found the specific project descriptions in Schedules D and H.¹¹⁵ However, this remedy is not supported by testimony, nor is it obvious to the ALJs.

¹¹⁰ Aqua Ex. 2, Schedule C.

¹¹¹ Tr. Vol. 1 at 47-48, 53, 65 (Ahmadibeni Cr.); Aqua Ex. 12 (Ahmadibeni Reb.) at 20; Aqua Initial Brief at 29.

¹¹² Docket No. 53428, Order at Ordering Paragraph No. 3; WWT Ex. 100 (Stannard Dir.) at 13.

¹¹³ Tr. Vol. 1 at 90-92 (Ahmadibeni Cr.).

¹¹⁴ Tr. Vol. 1 at 125-26 (Ahmadibeni Redirect (Redir.)).

¹¹⁵ Aqua Reply Brief at 14.

(iii) Explanation of Improvement

OPUC and the Intervenor Associations argue that the application fails to give an explanation of how each project has improved or will improve service.¹¹⁶ Mr. Alden testified that various projects “all improved customer service.”¹¹⁷ Regarding water projects, Mr. Alden testified that Aqua’s projects assure accurate billing, improve reliability, maintain appropriate pressure, and maintain compliance with environmental regulations.¹¹⁸ With respect to wastewater projects, Mr. Alden stated that “these improvements provided for better conveyance of sewage to the wastewater treatment facilities by improving reliability and reducing infiltration.”¹¹⁹ Mr. Alden then stated that “[w]astewater system improvements at Aqua’s wastewater treatment plants were made to ensure continued reliable treatment of sewage prior to discharging treated effluent into the environment.”¹²⁰

However, Intervenor Associations contend that nothing in Mr. Alden’s testimony shows that he reviewed each expenditure or made any individual determination as to how each project has improved or would improve service.¹²¹

¹¹⁶ OPUC Ex. 1 (Heddin Dir.) at 70.

¹¹⁷ Aqua Ex. 9 (Alden Dir.) at 8.

¹¹⁸ Aqua Ex. 9 (Alden Dir.) at 3-4.

¹¹⁹ Aqua Ex. 9 (Alden Dir.) at 4.

¹²⁰ Aqua Ex. 9 (Alden Dir.) at 4.

¹²¹ Intervenor Associations Initial Brief at 10.

Mr. Gresehover, who adopted Mr. Alden’s testimony, did not know if such an explanation existed.¹²²

For a small fraction of the projects, according to Ms. Heddin, Aqua provided the required descriptions. Ms. Heddin noted that Mr. Alden appropriately described and explained three of 5,700 water projects and four of the 1,400 wastewater projects.¹²³ But Mr. Alden did not say where these projects are located on Schedules D or H,¹²⁴ nor provide other identification, such as the cost, date of completion, vendor, or work order associated with the projects.¹²⁵

According to Ms. Heddin, “[t]he only way to correlate the projects described by Mr. Alden is to search Schedule H by subdivision and comb through all of the projects listed for each subdivision to locate a work order description that is similar in nature to the work that Mr. Alden described.”¹²⁶ In this manner, Ms. Heddin located work orders that have data and descriptions that “may be” associated with the three water projects he described:

Alden’s description	Heddin’s Schedule H search
“A major water project performed in Aqua’s North Region was the Oakview Farms Subdivision project in Johnson County which	Well #5 in the Oakview Farms Subdivision, work order no. 100002173 for a cost of \$1,506,435.46 ¹²⁸

¹²² Tr. Vol. 1 at 183 (Gresehover Cr.).

¹²³ OPUC Ex. 1 (Heddin Dir.) at 71-74 (water), 82 (wastewater).

¹²⁴ OPUC Ex. 1 (Heddin Dir.) at 72.

¹²⁵ OPUC Ex. 1 (Heddin Dir.) at 72 (water), 83 (wastewater).

¹²⁶ OPUC Ex. 1 (Heddin Dir.) at 72 (water), 83 (wastewater).

¹²⁸ Aqua Ex. 2, Schedule H, line 15237.

included drilling a Well #5 and associated improvements.” ¹²⁷	
“The major Aqua Southeast Region water projects were the construction of a new additional water treatment plant for Aqua’s North Wood Estates water system in Harris County” ¹²⁹	“Fairway Farms New Water Plant” for work order 100003018 for a total claimed eligible cost of \$1,152,985.79 ¹³⁰
“In the Aqua Southwest Region, a large-scale water main replacement project was performed for Aqua’s Sandy Creek Ranches Subdivision water system in Travis County.” ¹³¹	<p>Work order C.P5600100125.000002.007 description “Mains: Unknown Type Unknown Size,” with eight line items totalling \$135,266.44.</p> <p>Work order C.P5600100126.000002.013 description “Mains: Unknown Type Unknown Size,” with 16 line items, totaling \$4,206,747.14.</p> <p>Assuming all 24 line items are related to this project, the total cost is \$4,535,734.68</p>

By Ms. Heddin’s calculation, the total eligible cost for these three projects was \$7,001,434.83, and 26 of 5,700 work order line items complied with the description and explanation requirement for eligible plant in Rule 24.76(d)(1).¹³²

¹²⁷ Aqua Ex. 9 (Alden Dir.) at 4.

¹²⁹ Aqua Ex. 9 (Alden Dir.) at 5.

¹³⁰ Aqua Ex. 2, Schedule H, line 19008.

¹³¹ Aqua Ex. 9 (Alden Dir.) at 7.

¹³² OPUC Ex. 1 (Heddin Dir.) at 74.

In the same way, Ms. Heddin located work orders that have data and descriptions that “could be” associated with the four wastewater projects described by Mr. Alden:¹³³

Alden’s description	Heddin’s Schedule H search
“Major completed Aqua Southeast Region wastewater system improvement projects included the large-scale rehabilitation of the collection systems for the Old Egypt Subdivision wastewater system in Montgomery County” ¹³⁴	Work order number C.P5600321114.000002.014, description “Mains: Unknown Type Unknown Size,” five line items totaling \$45,833.52. ¹³⁵
“Major completed Aqua Southeast Region wastewater system improvement projects included the large-scale rehabilitation of the collection systems for . . . the Pine Trails wastewater system in Harris County.” ¹³⁶	Work order number 00002189, description “599-RplCollectionSystem, Pine Trail,” five line items totaling \$1,971,165.17. ¹³⁷
“Major completed Aqua Southwest Region wastewater system improvement projects included the construction of the Sunset Oaks wastewater treatment plant (WWTP)” ¹³⁸	Work order number 100002063, description of “Sunset Oaks WWTP,” 16 line items totaling \$7,347,430.46. ¹³⁹

¹³³ OPUC Ex. 1 (Heddin Dir.) 84-85.

¹³⁴ Aqua Ex. 9 (Alden Dir.) at 5.

¹³⁵ OPUC Ex. 36 (five line items highlighted).

¹³⁶ Aqua Ex. 9 (Alden Dir.) at 5-6.

¹³⁷ OPUC Ex. 37 (five line items highlighted).

¹³⁸ Aqua Ex. 9 (Alden Dir.) at 7.

¹³⁹ OPUC Ex. 38 (16 line items highlighted).

<p>“Major completed Aqua Southwest Region wastewater system improvement projects included . . . the complete replacement of the Barton Creek Lakeside WWTP.”¹⁴⁰</p>	<p>Work order number 100002061 and 100002062, description of “Replace WWTP - Barton Creek Lakeside” or “Rehab WWTP; Barton Creek Lakeside,” nine line items totaling \$3,753,651.61.¹⁴¹</p>
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By Ms. Heddin’s calculation, the total eligible cost for these four projects was \$13,118,080.80, and 35 of 1,400 work order line items for the wastewater systems complied with the description and explanation requirements in Rule 24.76(d)(1).¹⁴²

In sum, Aqua provided the required information for \$7,001,434.83 for water projects and \$13,118,080.80 for wastewater projects.¹⁴³ Thus, in total, Aqua provided the required information for only \$20,119,515 of the total claimed eligible cost of more than \$86 million.¹⁴⁴

¹⁴⁰ Aqua Ex. 9 (Alden Dir.) at 7.

¹⁴¹ OPUC Ex. 39 (nine line items highlighted).

¹⁴² OPUC Ex. 1 (Heddin Dir.) at 85. This part of Ms. Heddin’s testimony refers to “three projects”; that is clearly an error.

¹⁴³ OPUC Ex. 1 (Heddin Dir.) 86.

¹⁴⁴ The ALJs note that Ms. Heddin refers to a total claimed cost of \$94 million. OPUC Ex. 1 (Heddin Dir.) at 86. However, this appears to be the total before removal of CIAC, whereas the \$86 million claimed by Aqua is net of CIAC. Aqua Ex. 9 (Blanchette Dir.) at 11; Aqua Ex. 8 (Ahmadibeni Dir.) at 7-8; Aqua Ex. 12 (Ahmadibeni Reb.) at 38. The ALJs do not address which approach is appropriate except to state that starting with the gross may more accurately determine what should be excluded.

b) Support of Eligible Costs

Rule 24.76(d)(3) requires “information that sufficiently supports the eligible cost, such as invoices, receipts, and direct testimony.”¹⁴⁵

Intervenor Associations and OPUC argue that the application did not sufficiently support the costs as required. Mr. Stannard testified that reviewing the invoices is necessary to determine whether the costs are eligible.¹⁴⁶ He further testified that “Aqua’s failure to submit data supporting the cost of the assets to be recovered in Aqua’s proposed SIC drastically limits the ability to audit and test the validity of the calculation.”¹⁴⁷ Finally, Mr. Stannard testified that “Aqua [did not] organize the invoices so that it was possible to review them in connection to the expenditures listed in the Application.”¹⁴⁸

By Ms. Heddin’s review, the documents provided in direct testimony do not provide detail sufficient to ascertain whether the items qualify for inclusion of eligible cost, and she asserted that testimony, unsupported by invoices and receipts, is insufficient.¹⁴⁹ Further missing from Schedule D are the vendor names, invoice numbers, invoice amounts, date in which work was completed, and invoice dates.¹⁵⁰

¹⁴⁵ That rule also requires information “that sufficiently addresses the exclusion of costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction,” which is not directly at issue here.

¹⁴⁶ WWT Ex. 100 (Stannard Dir.) at 14.

¹⁴⁷ WWT Ex. 100 (Stannard Dir.) at 15.

¹⁴⁸ WWT Ex. 100 (Stannard Dir.) at 17.

¹⁴⁹ OPUC Ex. 1 (Heddin Dir.) at 22

¹⁵⁰ OPUC Ex. 1 (Heddin Dir.) at 19; *see, e.g.*, OPUC Ex. 3 (Schedule D excerpt).

c) Invoice Review

Aqua did not provide invoices and receipts with its application: Mr. Ahmadibeni testified that “[t]here are approximately 77,000 invoices or receipts that further support the infrastructure investments listed in Schedule H and being requested. . . . These documents are voluminous and not included in the application, but reasonable requests can be accommodated as needed in the proceeding.”¹⁵¹

OPUC made such requests—at least 18 of them, beginning on March 4, 2024.¹⁵² In testimony covering 30 pages,¹⁵³ Ms. Heddin chronicles her efforts to obtain the invoice information Aqua offered upon “reasonable request.”

When asked for “a transaction detail with all invoices paid for each asset included in the SIC and provide copies of all invoices that reconcile the transaction detail,” Aqua responded that “[t]hese invoices will be securely made available for review at a mutually agreed time and place.”¹⁵⁴

Aqua then provided two sources: the Perceptive Content database and an Invoice File.¹⁵⁵ The Invoice File was provided first on April 8, 2024, via email, and

¹⁵¹ Aqua Ex. 8 (Ahmadibeni Dir.) at 6-7.

¹⁵² OPUC Ex. 1 (Heddin Dir.) at 23; OPUC Exs. 89-105 (OPUC RFI Nos. 1-5, 2-2, 2-8, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9, 3-10, 3-11, 3-12, 3-18, 4-6, and 5-4).

¹⁵³ OPUC Ex. 1 (Heddin Dir.) at 22-58.

¹⁵⁴ See OPUC Ex. 5 (Aqua response to OPUC RFI No. 1-5).

¹⁵⁵ The Invoice File has a file name of “All Capital Invoices Jan 2022-July 2023.”

again later in response to discovery.¹⁵⁶ Before using the Perceptive Content database, however, the parties had to be trained by Aqua to use it, which happened on April 1, after which they were provided with log-in credentials on April 9.¹⁵⁷

(i) The Invoice File

To view the Invoice File, Ms. Heddin testified that she was instructed to cross reference the *work order* number from Schedule D to obtain an *invoice* number from the Invoice File, and then search the Invoice File for the invoice number.¹⁵⁸ Multiple line items on each file did not correlate, and the Invoice File did not allow for copying and pasting invoice numbers, so Ms. Heddin had to manually search for each of the 7,400 line items on Schedule D by typing the invoice number into the database.¹⁵⁹ The Invoice File also did not allow for printing or saving, so copies of invoices had to be sought through discovery.¹⁶⁰ Finally, because many invoices could not be located, and invoice totals and descriptions did not match what was listed on Schedules D and H, Ms. Heddin had to track all of this information as invoices were reviewed.¹⁶¹

¹⁵⁶ Aqua Ex. 12 (Ahmadibeni Reb.) at 10; OPUC Ex. 10 (Aqua response to OPUC RFI No. 2-1), the RFI refers to the Invoice File as Aqua 000891.

¹⁵⁷ OPUC Ex. 1 (Heddin Dir.) at 24; *see* OPUC Ex. 6 (email correspondence between OPUC and Aqua personnel regarding accessing Perceptive Content system); OPUC Ex. 10 (Aqua response to OPUC RFI No. 2-1).

¹⁵⁸ OPUC Ex. 1 (Heddin Dir.) at 27-28.

¹⁵⁹ OPUC Ex. 1 (Heddin Dir.) at 27-28; *see also* WWT Ex. 132 (Bitracanti Deposition) at 50 (reporting a similar experience).

¹⁶⁰ OPUC Ex. 1 (Heddin Dir.) at 28.

¹⁶¹ OPUC Ex. 1 (Heddin Dir.) at 27-28.

Ms. Heddin testified that the information was produced in an unorganized and unintelligible manner.¹⁶² Moreover, the Invoice File did not reconcile with Schedule D:¹⁶³

1. Schedule D had approximately 7,400 transaction line items, while the Invoice File included over 115,800 line items;¹⁶⁴
2. Many transactions in Schedule D were missing from the Invoice File.¹⁶⁵ Conversely, many transactions in the Invoice File were missing from Schedule D.¹⁶⁶
3. The amount recorded in Schedule D was *higher* than the amount recorded in the Invoice File, sometimes significantly.¹⁶⁷ In one instance, the amount in the Invoice File was a tenth of the amount in Schedule D.¹⁶⁸
4. The Invoice File contained double entries for many items (one associated with assigning the asset to the “GL” account number, one issued for “GL/IR Clearing”).¹⁶⁹

¹⁶² OPUC Ex. 1 (Heddin Dir.) at 27-28.

¹⁶³ OPUC Ex. 1 (Heddin Dir.) at 25.

¹⁶⁴ OPUC Ex. 1 (Heddin Dir.) at 24; *see* OPUC Ex. 7 (Aqua 00891 excerpt).

¹⁶⁵ *Compare* OPUC Ex. 8 (excerpt of Schedule D) *with* OPUC Ex. 9 (Invoice File [Aqua 000891]) excerpt showing work order #100002064 missing from the Invoice file).

¹⁶⁶ OPUC Ex. 1 (Heddin Dir.) at 27; *compare* OPUC Ex. 16 (Schedule D, first work order was #5300128) *with* OPUC Ex. 15 (Invoice File excerpt, showing first work order is #56003 followed by #5000100, then #5200161).

¹⁶⁷ *Compare* OPUC Ex. 14 (Schedule D, showing work order #100790832 for “[w]ells will not come on in hand” for \$1,523.15) *with* OPUC Ex. 13 (Invoice File, showing work order #100790832, for \$1,482.70).

¹⁶⁸ *Compare* OPUC Ex. 11 (Schedule D excerpt, showing work order #100002097 is for Replacement Pump House; Saddle Club with a cost of \$282,594.31) *with* OPUC Ex. 12 (Invoice File excerpt, work order #100002097 with cost of \$28,710). $\$28,710$ (Total cost from Invoice File)/ $\$282,594.31$ (Total Cost from Schedule D) = 10.16%.

¹⁶⁹ *See* OPUC Ex. 13 (Invoice File excerpt), . work order #100790832.

When asked to reconcile the Invoice File with Schedule D, Aqua responded to OPUC RFI No. 2-2 that “[t]he type of reconciliation requested is not possible.”¹⁷⁰

Aqua explained:

In addition to invoiced amounts, each line item in [Schedule D] may include all or some of the following components: (1) overhead; and (2) labor. Some Sch D items consist of overhead and labor without any invoiced amount because the invoice was inadvertently expensed. This means that particular invoice amount is not in the SIC case, which actually reduces the total eligible SIC plant amounts and works to the benefit of Aqua ratepayers. This accounts for all differences between the line item amounts in Aqua’s application Sch D spreadsheet and the [Invoice File], attached as Aqua 000891. More detail for each item is shown in the [Schedule H].¹⁷¹

Ms. Heddin found it significant that the two files cannot be reconciled—that some items *may* include labor and overhead with no explanation of which; and that Aqua was not able to produce invoices for items that were “inadvertently expensed” to justify the work that was done.¹⁷² Ms. Heddin also took issue with the claim that inadvertently expensing an invoice “reduces the eligible SIC plant amounts and works to the benefit of Aqua ratepayers,” as it assumes that the items should have been capitalized and not expensed.¹⁷³ She noted, however, that if the reverse were true and cost *should have been* expensed and not capitalized, then the eligible plant is

¹⁷⁰ OPUC Ex. 18 (Aqua response to OPUC RFI No. 2-2).

¹⁷¹ OPUC Ex. 1 (Heddin Dir.) at 33; *see* OPUC Ex. 18 (Aqua response to OPUC RFI No. 2-2). Bracketed language used to maintain consistency within the PFD.

¹⁷² OPUC Ex. 1 (Heddin Dir.) at 34-35.

¹⁷³ OPUC Ex. 1 (Heddin Dir.) at 35.

inappropriately increased due to the inclusion of the labor and overhead.¹⁷⁴ Without additional documentation, it is impossible to make this determination.¹⁷⁵

Aqua further explained that the Invoice File “does not 100% align with Schedule D or Schedule H . . . nor is it intended to.”¹⁷⁶ The Invoice File “was not used in Aqua’s SIC application. Rather, it was provided as a means of facilitating OPUC’s review of Aqua’s electronically stored invoices. While there are invoices that correspond to most work order line items in Aqua’s application schedules, some work order items do not have corresponding invoices.”¹⁷⁷

Similarly, Mr. Ahmadibeni confirmed that the Invoice File “was not meant to tie directly to Aqua’s Application documents.”¹⁷⁸ Rather, it “includes records for both expenses and capitalized assets so Aqua thought this document would assist OPUC in finding the supporting invoices it sought to review.”¹⁷⁹ He further testified that this file was a “crosswalk” by work order to match invoices in the Perceptive Content database with eligible plant items listed in Schedules D and H, but that “the amounts would be different due to overhead allocations,” and that “some items do not have corresponding invoices.”¹⁸⁰

¹⁷⁴ OPUC Ex. 1 (Heddin Dir.) at 35.

¹⁷⁵ OPUC Ex. 1 (Heddin Dir.) at 35.

¹⁷⁶ OPUC Ex. 95 at 8 (Aqua response to OPUC RFI No. 2-5).

¹⁷⁷ OPUC Ex. 95 at 8 (Aqua response to OPUC RFI No. 2-5).

¹⁷⁸ Aqua Ex. 12 (Ahmadibeni Reb.) at 13.

¹⁷⁹ Aqua Ex. 12 (Ahmadibeni Reb.) at 13.

¹⁸⁰ Aqua Ex. 12 (Ahmadibeni Reb.) at 15.

(ii) Perceptive Content Database

Given the time-intensive nature of using the Invoice File, Ms. Heddin turned to the Perceptive Content database.¹⁸¹ Ms. Heddin encountered similar problems in searching for and tracking invoices viewed—all manually.¹⁸²

Ms. Heddin explained that half the work orders on Schedule D are alphanumeric; the other half are only numeric.¹⁸³ Ms. Heddin searched for each of the 3,662 numeric work orders, again by manually typing each number. Ms. Heddin located invoices related to 1,896 of the transactions; the remaining 1,766 could not be located in the Perceptive Content database or the Invoice File.¹⁸⁴ None of the 3,490 alphanumeric C.P work orders could be found, either in the Perceptive Content database or the Invoice File.¹⁸⁵

In sum, of the 7,152 expense transactions in Schedule D,¹⁸⁶ Ms. Heddin was able to locate 1,896 of the invoices in the database; the remaining invoices could not

¹⁸¹ OPUC Ex. 1 (Heddin Dir.) at 29.

¹⁸² OPUC Ex. 1 (Heddin Dir.) at 29-30.

¹⁸³ OPUC Ex. 1 (Heddin Dir.) at 30. Ms. Heddin explained that 7,152 of the 7,439 transactions included in Schedule D were expense transactions; the remaining were records of customer contributions in aid of construction.

¹⁸⁴ OPUC Ex. 1 (Heddin Dir.) at 30-31. Ms. Heddin testified that she searched by work order number because it is the only number consistent across files; Schedules D and H did not include invoice number, vendor name, or invoice date. OPUC Ex. 8 (Schedule D excerpt, highlighted); OPUC Ex. 9 (Invoice File excerpt).

¹⁸⁵ OPUC Ex. 1 (Heddin Dir.) at 31; *see* OPUC Ex. 17 (Invoice File excerpt, showing the work orders beginning with “C.P” are not in this file).

¹⁸⁶ The remaining transactions in Schedule D were associated with recording customer contributions in aid of construction. OPUC Ex. 1 (Heddin Dir.) at 30.

be located. As such, 5,256, or 73%, of all transactions had no supporting invoices in either the Perceptive Content database or the Invoice File.¹⁸⁷

On June 3, 2024, Aqua admitted “that work orders that start with the prefix ‘C.P.’ cannot be located on the ‘Perceptive Content’ database by searching the work order number. Please see attached additional file (Aqua 000959) for all of these work orders.”¹⁸⁸ Ms. Heddin observed that this admission came long after the March 4 request for invoices: “After 3 months of trying to obtain access to these invoices, Aqua finally admitted that they did not provide OPUC with the information that was necessary to review these invoices.”¹⁸⁹

(iii) Aqua 000959

Aqua 000959 contained most of the same data fields as previous spreadsheets, except the two first columns contained C.P work order numbers.¹⁹⁰ The third column, labeled “Order,” contained data that, when entered into the Perceptive Content database, would sometimes pull up an invoice. Aqua 000959 included 12,416 transaction line items.¹⁹¹ As noted above, 3,490, or nearly half, of the work orders on Schedule D begin with C.P.

¹⁸⁷ OPUC Ex. 1 (Heddin Dir.) at 32.

¹⁸⁸ OPUC Ex. 1 (Heddin Dir.) at 49-50; OPUC Ex. 34 (Aqua response to OPUC RFI No. 4-6); *see also* Aqua Ex. 12 (Ahmadibeni Reb.) at 15 (“While mapping was not included or required in the SIC application, Aqua provided the file (Aqua 000959) to do this translation between CP work orders to SAP [numeric only] work orders in response to OPUC’s RFI 4-5 on June 3, 2024 when it was requested by OPUC.”), Attachment RA-16.

¹⁸⁹ OPUC Ex. 1 (Heddin Dir.) at 51, 94-95.

¹⁹⁰ OPUC Ex. 1 (Heddin Dir.) at 52; OPUC Ex. 26 (Aqua 000959 excerpt).

¹⁹¹ OPUC Ex. 1 (Heddin Dir.) at 52.

For some of the C.P work orders from Schedule D, Aqua 000959 had a single work order listed. For example, the first work order (C.P5600100125.00002.001) has a corresponding “Order” number (100732306).¹⁹² For many of the C.P work orders, however, the same number was listed multiple times. Work order C.P5600100125.00002.007 was listed 29 times, each with a different “Order” number, essentially *sub*-work orders.¹⁹³ This grew the number of searches on the Perceptive Content database for the C.P work orders from 3,490 searches to over 12,000 – in addition to the approximately 3,600 work orders with numeric values listed on Schedule D.¹⁹⁴

Ms. Heddin located all related sub-work orders to obtain associated work order numbers, then manually typed the newly associated sub-work order number into the Perceptive Content database to identify and view associated invoices.¹⁹⁵ After viewing the invoice, Ms. Heddin documented information from the invoice, such as work performed and cost. This process was extraordinarily time intensive.¹⁹⁶

¹⁹² OPUC Ex. 1 (Heddin Dir.) at 53; *see* OPUC Ex. 26 (Aqua 000959 excerpt).

¹⁹³ OPUC Ex. 1 (Heddin Dir.) at 53.

¹⁹⁴ OPUC Ex. 1 (Heddin Dir.) at 54

¹⁹⁵ OPUC Ex. 1 (Heddin Dir.) at 54

¹⁹⁶ OPUC Ex. 1 (Heddin Dir.) at 54.

Due to the time intensive nature of this effort, Ms. Heddin limited her search to the Texas Southwest wastewater rate district. For all other rate districts, Ms. Heddin performed sample searches.¹⁹⁷

Still, Aqua 000959 did not provide related work orders for all of the C.P work orders included in Schedule D.¹⁹⁸ Conversely, not all of the new work orders listed on Aqua 000959 were on the Perceptive Content database.¹⁹⁹

Given the number of missing invoices, OPUC requested “invoices and work orders for each item included in the SIC.” Aqua again responded that “[s]ome of the line items in the referenced Sch D do not have corresponding invoices for the reasons discussed in response to OPUC RFI 2-2 [labor and overhead allocation, inadvertent expensing]. Nevertheless, Aqua has provided OPUC with access to electronically review all invoices and work orders that exist for each item included in the SIC using the process previously agreed upon with OPUC.”²⁰⁰

Aqua also confirmed that “the source for all invoices that should be relied upon in this proceeding” is the Perceptive Content database, explaining this method

¹⁹⁷ OPUC Ex. 1 (Heddin Dir.) at 54.

¹⁹⁸ OPUC Ex. 1 (Heddin Dir.) at 55; OPUC Exs. 28-33 (see column B for “C.P” work orders from Schedule D not listed in Aqua 000959).

¹⁹⁹ OPUC Ex. 1 (Heddin Dir.) at 55-56; OPUC Exs. 28-33 (see column F for new work orders listed in Aqua 000959 not located in Aqua’s database).

²⁰⁰ OPUC Ex. 1 (Heddin Dir.) at 36; *see* OPUC Ex. 44 at Bates 551 (Aqua response to OPUC RFI No. 2-8).

is the most efficient and practical, and that the alternative is “to print, copy and produce over 77,000 pages.”²⁰¹

Next, OPUC requested invoices for each of the (presumably, 5,256) work orders from Schedule D that could not be located in the Perceptive Content database.²⁰² On May 20, 2024, Aqua responded that “Aqua will supplement this response.”²⁰³ On June 18, Aqua supplemented as follows:²⁰⁴

Aqua Texas provided OPUC with access to securely review invoices within its “Perceptive Content” database, but OPUC and other parties have since requested voluminous documents contained within that database. Therefore, Aqua is producing all invoices related to its SIC application in a different manner. Those invoices have been bates labeled Aqua 001000-Aqua 091807 and can be accessed through the following [Dropbox] link:

Due to time constraints, some documents provided at the link above do not relate to the SIC eligible plant assets in Aqua’s SIC calculations but were included in Aqua’s “Perceptive Content” database and could not be easily filtered for removal. Nevertheless, there are some supporting documents for SIC eligible plant assets used in Aqua’s SIC calculations at the link above. Aqua notes that some eligible plant asset items in the SIC application do not have corresponding invoices for the reasons discussed in response to OPUC RFI Nos. 2-2, 2-3, 2-4, 2-5, 2-6 and 2-8 [due to labor and overhead allocation]. Those invoices simply do not exist. Additionally, Aqua is producing Aqua 091808 – OPUC’s 3rd RFI

²⁰¹ OPUC Ex. 1 (Heddin Dir.) at 36; *see* OPUC Ex. 96 at 4 (Aqua response to OPUC RFI No. 3-1).

²⁰² OPUC Ex. 1 (Heddin Dir.) at 37; OPUC Ex. 21 (exhibits to OPUC RFI Nos. 3-2 through 3-7).

²⁰³ *See* OPUC Ex. 19 (Aqua’s initial response to OPUC RFI Nos. 3-2 through 3-7).

²⁰⁴ OPUC Ex. 1 (Heddin Dir.) at 39.

Exhibit 1-12 Invoice List, which is a cross-walk to accessing the requested invoices in Aqua’s document production.²⁰⁵

(iv) The Dropbox Folder

The Dropbox folder included two file folders, *Images* and *Natives*. Both folders contained sub-folders for each year, within which were sub-folders by vendor.²⁰⁶ Sampling files from both folders showed that the majority of the files were not invoices.²⁰⁷ In *Natives*, each vendor file included a series of Excel files, but there was no means of identifying which files were associated with each work order included in the application.²⁰⁸

Ms. Heddin testified that Aqua produced approximately 90,000 files.²⁰⁹ Some of the invoices had the work order number handwritten on them, but many did not include any identifying information to reconcile it back to the application.²¹⁰ Aqua did not provide a crosswalk to correlate the Bates stamp of the invoice to the claimed eligible costs.²¹¹ And, as noted above, “some of the documents [in the Dropbox folder] do not relate to SIC eligible plant assets in Aqua’s SIC calculations but were

²⁰⁵ OPUC Ex. 1 (Heddin Dir.) at 39; *see* OPUC Ex. 22 (Aqua supplemental responses to OPUC RFI Nos. 3-2 through 3-8).

²⁰⁶ OPUC Ex. 1 (Heddin Dir.) at 39-40.

²⁰⁷ OPUC Ex. 1 (Heddin Dir.) at 39-40; *see, e.g.*, OPUC Ex. 27 (Aqua 021360, which was located in the “Natives/2022/Gulf Coast Pump & Supply” folder).

²⁰⁸ OPUC Ex. 1 (Heddin Dir.) at 40.

²⁰⁹ OPUC Ex. 1 (Heddin Dir.) at 41.

²¹⁰ OPUC Ex. 1 (Heddin Dir.) at 41.

²¹¹ OPUC Ex. 1 (Heddin Dir.) at 41.

included in Aqua’s ‘Perceptive Content’ database and could not be easily filtered for removal.”²¹² Ms. Heddin testified that as a result:

the only way to have worked with these documents was to open all 90,000 files one at a time. Review the document provided to determine if the document was actually an invoice and if it was an invoice, determine if a work order number was provided on the document. If a work order number was not provided or if the document was not an invoice that described the work completed, the document is useless. If a work order number was provided, I would then have to search the SIC application for that individual work order number to determine if the work order number was part of the application. Essentially, this amounted to a needle in a hay-stack search for invoices that are applicable to the application.²¹³

(v) Aqua 091808

As noted above, with the Dropbox folder provided on June 18, 2024, Aqua also provided Aqua 091808.²¹⁴ Aqua 091808 contained the same information as the Invoice File, except that the data was separated by rate division.²¹⁵ Importantly, the missing invoices were not listed.²¹⁶ In Ms. Heddin’s words, Aqua’s supplemental response was another “data dump,” unresponsive to the question that was asked.²¹⁷

²¹² OPUC Ex. 1 (Heddin Dir.) at 41; OPUC Ex. 22 (Aqua supplemental responses to OPUC RFI Nos. 3-2 through 3-8).

²¹³ OPUC Ex. 1 (Heddin Dir.) at 41.

²¹⁴ OPUC Ex. 1 (Heddin Dir.) at 43.

²¹⁵ OPUC Ex. 1 (Heddin Dir.) at 43; OPUC Ex. 20 (Aqua 091808 excerpt).

²¹⁶ OPUC Ex. 1 (Heddin Dir.) at 43; *compare* OPUC Ex. 21 (Excel file, list of missing invoices by work order, including 5301545, 5301549, and beginning with 100002064 and ending with 100108257) *with* OPUC Ex. 20 (excerpt from Aqua 091808, showing that invoices for these work orders are missing).

²¹⁷ OPUC Ex. 1 (Heddin Dir.) at 44.

In discovery, Aqua confirmed its Perceptive Content database “is the sole source for invoices related to this docket;” that “no invoices exist except for those on Aqua’s Perceptive Content database;” “that for any invoice which cannot be located on Aqua’s Perceptive Content database for a specific work order, Aqua does not have an invoice for that work order;” and “that the balance amount not included in the invoices that have been located on Aqua’s Perceptive Content database is due to labor or overhead allocations.”²¹⁸

d) Intervenor Arguments

OPUC and Intervenor Associations argue that Aqua’s application is not sufficient and should be denied in its entirety because it fails to adequately describe the eligible plant, projects, or explain how they would improve service. Moreover, Aqua failed to sufficiently support its eligible costs through invoices, receipts, or direct testimony.²¹⁹

Staff member Bitracanti, who performed only the initial sufficiency review but did not file testimony, had an experience similar to Ms. Heddin’s. Ms. Bitracanti described her review of the Perceptive Content database and Dropbox as time consuming and not straightforward.²²⁰ She also had to limit her review to a few receipts because there was no option to save the receipts, “so it was a difficult process.” “I didn’t go to manually review each one of the receipts by entering the

²¹⁸ OPUC Ex. 1 (Heddin Dir.) at 56-57; OPUC Ex. 87 (Aqua response to OPUC RFI No. 5-4).

²¹⁹ OPUC Ex. 1 (Heddin Dir.) at 57.

²²⁰ WWT Ex. 132 (Bitracanti Deposition) at 53, 55-56.

work order or receipt number. It was just not practical.”²²¹ Intervenor Associations point to this testimony to argue that the application is deficient.

Intervenor Associations note that Mr. Gresehover, on cross-examination, did not use any of the sources provided to the parties, but rather used “a viewer of our internal database,” “one of our viewers for PowerPlan and our invoices, work orders, and projects,” using project numbers and other identifiers that he did not know were included in the application.²²² Rather, Aqua produced a poorly organized Dropbox folder of over 90,000 documents, some of which did not relate to the SIC eligible plant assets in Aqua’s SIC calculations, and which still did not provide work order numbers.²²³

e) Aqua’s Response

Aqua does not dispute Ms. Heddin’s testimony as it relates to her efforts in obtaining information. Indeed, Mr. Ahmadibeni corroborates it.²²⁴ Rather, Aqua asserts that Ms. Heddin failed to contact Aqua for help or to discuss her search method with Aqua.²²⁵ Aqua states that “[a]ny allegation of insufficient help is attributable to that party’s failure to contact Aqua directly for clarification, not Aqua’s lack of support.”²²⁶ Aqua faults OPUC and the Intervenor Associations for

²²¹ WWT Ex. 132 (Bitracanti Deposition) at 50.

²²² *See, e.g.*, Tr. Vol. 1 at 161, 173-75 (Gresehover Cr.).

²²³ OPUC Ex. 1 (Heddin Dir.) at 58.

²²⁴ Aqua Ex. 12 (Ahmadibeni Reb.) at 10-11, 13, 16, 23.

²²⁵ Tr. Vol. 2 at 34-35, 39, 70 (Heddin Cr.).

²²⁶ Aqua Initial Brief at 3; Tr. Vol. 2 at 70 (Heddin Cr.); Tr. Vol. 1 at 231 (Stannard Cr.).

relying “only on RFIs without direct contact with Aqua representatives to clarify issues they were having with review of Aqua’s produced documents and Application schedules.”²²⁷

Aqua also points to the rebuttal and cross-examination testimonies of Mr. Ahmadibeni and Mr. Gresehover to show how invoices for the same project could be identified from the information provided in the application.²²⁸

Aqua asserts that “Ms. Heddin apparently did have sufficient information available to focus her review on one Aqua region, but did not even attempt to review the others.”²²⁹ For this assertion, Aqua points to testimony that Ms. Heddin limited her search due to the time intensive nature of the search.²³⁰ Mr. Ahmadibeni testified that “Aqua sufficiently supported its Application and provided information to support its SIC eligible costs.”²³¹ Mr. Ahmadibeni testified that there are in excess of 77,000 invoices and “[d]uring this proceeding, every one of those 77,000 invoices were [sic] made available for review and provided in Dropbox files that can be accessed and offered into the record at the request of any Party.”²³²

²²⁷ Aqua Initial Brief at 3; Tr. Vol. 2 at 34-35 (Heddin Cr.); Tr. Vol. 1 at 231-32 (Stannard Cr.).

²²⁸ See Tr. Vol. 1 at 51-53, 64-66 (Ahmadibeni Cr.); Aqua Ex. 12 (Ahmadibeni Reb.) at 11-12.

²²⁹ Aqua Initial Brief at 15.

²³⁰ OPUC Ex. 1 (Heddin Dir.) at 40, 56, 95, 105.

²³¹ Aqua Ex. 12 (Ahmadibeni Reb.) at 8, 24.

²³² Aqua Ex. 12 (Ahmadibeni Reb.) at 5-6.

3. Analysis

The evidence shows that Aqua’s application did not provide the requisite description of eligible plant, description of project, or explanation of service for “each project,” as required by Rule 24.76(d)(1). The raw data field notations that Aqua seeks to pass for *descriptions* are vague and inadequate for review, much less expeditious review. The explanation of improvement of service in Mr. Alden’s testimony is cursory, general, and not tied to each project. Moreover, none of the descriptions were tied to Aqua’s schedules of eligible costs.²³³ Using favorable assumptions, Ms. Heddin concluded that Aqua provided the requisite information for 14% (\$7,001,434.83) of water system costs and 29% (\$13,118,080.80) of wastewater costs.²³⁴ However, these calculations were not verified by Aqua, nor were they tied to supporting invoices. Accordingly, these figures amount to optimistic speculation on the part of Ms. Heddin. The ALJs find that the application is insufficient under Rule 24.76(d)(1).

Additionally, the evidence conclusively shows that Aqua’s application contains insufficient information to support its eligible costs.²³⁵ Instead of providing invoices with its application, Aqua chose to provide them only *upon request*. Aqua gives no explanation for why the 77,000 invoices, if available by request, could not have been provided without request, electronically by disc or thumb-drive. Aqua

²³³ OPUC Ex. 1 (Heddin Dir.) at 74 (water), 84-85 (wastewater).

²³⁴ OPUC Ex. 1 (Heddin Dir.) 86-87.

²³⁵ Aqua Ex. 8 (Ahmadibeni Dir.) at 6-7 (“These documents are voluminous and not included in the application.”); Aqua Ex. 11 (Application Supplement) at 2-3 (stating supporting invoices “are too voluminous for inclusion in the Application filing itself”).

points to the 77,000 invoices that it “made available for review,”²³⁶ but even if making thousands of invoices “available” is given any evidentiary weight, there is a difference between the quantity and the quality of evidence.²³⁷

Moreover, by making the invoices available upon request, Aqua transferred its obligation to provide information with its application, governed by Subchapter E of Chapter 22 of the Commission Rules, to the other parties via the discovery process, governed by Subchapter H. Only through the discovery process, did Aqua provide, by way of its Perceptive Content database, “all invoices that should be relied upon in this proceeding.”²³⁸

Moreover, the request for the required information seems to have caught Aqua off guard. Its first offering—the Invoice File—was “not used in Aqua’s SIC application” and “not meant to tie directly to Aqua’s Application documents.”²³⁹ Moreover, these invoices were not made available for viewing until April 9, 2024—nearly six months after its application was filed and over a month after OPUC requested them on March 4, and then only after special training and log-in credentials. Ms. Heddin’s testimony credibly demonstrates that Aqua was not prepared to respond to such a request in an efficient and timely manner.

²³⁶ Aqua Ex. 12 (Ahmadibeni Reb.) at 5-6.

²³⁷ See, e.g., *Entergy Gulf States, Inc. v. Pub. Util. Comm’n of Tex.*, 112 S.W.3d 208, 213 (Tex. App.—Austin 2003, pet. denied) (“In our opinion, this sentence [regarding ‘extensive evidence’] comments on the quantity and not the quality of the evidence introduced.”).

²³⁸ OPUC Ex. 96 at 4 (Aqua response to OPUC RFI No. 3-1).

²³⁹ OPUC Ex. 95 at 8 (Aqua response to OPUC RFI No. 2-5); Aqua Ex. 12 (Ahmadibeni Reb.) at 13.

After request (in early March), Aqua may have provided all of the supporting invoices, but it did not do so until a month after they were requested (in April), and it did not provide a means of matching them to the work order numbers in the application until three months after they were requested (in late June). Had Aqua not agreed to extend the 120-day deadline, the hearing would have been held in late May, meaning there would have been no way of accessing the invoices before then. The insufficiency of the information provided in the application, along with the delays in providing information through discovery, does not comport with the expedited nature of this proceeding.

Nor was the information provided in a manner that lent itself to easy review. Not until June 18 did Aqua provide a means for cross-referencing and accessing work orders that it admitted could not be otherwise accessed. Even then, it provided documents that do not relate to the application and could not be removed “[d]ue to time constraints.”²⁴⁰

Notwithstanding Aqua’s overtures to help locate supporting invoices, that need for that help bears directly on the sufficiency of the application. In reply briefing, OPUC states:

The streamlined application process starts after the applicant fulfills its burden of proof as to sufficiency. This burden to file a complete application under the rule is not Staff’s burden, it is not OPUC’s burden, and it is not the ratepayer or intervenors’ burden.²⁴¹

²⁴⁰ OPUC Ex. 1 (Heddin Dir.) at 39; *see* OPUC Ex. 22 (Aqua responses to OPUC RFI Nos. 3-2 through 3-8).

²⁴¹ OPUC Reply Brief at 5.

The ALJs agree. Aqua alone must carry its burden of proof.²⁴²

This proceeding has made clear a recent observation of the Commission: “It is not an efficient use of the Commission’s and parties’ resources to process an application that is incomplete or noncompliant with applicable statutes and rules.”²⁴³ This is especially important in expedited proceedings. Where the utility benefits from limited processing, the burden of sufficiency is greater. Nevertheless, at this stage, Aqua’s failure goes to the burden of proof and weight of the evidence.²⁴⁴

The evidence shows that Aqua did no more than open its books and records for inspection. Aqua says as much: “Aqua does not keep and track its data in a manner specifically intended for SIC applications,” but rather “keeps and tracks its data, including data reflected in its supporting Application documents, in a manner that comports with its internal protocols and applicable reporting requirements.”²⁴⁵ However, a utility does not prove up costs simply opening its books to inspection.²⁴⁶

²⁴² See *Dessommes v. Dessommes*, 505 S.W.2d 673, 679 (Tex. App.—Dallas 1973, writ ref’d n.r.e.) (“One of the recognized principles in determining the burden is to place it on the party having peculiar knowledge of the facts to be proved.”).

²⁴³ *Application of Undine LLC for Authority to Change Rates*, Docket No. 56354, Order on Appeal of Interim Order No. 3 at 4 (July 25, 2024) (addressing compliance with test-year requirements).

²⁴⁴ See, e.g., Docket No. 56354, Order on Appeal of Interim Order No. 3 at 3-4.

²⁴⁵ Aqua Initial Brief at 2; Aqua Ex. 12 (Ahmadibeni Reb.) at 4 (“The Company has provided its requested records in the manner they are tracked and recorded.”).

²⁴⁶ See *Application of Oncor Elec. Delivery Co. LLC for Auth. to Change Rates*, No. 53601, Order on Rehearing at Conclusion of Law No. 18 (June 30, 2023) (citing *Entergy Gulf States, Inc. v. Pub. Util. Comm’n*, 112 S.W.3d 208, 214 (Tex. App.—Austin 2003, pet. denied) (noting that a utility “enjoys no presumption that the costs reflected therein were prudently incurred by simply opening its books to inspection”).

Accordingly, Aqua enjoys no presumption that the costs it seeks to recover through a system improvement charge are eligible plant.

The fact that Aqua’s internal recordkeeping system is incompatible with regulatory review does not make it sufficient. It is not for rules to yield to a utility’s internal recordkeeping, but for the utility to organize its records such that they are amenable to—in this case, streamlined—regulatory review. The process for recovering such costs is clearly prescribed by Commission rules and—as related to Aqua—prior order. Aqua cannot claim surprise in needing to (1) “only include in the application assets for which the applicant is seeking recovery of investment,” (2) presenting its assets in a well-organized manner, by project and public water or sewer system, and (3) appropriately linking the data to the model used by the applicant.²⁴⁷ Instead, the invoice databases were cluttered with in applicable invoices, which Aqua could not remove “[d]ue to time constraints.”²⁴⁸ Aqua also failed to organize its assets well, if at all, by project and public water or sewer system, or link the data to its models. The ALJs find the application is not sufficient under Rule 24.76(d), nor under the Commission’s final order in Docket No. 53428.

B. ELIGIBLE PLANT

To be eligible for cost recovery, plant must be properly recorded in the applicable water and sewer accounts according to the NARUC System of

²⁴⁷ Docket No. 53428, Order at Ordering Paragraph No. 3.

²⁴⁸ OPUC Ex. 1 (Heddin Dir.) at 39; *see* OPUC Ex. 22 (Aqua responses to OPUC RFI Nos. 3-2 through 3-8).

Accounts.²⁴⁹ Specifically, accounts 304 through 339 for water utility service and accounts 354 through 389 for sewer utility service.²⁵⁰ These NARUC categories generally reflect capital projects.

Except for some minor adjustments, Aqua claims \$86.2 million in eligible plant (\$44.3 million for water and \$41.8 million for wastewater).²⁵¹ Intervenor Associations and OPUC dispute whether the plan is eligible. Staff takes no position on this issue.

In support of the proposition that these expenses relate to eligible plant, Aqua refers to the same Schedules D and H discussed above, and Mr. Ahmadibeni's testimony that over 77,000 supporting invoices were made available for review.²⁵²

According to Aqua, the capital improvement projects are divided into four categories: (1) meter replacements and service line repairs/replacements to improve the reliability of service to water customers; (2) improvements to system storage, including the replacement of high-pressure tanks and ground storage tanks that were at the end of their useful life; (3) booster pump improvements to provide water from ground storage tanks into distribution systems at the appropriate pressure; and (4) replacement or rehabilitation of sewer mains, manholes, and lift stations to

²⁴⁹ 16 TAC § 24.76(b)(1).

²⁵⁰ 16 TAC § 24.76(b)(1).

²⁵¹ Aqua Ex. 8 (Ahmadibeni Dir.) at 8; Aqua Ex. 2, Schedules B and D.

²⁵² Aqua Ex. 12 (Ahmadibeni Reb.) at 5-6; *see also* Aqua Ex. 2, Schedules D and H.

provide better conveyance of sewage to the wastewater treatment facilities.²⁵³ Aqua's schedules include the NARUC account numbers assigned to each invoice and they are all eligible accounts under the Commission's SIC rule.²⁵⁴

As noted above, the decision of whether an item should be capitalized is made by the field technicians and engineers. Mr. Ahmadibeni testified that he did not ensure that each item or project should be capitalized, but trusts the field technicians when they make the decision.²⁵⁵ These field technicians, Mr. Gresehover explained, "are responsible for the day-to-day operation of the system [and] might be the ones who identify, 'hey this tank is leaking and it needs to be replaced' or whatever. They would initiate, through our work order management system service link, a project associated with that project number."²⁵⁶ Mr. Ahmadibeni testified that his task is limited to verifying whether each expenditure falls within the proper NARUC account:

It's not my job to initiate – I'm not on the field on our 400 system[s] to make a decision this is a capital project or not. Our engineering and operation make that decision and they write down everything they feel that moment and it follows our NARUC book, our capitalization policy, and they choose the work order or make the work order related to that one and it end[s] up the capital project.²⁵⁷

²⁵³ Aqua Ex. 9 (Alden Dir.); Aqua Ex. 10 (Gresehover Dir.).

²⁵⁴ See Aqua Ex. 8 (Ahmadibeni Dir.) at 5; Aqua Ex. 12 (Ahmadibeni Reb.) at 14.

²⁵⁵ Tr. Vol. 1 at 56 (Ahmadibeni Cr.).

²⁵⁶ Tr. Vol. 1 at 190 (Gresehover Clarifying).

²⁵⁷ Tr. Vol. 1 at 54-55 (Ahmadibeni Cr.).

OPUC and Intervenor Associations argue that many of the costs in the application are not eligible plant.

1. Intervenor Associations' Position

Mr. Stannard testified that, while the system improvement charge encourages utilities to invest in infrastructure, it also encourages the utility to capitalize as many costs as possible to maximize the return.²⁵⁸ Therefore, Intervenor Associations argue that it is critical that the utility clearly define what is the eligible plant, because only capital expenditures are eligible for recovery through a system improvement charge.²⁵⁹

Mr. Stannard determined that many of Aqua's expenditures are not eligible capital expenditures, but rather regular operation and maintenance costs.²⁶⁰ He testified that both the schedule descriptions and the invoices show that the work performed "included routine or corrective maintenance," such as exercising valves, removal of downed trees, removal of debris clogging pump impellers, and cleaning and painting in preparation of TCEQ inspections.²⁶¹

Mr. Gresehover conceded that, as a stand-alone cost, many of these expenses would not be capitalizable: "When viewed independently, some of the submitted

²⁵⁸ WWT Ex. 100 (Stannard Dir.) at 8-9.

²⁵⁹ Tr. Vol. 1 at 41 (Ahmadibeni Cr.) (agreeing that only capital expenditures are eligible for inclusion in the application); *see also* 16 TAC § 24.76(b)(1).

²⁶⁰ WWT Ex. 100 (Stannard Dir.) at 16.

²⁶¹ WWT Ex. 100 (Stannard Dir.) at 16, 18-19; WWT Exs. 102-31.

invoices could be interpreted as operational or maintenance costs; however, the invoice-by-invoice examination of costs may not consider the context of larger and broader capital projects and work.”²⁶²

By failing to organize its expenditures by project, Intervenor Associations argue, Aqua has not provided information sufficient to show that these otherwise ineligible expenses are a part of a larger capital project.²⁶³ Costs are not capitalizable by mere inclusion in the application.²⁶⁴ Nor is an expenditure shown to be eligible by simply assigning it to an eligible NARUC category.²⁶⁵

During cross-examination, Mr. Ahmadibeni gave the following testimony:

Q And then your job, in preparing the application, is to ensure that each of those NARUC categories is assigned properly?

A Right.

Q So you’ve reviewed each individual expenditure and made sure it’s assigned to the proper NARUC category?

A I reviewed every eligible NARUC account related to the SIC application and required by the SIC application and if it’s on that category, it’s good to go.²⁶⁶

²⁶² Aqua Ex. 13 (Gresehover Reb.) at 3; Aqua Ex. 8 (Ahmadibeni Dir.), RA-2 (Accounting Policy and Procedure Statement).

²⁶³ Intervenor Associations Initial Brief at 11.

²⁶⁴ See Tr. Vol. 1 at 153-85 (Gresehover Cr.).

²⁶⁵ Intervenor Associations Initial Brief at 7.

²⁶⁶ Tr. Vol. 1 at 44-45 (Ahmadibeni Cr.).

As such, Intervenor Associations argue, Mr. Ahmadibeni admitted that he reviewed only whether each NARUC account included in the application was eligible, not that each *expenditure* was eligible.²⁶⁷ He testified that he did not check everything because the application covers a “time period of 19 months, includes more than 7,000 work orders, and is made up of raw data from the field.”²⁶⁸ Intervenor Associations argues that this shows that the application is not capable of review to determine eligibility, even by Aqua’s own witness.

Intervenor Associations maintain that a detailed review of each expenditure claimed is necessary to determine that the “plant” or expenditure is recorded using the NARUC System of Accounts, and that it is “properly” recorded under Rule 24.76(b)(1). Because this review is not possible here, they argue, the application should be denied.

In response, Aqua emphasizes that though the NARUC categorizations are assigned by the field technicians and engineers,²⁶⁹ Mr. Ahmadibeni ensured that only eligible plant items included in the NARUC accounts permitted by the SIC rule made it into the application.²⁷⁰ Aqua points to testimony by Mr. Gresehover to show that the engineering team is specifically trained to use Aqua’s capitalization policy.²⁷¹ As such, Aqua argues that its application only includes eligible plant costs capitalized in

²⁶⁷ Tr. Vol. 1 at 45 (Ahmadibeni Cr.).

²⁶⁸ Tr. Vol. 1 at 45 (Ahmadibeni Cr.).

²⁶⁹ Tr. Vol. 1 at 187-92 (Gresehover Cr.).

²⁷⁰ Aqua Ex. 12 (Ahmadibeni Reb.) at 4; Tr. Vol. 1 at 45, 54-56, 113 (Ahmadibeni Cr.).

²⁷¹ Tr. Vol. 1 at 146-47 (Gresehover Cr.).

accordance with Aqua's Capital Policy and a monthly review of bookings to the various NARUC account categories within Aqua's internal system.²⁷²

2. OPUC's Position

As discussed above, OPUC's primary position is that the application should be denied because it is insufficient. However, in the alternative, OPUC recommends several adjustments based on the invoices that its witness Ms. Heddin was able to view.

a) Capitalization Policy

Mr. Ahmadibeni explained Aqua's capitalization policy as follows:

The company utilizes the following policies for capitalization of costs: Except as provided below for specific classes of utility plant, expenditures for any unit of property which has a useful life exceeding one (1) year and a total cost in excess of \$750 are considered capital expenditures (or multiple components of property that when constructed together at the same timeframe that total \$750). Such expenditures are for the construction or acquisition of assets used in the provision of water service and, as such, are recorded into one of the Utility Plant general ledger accounts 301000 through 398000.²⁷³

The \$750 materiality threshold is based on NARUC guidance:

The cost of individual items of equipment of less than \$750 or of short life, including small portable tools and implements, shall not be charged to utility plant accounts unless the correctness of the accounting therefor is verified by current inventories. The cost shall be charged to

²⁷² Tr. Vol. 1 at 146 (Gresehover Cr.).

²⁷³ Aqua Ex. 8 (Ahmadibeni Dir.) at 9.

the appropriate operating expense or clearing accounts, according to the use of such items, or, if such items are consumed directly in construction work, the cost shall be included as part of the cost of the construction unit.²⁷⁴

In explaining how Aqua applies its capitalization policy to improvements of existing components of utility plant, Mr. Ahmadibeni stated:

Costs incurred in making improvements to existing components of utility plant are capitalized where the expenditures meet all other requirements and the improvements either:

1. Add to the usefulness or efficiency of the property,
2. Extend the useful life of the property or
3. Increase the revenue or decrease expenses associated with the asset.

Expenditures which simply restore property to its original condition and allow it to reach its original life are expensed.²⁷⁵

OPUC challenges Aqua's capitalization policy as overly inclusive for several reasons. First, OPUC challenges Aqua's materiality threshold. Ms. Heddin argues that the NARUC guidelines do not support capitalizing everything more than \$750. Rather, the guidelines provide that individual items of equipment less than \$750 "shall *not be* charged to utility plant accounts" and instead should be expensed.²⁷⁶ Any item less than \$750, even if an asset, should not be expensed unless it is *verified*

²⁷⁴ OPUC Ex. 41 (Aqua response to OPUC RFI No. 4-1).

²⁷⁵ Aqua Ex. 8 (Ahmadibeni Dir.) at 10.

²⁷⁶ OPUC Ex. 1 (Heddin Dir.) at 97-98.

by *current inventories*.²⁷⁷ Items that cost more than \$750 are not addressed by this guidance. In Ms. Heddin’s opinion, it is never appropriate to capitalize an expense simply because it is more than \$750.²⁷⁸

OPUC contends \$750 is an unusually low capitalization threshold and not appropriate for a Class A utility like Aqua.²⁷⁹ Ms. Heddin argues this threshold should be adjusted for inflation because the policy is almost 30 years old, and “NARUC has not updated its guidance documents since 1996.”²⁸⁰ Moreover, Ms. Heddin testified that dozens of sub-work orders that comprised the C.P work order line items were for *less than* \$750.²⁸¹

Next, OPUC argues that Aqua’s capitalization policy is overly broad, as it allows an item to be capitalized if it adds to the *usefulness or efficiency of the property*, which could encompass capitalizing even electricity costs or tightening a screw on a pump.²⁸² Similarly, capitalizing items that *increase revenues or decrease expenses* associated with an asset would encompass any leak repair, however minor.²⁸³

²⁷⁷ OPUC Ex. 1 (Heddin Dir.) at 97-98.

²⁷⁸ OPUC Ex. 1 (Heddin Dir.) at 98.

²⁷⁹ A Class A utility serves 10,000 or more connections. TWC § 13.002(4-a).

²⁸⁰ OPUC Ex. 1 (Heddin Dir.) at 97-98.

²⁸¹ OPUC Ex. 1 (Heddin Dir.) at 98.

²⁸² OPUC Ex. 1 (Heddin Dir.) at 99.

²⁸³ OPUC Ex. 1 (Heddin Dir.) at 99.

Ms. Heddin testified that this is contrary to NARUC guidelines and generally accepted accounting principles.²⁸⁴

Ms. Heddin further testified that Aqua's capitalization policy has never undergone Commission review because it was adopted in 2016 after Aqua's last comprehensive base rate case.²⁸⁵

b) Proposed Adjustments

In the alternative to denial, OPUC recommends several adjustments. First, OPUC recommends disallowing any expenses for which no work order could be located. As noted above, Ms. Heddin could not locate invoices for 7,152, or 73%, of the expense transactions. For the 1,896 invoices she was able to locate and reconciled back to the application, the majority of the invoices recorded expenses that do not qualify as eligible plant because they should not be capitalized.²⁸⁶

The NARUC System of Accounts that define eligible plant do not include the cost to repair or maintain, or the cost of preventative maintenance, leak repair, chemicals, water hauling, cleaning wastewater spills, or de-ragging pumps.²⁸⁷ Rather, items that should be capitalized under the guidelines include new infrastructure and certain replacement of old infrastructure. But “[w]hen the expenditure involves

²⁸⁴ OPUC Ex. 1 (Heddin Dir.) at 99.

²⁸⁵ OPUC Ex. 1 (Heddin Dir.) at 100; OPUC Ex. 42 (Aqua response to OPUC RFI No. 5-5).

²⁸⁶ OPUC Ex. 1 (Heddin Dir.) 32-33.

²⁸⁷ OPUC Ex. 1 (Heddin Dir.) 101-04.

changes to an existing asset, the changes should be an enhancement that extends the original useful life of the asset,” not repairs that restore an asset to working condition or maintenance.²⁸⁸

Applying these guidelines, OPUC recommends the following disallowances from the eligible plant for which Aqua seeks recovery:

1. \$25,500,370 of Aqua’s claimed eligible cost as unsupported by any invoices;²⁸⁹
2. \$24,670,847.92 for the amount by which Schedules D and H exceed the invoice amounts. Schedules D and H showed a cost for these transactions of \$31,488,834.15 while the invoices for these work orders show \$6,817,986.23;²⁹⁰
3. \$384,423.36 in unsupported markup for labor and overhead;²⁹¹
4. \$37,940,465 for replacement of minor items ranging from O-rings to pump replacements that should be expensed;²⁹²
5. \$21,651,792.20 for main breaks and leak repairs that should be expensed;²⁹³

²⁸⁸ OPUC Ex. 1 (Heddin Dir.) 104.

²⁸⁹ OPUC Ex. 1 (Heddin Dir.) at 89, 111-12; OPUC Exs. 28-33 (Column I).

²⁹⁰ OPUC Ex. 1 (Heddin Dir.) at 89, 113-26; OPUC Exs. 28-33 (Column J).

²⁹¹ OPUC Ex. 1 (Heddin Dir.) at 89.

²⁹² OPUC Ex. 1 (Heddin Dir.) at 89.

²⁹³ OPUC Ex. 1 (Heddin Dir.) at 90.

6. \$2,845,515.50 for repairs such as shocking well, exercising valves, repairing fences, checking system, defrosting lines, removing fallen limbs, and resetting pumps that should be expensed;²⁹⁴
7. \$55,341.51 for preventative maintenance that should be expensed;²⁹⁵
8. \$427,028.20 for other operations such as cleaning chlorine contact chamber and wash plant, purchase of fuel, purchase of bleach, purchase of liquid chlorine and moving chlorine into outbuilding that should be expensed;²⁹⁶
9. \$112,014.35 for Texas Commission on Environmental Quality (TCEQ) inspection preparation, such as paint casing on well, place road ties on road, backfill holes, insulate, repair fencing, wash down walls and clean up trash, that should be expensed;²⁹⁷ and
10. \$615,287.76 for water hauling, jetting, vactoring, effluent transportation and wastewater spill clean-up that should be expensed.²⁹⁸

Because some items fall into more than one adjustment category, these adjustments are not cumulative.²⁹⁹ In total, Ms. Heddin recommends a reduction of \$83,403,404.12 in eligible costs, with a revised eligible cost of \$10,862,585.30.³⁰⁰ These adjustments are further explained below.

²⁹⁴ OPUC Ex. 1 (Heddin Dir.) at 90.

²⁹⁵ OPUC Ex. 1 (Heddin Dir.) at 90.

²⁹⁶ OPUC Ex. 1 (Heddin Dir.) at 90.

²⁹⁷ OPUC Ex. 1 (Heddin Dir.) at 90-91.

²⁹⁸ OPUC Ex. 1 (Heddin Dir.) at 91.

²⁹⁹ OPUC Ex. 1 (Heddin Dir.) at 167-68; OPUC Exs. 28-33 (Column R).

³⁰⁰ OPUC Ex. 1 (Heddin Dir.) at 91.

(i) Labor and Overhead

OPUC argues that Aqua fails to support its claimed labor and overhead expense. As noted above, Aqua included labor and overhead in Schedule D with no corresponding invoice.³⁰¹ But, Ms. Heddin testified, even if there is no invoice for the overhead and labor, there should be an invoice for the associated materials and supplies.³⁰² Instead, Aqua excused the items as “inadvertently expensed.”³⁰³ Aqua further stated that “[e]ach work order has unique labor cost allocations, and the overhead allocation can vary depending on when the asset is placed into service,”³⁰⁴ but provided no information on how much is for “unique labor cost allocations” and how much is “overhead allocations.”³⁰⁵

Mr. Ahmadibeni’s direct testimony originally stated that overhead allocations could be found in Schedule H, labeled General Capital Service Bill or SUNDRY Capital.³⁰⁶ But Ms. Heddin could not locate any entries with these labels, and Aqua admitted in discovery that there were none.³⁰⁷ Aqua did not show how the overhead

³⁰¹ OPUC Ex. 95 at 8 (Aqua response to OPUC RFI No. 2-5).

³⁰² OPUC Ex. 1 (Heddin Dir.) at 109.

³⁰³ OPUC Ex. 95 at 8 (Aqua response to OPUC RFI No. 2-5).

³⁰⁴ OPUC Ex. 95 at 7 (Aqua response to OPUC RFI No. 2-4).

³⁰⁵ OPUC Ex. 1 (Heddin Dir.) at 110.

³⁰⁶ Aqua Ex. 8 (Ahmadibeni Dir.) at 10.

³⁰⁷ OPUC Ex. 1 (Heddin Dir.) at 128; OPUC Ex. 51 (Aqua response to OPUC RFI No. 4-8).

and labor could be determined but admitted that this testimony needed to be corrected.³⁰⁸

The corrected testimony was filed June 27, 2024, to reflect that, prior to 2022, the overhead allocation would have appeared in Schedule H under those labels, but that for the “period used for Aqua’s SIC amendment application here, overhead and labor allocations are embedded in the total for each capitalized asset item without use of those labels.”³⁰⁹ But this correction still did not address how or where overhead allocations for these transactions could be located.³¹⁰

To discover their location, OPUC asked Aqua to “explain the difference in value for work order #100058899 across the [Invoice File] (at \$765) and [Schedule D] (at \$907.81).”³¹¹ This work order was used as a sample. Aqua responded:

The difference in the invoice value of \$765.00 and the total work order #100058899 value of \$907.81 is due to labor and overhead allocations not shown in the invoice itself. Those additional amounts are reflected in [Schedule D], and even more detail for each item is shown in [Schedule H]. This is an example of the type of difference discussed in response to OPUC RFI 2-2.

JW Utilities	765.00
Overheads applied	<u>142.51</u>
	907.51 ³¹²

³⁰⁸ OPUC Ex. 1 (Heddin Dir.) at 128.

³⁰⁹ Aqua Ex. 8 (Ahmadibeni Dir.) 10-11.

³¹⁰ OPUC Ex. 1 (Heddin Dir.) at 128-29.

³¹¹ OPUC Ex. 1 (Heddin Dir.) at 129.

³¹² OPUC Ex. 52 (Aqua response to OPUC RFI No. 2-3).

Ms. Heddin observed that this response addressed overhead, but not labor.³¹³ More troubling, according to Ms. Heddin, Aqua stated that “those additional amounts are reflected” in Schedule D and H, but they are not.³¹⁴ Therefore, Aqua has not provided a manner to examine these amounts in detail. Ms. Heddin testified that this pattern appears for virtually every work order.³¹⁵

In Schedule H, this same work order (# 100058899) is listed on three line items, all with the same description as Schedule D – “main break.” The amounts in the three line items were \$2,366.57, (\$672.89), and (\$785.87).³¹⁶ When asked to explain the three entries, Aqua stated that the negative numbers represent “reversal of previous over allocation,” and “reclass of duplicate service entry and labor.”³¹⁷ Aqua also provided Aqua 091810.

Aqua 091810, Ms. Heddin testified, failed to clearly show the basis of the markup, without appropriate label or description. Each line item had dramatically different mark-up levels.³¹⁸ In many instances, there were reversals of previous

³¹³ OPUC Ex. 1 (Heddin Dir.) at 130.

³¹⁴ OPUC Ex. 1 (Heddin Dir.) at 130-31; OPUC Ex. 53 (Schedule D excerpt, work order number 100058899, description “main break,” one line item for \$907.51; OPUC Ex. 54 (Schedule H excerpt, work order number 100058899, description “main break,” three line items for \$2,366.57, (\$672.89), and (\$785.87).

³¹⁵ OPUC Ex. 1 (Heddin Dir.) at 131.

³¹⁶ OPUC Ex. 1 (Heddin Dir.) at 132.

³¹⁷ OPUC Ex. 50 (Aqua 091810 excerpt); OPUC Ex. 55 (Aqua response to OPUC RFI No. 5-3).

³¹⁸ OPUC Ex. 1 (Heddin Dir.) at 134.

over-allocations and re-classifications of duplicate service entry and labor. Schedule H, Ms. Heddin testified, “is riddled with similar credit entries.”³¹⁹

When asked for the exact amount of overhead and labor for each work order listed on Schedule D, Aqua responded that the information “is not available in the requested format,” and again referenced Aqua 091810, “which includes details of 4 different example work orders that include all items and allocations related to each work order.”³²⁰ However, the four examples include line items that lack a description and each include credit reversals for reclassifications.³²¹

Aqua also referred to the Corporate Charges Allocations Manual for more detail.³²² Ms. Heddin testified that this manual generally describes the process used by Aqua to allocate certain charges, but is dated March 27, 2023, and therefore applies only to a few months of the recovery period (January 1, 2022, through July 31, 2023).³²³

Ms. Heddin testified that Aqua failed to support overhead costs with records showing “the nature and amount of each overhead expenditure charged to *each construction work order* and to each utility plant account, and the basis of distribution

³¹⁹ OPUC Ex. 1 (Heddin Dir.) at 134.

³²⁰ OPUC Ex. 49 (Aqua response to OPUC RFI No. 5-2).

³²¹ OPUC Ex. 1 (Heddin Dir.) at 135-36.

³²² OPUC Ex. 49 (Aqua response to OPUC RFI No. 5-2); OPUC Ex. 58 (Essential Utilities Corporate Charges Allocations Manual, Updated March 27, 2023).

³²³ OPUC Ex. 1 (Heddin Dir.) at 136.

of such costs,” as required by NARUC.³²⁴ Instead, Aqua provided four out of over 7,000 work order transactions from Schedule D that did not include descriptions for the majority of the transactions.³²⁵

For these reasons, OPUC recommends removing \$384,423.36 in mark-ups from the eligible cost.³²⁶ Ms. Heddin notes that this amount is understated as it includes only mark-ups for work order numbers with a numeric value, not C.P work orders, which Ms. Heddin was unable to locate and itemize due to time constraints.³²⁷

(ii) Leaks and Main Breaks

Ms. Heddin recommended disallowing \$21,351,792.20 associated with leaks and main breaks, which are common and expected of utility operations.³²⁸ Repairing the line is not extending the useful life of the asset or adding a new asset, but merely repairing the asset such that it will reach its original expected useful life.³²⁹ These kinds of expenditures should have been included in Aqua’s operations and maintenance expenses and not included as a capital expenditure, according to Ms. Heddin.³³⁰

³²⁴ OPUC Ex. 1 (Heddin Dir.) at 136-37.

³²⁵ OPUC Ex. 1 (Heddin Dir.) at 138.

³²⁶ OPUC Ex. 1 (Heddin Dir.) at 138-39; OPUC Exs. 28-33 (Column H).

³²⁷ OPUC Ex. 1 (Heddin Dir.) at 138.

³²⁸ OPUC Ex. 1 (Heddin Dir.) at 156-58; OPUC Exs. 28-33 (Column K).

³²⁹ OPUC Ex. 1 (Heddin Dir.) at 157.

³³⁰ OPUC Ex. 1 (Heddin Dir.) at 157.

(iii) Other Repairs

Ms. Heddin recommended disallowing \$2,845,515.50 for other types of repairs that should have been expensed as operations.³³¹

(iv) Preventative Maintenance

OPUC recommends disallowing \$55,341.51 in costs for preventative maintenance activities.³³² Ms. Heddin testified that preventative maintenance is part of normal utility operations and does not add new infrastructure, replace old infrastructure, nor extend the useful life of existing infrastructure. These activities simply keep the equipment in operable condition and help to ensure the equipment reaches its original useful life.³³³ Aqua accepts this adjustment.³³⁴

(v) Other Operating Expenses

Ms. Heddin recommended removing \$427,028.20 for other operating expenses.³³⁵ Examples include, “Bottom clean chlorine contact chamber and wash down plant;”³³⁶ “clean up fence and wash tank. Cleared and repaired fence. Pressure

³³¹ OPUC Ex. 1 (Heddin Dir.) at 159-60.

³³² OPUC Exs. 28-33 (Column N).

³³³ OPUC Ex. 1 (Heddin Dir.) at 161-62.

³³⁴ See Aqua Ex. 12 (Ahmadibeni Reb.) at 35.

³³⁵ OPUC Ex. 1 (Heddin Dir.) at 162-64; OPUC Exs. 28-33 (Column O).

³³⁶ OPUC Ex. 80 (Magna Flow Invoice).

wash tank;”³³⁷ 26.1 gallons of diesel fuel,³³⁸ 115 gallons of bleach;³³⁹ 96 gallons of chlorine,³⁴⁰ and “Plant – Move chlorine into out building.”³⁴¹ Ms. Heddin testified that these kinds of transactions are a common and expected part of utility operations. They do not extend the useful life of the asset beyond the original useful life.³⁴²

(vi) TCEQ Inspection Preparations

Ms. Heddin recommended disallowing \$112,014.35 related to preparation for TCEQ inspections.³⁴³ Ms. Heddin testified that these tasks are not capital in nature, do not increase the expected useful life of the assets beyond the original life, but simply maintain the assets, and should be expensed.³⁴⁴

(vii) Water Hauling, Vactoring, Effluent Transportation, and Wastewater Spill Clean-up

Ms. Heddin recommended disallowing \$615,287.76 for water hauling, jetting sewer lines, vactoring, effluent hauling, and wastewater spill clean-up.³⁴⁵ None of

³³⁷ OPUC Ex. 81 (RLS Invoice).

³³⁸ OPUC Ex. 82 (Sun Coast Invoice).

³³⁹ OPUC Ex. 83 (NAPCO Chemical Invoice).

³⁴⁰ OPUC Ex. 84 (Core & Main Invoice).

³⁴¹ OPUC Ex. 85 (RGB Resources Invoice).

³⁴² OPUC Ex. 1 (Heddin Dir.) at 162-63.

³⁴³ OPUC Ex. 1 (Heddin Dir.) at 164-66; OPUC Ex. 86; OPUC Exs. 28-33 (Column P).

³⁴⁴ OPUC Ex. 1 (Heddin Dir.) at 164-66.

³⁴⁵ OPUC Ex. 1 (Heddin Dir.) at 166-67; OPUC Exs. 28-33 (Column N).

these were associated with work orders from capital items; they were all listed as their own work order number.³⁴⁶ These transactions are a common and expected part of utility operations; they do not extend the useful life of the asset, nor replace infrastructure or build new infrastructure. According to Ms. Heddin, these items should be removed from the utility's books as capitalized assets and instead should be expensed.³⁴⁷

3. Aqua's Response

In response to OPUC, Aqua argues that its eligible plant classification methods are sound. Instead of reaching out to Aqua directly for better understanding, Aqua alleges that Ms. Heddin made improper presumptions to support her recommended disallowances.³⁴⁸

Regarding the \$750 materiality threshold, Aqua argues that the NARUC guidance is the industry standard, used in other contexts by the Commission and Ms. Heddin.³⁴⁹ Moreover, Ms. Heddin conceded that the \$750 materiality threshold established by NARUC in 1996 has not been changed by NARUC, the Water Code, nor Commission rules.³⁵⁰

³⁴⁶ OPUC Ex. 1 (Heddin Dir.) at 166.

³⁴⁷ OPUC Ex. 1 (Heddin Dir.) at 167.

³⁴⁸ Tr. Vol. 2 at 42 (Heddin Cr.).

³⁴⁹ Aqua Ex. 12 (Ahmadibeni Reb.) at 29-30; 16 TAC § 24.127(1)(A) (requiring that Class A utilities use the NARUC uniform system of accounts).

³⁵⁰ Tr. Vol. 2 at 45-46 (Heddin Cr.).

Aqua argues that both intervenor witnesses improperly assumed that costs should be expensed by failing to consider that they were part of larger projects. Mr. Ahmadibeni testified that “[i]t is very important to understand for context that ONE work order will often have MANY invoices tied to it.”³⁵¹ Aqua points to Mr. Ahmadibeni’s rebuttal testimony that “just from looking” at the date, location/system name, and work order on Schedule H, one can tell that work is part of a larger project.³⁵² Aqua argues that its capitalization policy appropriately accounts for this phenomenon and is consistent with the NARUC System of Accounts and generally accepted accounting principles.³⁵³

In response to Ms. Heddin’s specific adjustments, Mr. Ahmadibeni testified that there were no *missing invoices* or *mark ups*, only the labor and overhead costs that any utility would incur such as internal engineering support, rent, and administrative salaries.³⁵⁴ He explained that an invoice would not have corporate charge or overhead allocations on it, and Aqua does not have invoices for such allocations.³⁵⁵ Rather, Mr. Ahmadibeni attributes Ms. Heddin’s account to her failing to understand “the Company’s internal accounting protocols even after Aqua provided all available invoices to OPUC for review as requested and repeatedly offered assistance.”³⁵⁶

³⁵¹ Aqua Reply Brief at 10; Aqua Ex. 12 (Ahmadibeni Reb.) at 20; Tr. Vol. 1 at 47-48, 65 (Ahmadibeni Cr.).

³⁵² Aqua Ex. 12 (Ahmadibeni Reb.) at 11-12.

³⁵³ Aqua Ex. 13 (Gresehover Reb.) at 3.

³⁵⁴ Aqua Ex. 12 (Ahmadibeni Reb.) at 16-17.

³⁵⁵ Aqua Ex. 12 (Ahmadibeni Reb.) at 17.

³⁵⁶ Aqua Ex. 12 (Ahmadibeni Reb.) at 6.

For the same reason, the invoices Ms. Heddin found to be less than the claimed eligible cost is due to the amount for the labor and overhead pool allocations to the capital projects, according to Mr. Ahmadibeni.³⁵⁷ Aqua further argues that Rule 24.76 does not require an invoice to support this type of allocation cost.

Regarding *leaks and main breaks*, Mr. Ahmadibeni testified that these items are properly capitalized as extending the life of the pipe and entire distribution system by fixing the broken portion.³⁵⁸ Mr. Gresehover testified that, in cases of larger main or service leaks, break, or repairs in general, if a substantive portion of pipe is renewed, it is considered as capital consistent with the Capital Policy.³⁵⁹ This type of replacement would add a new asset, extend the life, and improve the performance of the overall asset section of the distribution network.³⁶⁰

Regarding *other repairs*, Mr. Ahmadibeni testified that these are small parts of larger projects.³⁶¹ Mr. Gresehover testified that, viewed independently, some of Aqua's invoices could be interpreted as operational or maintenance costs, but doing so does not adequately consider the context of larger and broader capital projects and work.³⁶² He explained that when the costs are included as parts of larger capital projects and it is recognized that these costs would not otherwise have been incurred

³⁵⁷ Aqua Ex. 12 (Ahmadibeni Reb.) at 27-28.

³⁵⁸ Aqua Ex. 12 (Ahmadibeni Reb.) at 34.

³⁵⁹ Aqua Ex. 13 (Gresehover Reb.) at 10.

³⁶⁰ Aqua Ex. 13 (Gresehover Reb.) at 10.

³⁶¹ Aqua Ex. 12 (Ahmadibeni Reb.) at 34-35.

³⁶² Aqua Ex. 13 (Gresehover Reb.) at 11.

except as part of the capital work, it becomes clear that these costs are properly classified as capital.³⁶³

Similarly, regarding Ms. Heddin's adjustments for *other operation expenses*, Mr. Gresehover testified that when viewed independently, some invoices could be interpreted as other (common) operating expenses.³⁶⁴ However, this type of examination does not adequately consider the context of larger and broader capital projects and work.³⁶⁵ When the invoices are included as parts of larger capital projects, "it becomes clear that these costs are properly classified as capital."³⁶⁶

Regarding *TCEQ inspection preparations*, Mr. Ahmadibeni testified that this type of inspection is unique because the TCEQ is inspecting and approving new capital projects, which is a part of the whole project.³⁶⁷ Mr. Gresehover added that "the referenced cost would not have been incurred if not for the related capital project that a TCEQ inspection is directly a part of."³⁶⁸

Finally, regarding *water hauling, jetting, vactoring, effluent transportation, and wastewater spill clean-up*, Mr. Gresehover testified that these operation and

³⁶³ Aqua Ex. 13 (Gresehover Reb.) at 11.

³⁶⁴ Aqua Ex. 13 (Gresehover Reb.) at 14.

³⁶⁵ Aqua Ex. 13 (Gresehover Reb.) at 14.

³⁶⁶ Aqua Ex. 13 (Gresehover Reb.) at 14.

³⁶⁷ Aqua Ex. 12 (Ahmadibeni Reb.) at 36.

³⁶⁸ Aqua Ex. 13 (Gresehover Reb.) at 15.

maintenance expenses would not have been incurred except as part of capital work, and these expenses are therefore properly capitalized.³⁶⁹

In its reply brief, Aqua argues that internal protocols ensure that costs are accurately capitalized or expensed.³⁷⁰ Mr. Gresehover explained the process by which projects, planned and unplanned, are made up of many smaller work orders.³⁷¹ He testified, for example, that if a ground storage tank fails and needs to be replaced, the work completed would be assigned a work order.³⁷² If other work is done at that location, there could be multiple work orders associated with the one project.³⁷³ One work order can have multiple contractors, and work orders can be unplanned but still considered capital expenses.³⁷⁴

These decisions are made by the field engineers and frontline operations technicians, who would initiate a project associated with a larger project number through Aqua's work order management system service link, marking the project as either expense or capital.³⁷⁵ All the work orders and invoices associated with the project number go into Aqua's system, and the dollars will be reconciled internally.³⁷⁶

³⁶⁹ Aqua Ex. 13 (Gresehover Reb.) at 16.

³⁷⁰ Aqua Reply Brief at 9.

³⁷¹ Tr. Vol. 1 at 188-92 (Gresehover Clarifying).

³⁷² Tr. Vol. 1 at 188 (Gresehover Clarifying).

³⁷³ Tr. Vol. 1 at 188 (Gresehover Clarifying).

³⁷⁴ Tr. Vol. 1 at 188-89 (Gresehover Clarifying).

³⁷⁵ Tr. Vol. 1 at 190 (Gresehover Clarifying).

³⁷⁶ Tr. Vol. 1 at 191 (Gresehover Clarifying).

Field technicians initially assign the work order as a normal activity work order of the maintenance or expense.³⁷⁷ Once the field technicians realize the work is going to be a capital project, they initiate the work as a capital project.³⁷⁸

Planned projects, by contrast, are initiated by the engineer responsible for the planned work.³⁷⁹ The engineers, not the accountants, are responsible for deciding whether a particular activity is a capital expense.³⁸⁰ Mr. Gresehover gave the following testimony:

Q Okay. And you agree that -- well, only capital costs or capitalizable costs are included in the SIC application, right?

A Yes. By our capital policy and how we train and then also review, specifically, the Texas team on a monthly basis what is in the various categories. Yes, everything in the SIC should be capital.

Q Okay. And to train your employees who are responding to these unplanned projects, what kind of training or guidance do they get?

A We have a published capitalization policy, which is an exhibit in the SIC. I can't speak to the training in Texas, but I do know there are review meetings with the finance team of the items that come in each month to the various internal order codes.³⁸¹

³⁷⁷ Tr. Vol. 1 at 43 (Ahmadibeni Cr.).

³⁷⁸ Tr. Vol. 1 at 43 (Ahmadibeni Cr.).

³⁷⁹ Tr. Vol. 1 at 191 (Gresehover Clarifying).

³⁸⁰ Tr. Vol. 1 at 46 (Ahmadibeni Cr.).

³⁸¹ Tr. Vol. 1 at 146-47 (Gresehover Cr.).

According to Mr. Ahmadibeni, once a work order has been created, a NARUC categorization is associated with the work order.³⁸²

4. Intervenor Associations Reply

In their reply brief, Intervenor Associations argue that the record does not support Aqua's claim that anyone reviewed *expenditures* in this application. Neither Mr. Ahmadibeni nor Mr. Gresehover reviewed the individual expenditures for eligibility.³⁸³ Mr. Gresehover's testimony that those costs would not have been incurred except as part of the capital work,³⁸⁴ Intervenor Associations argue, is circular logic.

Intervenor Associations further argue that Aqua's explanation of *how* work is initiated and categorized in its internal system does not show how these individual expenditures (or their descriptions) are connected as a part of a larger project and does not provide the documentation required as discussed above.

Intervenor Associations also point to Mr. Gresehover's testimony on cross-examination that he tracks work orders and invoices by running a report on an internal system, PowerPlan.³⁸⁵ During cross-examination, Mr. Gresehover answered questions about work orders by viewing this internal system, not the schedules in the

³⁸² Tr. Vol. 1 at 44 (Ahmadibeni Cr.).

³⁸³ Intervenor Associations Reply Brief at 12.

³⁸⁴ Aqua Ex. 13 (Gresehover Reb.) at 4, 8, 11, 14-16, 19.

³⁸⁵ Tr. Vol. 1 at 147-48 (Gresehover Cr.).

application.³⁸⁶ “[T]he work orders, invoices, associated with that are going to go to that project number in our PowerPlan system and the dollars will be reconciled and rolled up there.”³⁸⁷ Intervenor Associations argue that keeping its process of reconciling costs from public review is contrary to legislative intent and the requirements of Rule 24.76.³⁸⁸

Intervenor Associations also point out that there is no support for Aqua’s assertion that field technicians are trained on its capitalization policy, as Mr. Gresehover could not speak to training in Texas, as noted above.³⁸⁹

5. Analysis

No party disputes the general principle that common operation and maintenance expenses can be capitalized if part of a larger project.³⁹⁰ The evidence unequivocally shows that many of the costs are properly categorized as operation and maintenance expenses, unless part of a larger project. The evidence further shows that the decision of whether an expense should be capitalized is made by Aqua’s field technicians and engineers. However, these frontline workers did not testify.

³⁸⁶ Tr. Vol. 1 at 161 (Gresehover Cr.).

³⁸⁷ Tr. Vol. 1 at 191 (Gresehover Cr.).

³⁸⁸ Intervenor Associations Reply Brief at 12-13.

³⁸⁹ Tr. Vol. 1 at 146-47 (Gresehover Cr.).

³⁹⁰ Tr. Vol. 1 at 233-34 (Stannard Cr.).

Aqua asks the Commission to trust its internal protocols for ensuring that only capital projects are included in the application. According to Aqua, because these frontline workers are trained in the capitalization policy and feed their decisions into an internal software system that allows the company to track and reconcile costs with projects, “everything in the SIC should be capital.”³⁹¹ But Mr. Gresehover’s tautology that the costs “would not otherwise have been incurred except as part of the capital work,”³⁹² is inadequate to serve as a substitute for evidence that the otherwise operational costs are part of a larger project. This would require the ALJs to infer that the field operators are adequately trained to discern expense from capital items. Yet this training may reasonably be questioned, at a minimum, when it allowed for the inclusion of preventative maintenance as a capital expense. The ALJs would then be required to infer that the expenses are properly recorded and assigned to the proper NARUC accounts. However, Aqua has not shown that otherwise operation and maintenance expenses are a part of a larger project by which they are transformed into capital. A vital fact “may not be established by piling inference upon inference.”³⁹³ Even if Mr. Ahmadibeni’s direction to simply search Schedule H by date, location/system name, and work order were fruitful, this was not direct evidence. As Aqua boldly asserts, “Aqua knows its recordkeeping system, but outside parties do not.”³⁹⁴ It then falls to Aqua to translate its recordkeeping system into a format that lends itself to verification. Aqua has not done this.

³⁹¹ Tr. Vol. 1 at 146 (Gresehover Cr.).

³⁹² Aqua Ex. 13 (Gresehover Reb.) at 4, 8, 11, 14-16, 19.

³⁹³ *Sheehan v. Adams*, 320 S.W.3d 890, 895 (Tex. App.—Dallas 2010, no pet.) (citing *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 858 (Tex. 1969)).

³⁹⁴ Aqua Initial Brief at 4.

Aqua asks to stretch the Commission’s faith even further with respect to overhead and labor allocation. Mr. Ahmadibeni flatly admits that “[t]hose invoices simply do not exist.”³⁹⁵ Although direct testimony may be used to support eligible costs,³⁹⁶ Aqua’s explanation for how the amounts are established is particularly opaque. Although Mr. Ahmadibeni testified that these costs are allocated according to the manual of Essential Utilities,³⁹⁷ this is not sufficient to support the requested amount. Aqua’s explanation of the difference between the invoice amount and the amount requested simply fills the lacuna with the difference:

The difference in the invoice value of \$765.00 and the total work order #100058899 value of \$907.81 is due to labor and overhead allocations not shown in the invoice itself. ***

JW Utilities	765.00
Overheads applied	<u>142.51</u>
	907.51 ³⁹⁸

This is conclusory and does nothing to illuminate how the allocation is applied. As Ms. Heddin discovered, there appears to be no reviewable data for how this amount is derived. Aqua has stated as much: “Each work order has *unique* labor cost allocations, and the overhead allocation can *vary* depending on when the asset is placed into service.”³⁹⁹ Mr. Ahmadibeni’s assurance that “overhead and labor allocations are embedded in the total for each capitalized asset item,” only takes the

³⁹⁵ OPUC Ex. 22 (Aqua responses to OPUC RFI Nos. 3-2 through 3-8).

³⁹⁶ 16 TAC § 24.76(d)(3).

³⁹⁷ Aqua Ex. 8 (Ahmadibeni Dir.) at 10, RA-9 (Essential Utilities Corporate Charges Allocation Manual).

³⁹⁸ OPUC Ex. 52 (Aqua response to OPUC RFI No. 2-3).

³⁹⁹ OPUC Ex. 95 at 7 (Aqua response to OPUC RFI No. 2-4) (emphasis added).

opacity further. Aqua has not provided a manner to examine these amounts in detail, which is particularly concerning given the heightened scrutiny with which affiliate transactions are reviewed.⁴⁰⁰ Moreover, Aqua’s own evidence shows many errors involving reversal of previous *over*-allocations or re-classification of duplicate service entries or inadvertent expensing. This last error type raises further concerns, as Aqua was unable to produce the underlying invoices.

Aqua takes issue with Ms. Heddin’s characterization of missing invoices, by which the ALJs understand her to mean (with the exception regarding overhead and labor invoices) invoices she was unable to locate. Aqua asks the ALJs to take it on faith that there are no missing invoices, and they are all in its Perceptive Content database. However, Aqua has not offered the invoices into evidence nor offered them for viewing in a format susceptible to ready review. Nor has Aqua sufficiently supported its eligible costs through testimony. As Mr. Stannard testified, utilities will be incentivized to include in a system improvement charge “as many costs as possible, in order to maximize the return on investment. Without diligent oversight, this increases the potential for abuse, particularly given that the process itself is streamlined as compared to a comprehensive rate case.”⁴⁰¹ The ALJs agree. Given the narrow scope of issues and the streamlined process, the utility must clearly demonstrate its costs are eligible.

⁴⁰⁰ TWC §§ 13.002(2), .185(e); *see also* Aqua Ex. 7 (Blanchette Dir.) at 4-5 (“Essential’s Service company and Aqua Services, Inc. provides support for capitalization that is generally allocated to subsidiaries, such as Aqua, as overhead.”); Aqua Ex. 8 (Ahmadibeni Dir.) at 10 (same).

⁴⁰¹ WWT Ex. 100 (Stannard Dir.) at 10.

Ultimately, the Commission must know what it is approving and what resulting costs will be included in customers' bills. Aqua's application does not provide a means for doing so, much less quickly. The ALJs find that Aqua has not sufficiently supported the eligible cost.

As to Aqua's capitalization policy, given its vintage, the ALJs recommend that it be reviewed in Aqua's next comprehensive rate case but do not otherwise make findings regarding its appropriateness.⁴⁰²

C. CALCULATION OF THE SIC

Using the eligible plant, the system improvement charge is calculated by a formula comprising the utility's reconcilable costs, accumulated depreciation, rate of return, federal income taxes, depreciation, ad valorem taxes, and other revenue related taxes.⁴⁰³ The rule defines each of those items and certain parameters that apply to some items.⁴⁰⁴ Except for flow-through impacts of disputes elsewhere, Aqua's calculation is largely undisputed.

1. Reconcilable Cost

Reconcilable cost is, as applicable here, "the original costs of eligible plant installed after . . . the end of the test year used in the utility's most recent base-rate proceeding, less (A) accumulated depreciation; and (B) any costs for plant provided

⁴⁰² The ALJs note that, in 2016, the IRS increased the *de minimis* safe harbor limit to \$2,500. 26 C.F.R. § 1.263(a)-1(f)(1)(ii), I.R.S. Notice 2015-82.

⁴⁰³ 16 TAC 24.76(e)(3)-(9).

⁴⁰⁴ 16 TAC § 24.76(e)(1)-(11).

by explicit customer agreements or funded by customer contributions in aid of construction.”⁴⁰⁵

Aqua’s most recent rate cases were finalized between 2008 and 2014,⁴⁰⁶ before the ending date of the 2019 reporting period reflected in Aqua’s annual report filed under Rule 24.19 and more than three years before the application was filed.⁴⁰⁷

None of the plant items included in this application were present during the previous rate cases or in Aqua’s previous SIC application, which covered January 2020 through December 2021.⁴⁰⁸

2. Federal Income Taxes

Aqua used a 21 percent federal statutory income tax rate for both water and wastewater to calculate income taxes.⁴⁰⁹ No party disputes this rate, except that Staff witness Kathryn Eiland recommended adjustments to federal income tax expense to

⁴⁰⁵ 16 TAC § 24.76(e)(3).

⁴⁰⁶ None of Aqua’s rate regions have had a comprehensive rate case since 2024. All prior rates cases were concluded at the TCEQ: *Application of Aqua Utilities, Inc. and Aqua Development Company, Inc. d/b/a Aqua Texas, Inc. to Change Water and Sewer Rates*, SOAH Docket Nos. 582-05-2770 and 582-05-2771, Final Order (Sep. 23, 2008); *Application of Aqua Texas, Inc., Aqua Utilities, Inc. and Aqua Development, Inc. dba Aqua Texas for a Water Rate/Tariff Change Southeast Region Only*, SOAH Docket No. 582-11-3607, TCEQ Docket No. 2011-0241-UCR, Final Order (May 20, 2012); *Application of Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc., Harper Water Company, Inc., and Kerrville Southern Water Company, Inc. dba Aqua Texas for Southwest Region Water Rate/Tariff Change*, SOAH Docket No. 582-12-6658, TCEQ Application Nos. 37234-R and 37235-R, Final Orders (June 3, 2013); *Application of Aqua Texas, Inc. and Aqua Utilities, Inc. dba Aqua Texas for Water and Sewer Rate/Tariff Changes*, SOAH Docket No. 582-14-1051, TCEQ Docket No. 2013-2007-UCR, Final Order (July 17, 2014) (Chambers, Jefferson and Liberty Counties).

⁴⁰⁷ Docket No. 53428, Order at Finding of Fact (FoF) No. 47.

⁴⁰⁸ Docket No. 53428, Order at FoF No. 7.

⁴⁰⁹ See Aqua Ex. 12 (Ahmadibeni Reb.) at 40; Aqua Ex. 2, Schedule I.

reflect the flow-through effects of Staff witness Emily Sears's proposed rate of return adjustment, which is discussed below.⁴¹⁰

Aqua accepts Staff's recommended adjustment,⁴¹¹ but notes that the adjustment does not affect the tax rate used, only the total federal income tax amount.⁴¹²

3. Annual Depreciation Expense

Aqua's depreciation expense was calculated by taking the eligible costs of each added asset in Schedule H, Column Z and multiplying that cost by the depreciation group rate in Column AE.⁴¹³ The depreciation rates were developed for Aqua by outside consultant Gannett Fleming and used in the last three rate applications filed by Aqua.⁴¹⁴

4. Ad Valorem Taxes

Aqua's requested SIC revenue requirement does not include amounts associated with ad valorem taxes.⁴¹⁵

⁴¹⁰ Staff Ex. 2 (Eiland Dir.) at 7, Attachments KE-1, KE-2, KE-3, KE-4, KE-5, and KE-6.

⁴¹¹ Aqua Ex. 12 (Ahmadibeni Reb.) at 3.

⁴¹² Aqua Initial Brief at 21.

⁴¹³ See Aqua Ex. 8 (Ahmadibeni Dir.) at 11; Aqua Ex. 2, Schedule H.

⁴¹⁴ See Aqua Ex. 8 (Ahmadibeni Dir.) at 12.

⁴¹⁵ Aqua Ex. 2, Schedule A; Staff Ex. 2 (Eiland Dir.) at 8.

5. Other Revenue Related Taxes

Other revenue related taxes are equal to the current annual amount of any additional taxes resulting from the utility's increased revenues related to the system improvement charge.⁴¹⁶ These are included in Aqua's return on reconcilable cost in the form of the Texas State Gross Margin (Franchise) Tax.⁴¹⁷ Ms. Eiland recommended adjustments to the Texas margins tax to reflect the flow-through effects of the rate of return adjustment presented by Ms. Sears.⁴¹⁸ Aqua accepts Staff's recommended adjustment based on the flow-through effects of the after-tax overall rate of return adjustment.⁴¹⁹

6. After-Tax Overall Rate of Return

Under Rule 24.76, "if the final order approving the utility's overall rate of return (i.e., the company's weighted-average cost of capital) was filed three years or more before the date the utility files an application for a SIC, the after-tax overall rate of return is the average of the [C]ommission's approved rates of return for water and sewer utilities in settled and fully litigated cases over the three years immediately preceding the filing of the SIC."⁴²⁰

⁴¹⁶ 16 TAC § 24.76(e)(9).

⁴¹⁷ See Aqua Ex. 8 (Ahmadibeni Dir.) at 11.

⁴¹⁸ Staff Ex. 2 (Eiland Dir.) at 7, Attachments KE-1, KE-2, KE-3, KE-4, KE-5, and KE-6.

⁴¹⁹ Aqua Ex. 12 (Ahmadibeni Reb.) at 3.

⁴²⁰ 16 TAC § 24.76(e)(5), (10)(B).

Because it has not had a comprehensive rate case within the last three years, Aqua used the average cost of capital/total return (i.e., the after-tax overall rate of return) of 6.98 percent approved in the 2020-2023 final orders from the Commission's approved rates of return for water and sewer utilities in settled and fully litigated cases.⁴²¹ Ms. Sears recommended an overall rate of return of 6.94 percent, to account for a rate of return for Woodland Hills Water, LLC with an order dated June 30, 2022.⁴²² Aqua accepts this recommendation.⁴²³

Aqua requested a weighted cost of debt of 2.64 percent in its SIC application,⁴²⁴ which Staff agrees with.⁴²⁵

7. Annual Meter Equivalents

Aqua's annual meter equivalent calculations are shown in Schedule E for both water and wastewater.⁴²⁶ However, contrary to Rule 24.76(e)(11), Aqua used a meter size multiplier of 16 instead of 15 for 3" meters.⁴²⁷ Staff witness David Lopez

⁴²¹ See Aqua Ex. 2, Schedule G.

⁴²² Staff Ex. 1 (Sears Dir.) at 7.

⁴²³ Aqua Ex. 12 (Ahmadibeni Reb.) at 3.

⁴²⁴ Aqua Ex. 2, Schedule G.

⁴²⁵ Staff Ex. 1 (Sears Dir.) at 8.

⁴²⁶ Aqua Ex. 2, Schedule E.

⁴²⁷ Staff Ex. 3 (Lopez Dir.).

recommended adjusting the meter equivalents for 3” meters by using a meter size multiplier of 15.⁴²⁸ Aqua accepts this adjustment.⁴²⁹

V. CONCLUSION

While Aqua may have a high degree of confidence in its own internal protocols and its field technicians’ on-site determinations regarding capitalization, it has not presented an application that lends itself to review—much less the rapid review required for system improvement charge applications. As Mr. Ahmadibeni testified, “the SIC application process is streamlined and I believe meant to be as efficient as possible. As with everything, balance is needed.”⁴³⁰ Indeed; and that efficiency and balance favors greater preparation. Aqua might have taken the time to develop a more thorough submission before asking the Commission to approve an \$8.8 million increase in annual revenues in 120 days.

When time was of the essence, Aqua availed itself of an agreed extension of the deadline in support of meeting its burden. Aqua did not include invoices in its October 2023 application. Instead, it produced them in early April 2024, but with no ready means of relating them to the application. Instead of timely producing requested information, Aqua responded that “Aqua will supplement this response,”⁴³¹ which was ultimately not provided until June 18. As late as June 28,

⁴²⁸ Staff Ex. 3 (Lopez Dir.) at 5.

⁴²⁹ See Aqua Ex. 12 (Ahmadibeni Reb.) at 3.

⁴³⁰ Aqua Ex. 12 (Ahmadibeni Reb.) at 6.

⁴³¹ See OPUC Ex. 19 (Aqua response to OPUC RFI Nos. 3-2, 3-3, 3-4, 3-5, 3-6, 3-7).

M. Ahmadibeni was correcting his testimony to confirm that information he originally stated was in the application was not there. All of that should have been included on day one of the 120-day process. None of it would have been available at the hearing had the parties and the ALJs adhered to that deadline.

Aqua credits itself for extending assistance in navigating its labyrinthine spreadsheets and invoice databases, faulting intervenors for failing to avail themselves of its help; but that is not the standard. The standard is set out in Rule 24.76. However Aqua keeps its records, when it seeks regulatory approval to recover costs from its customers, especially on an expedited basis, it must submit a product capable of review. It has not done so here.

Accordingly, the ALJs recommend that the application be denied. Though many resources have been expended to get to this point, attempting to carve out some amount for approval would be a best guess given the evidentiary record. As Mr. Stannard testified, “it is not possible to reliably calculate a SIC based on the information provided by Aqua.”⁴³² The Commission must know what it is approving. This cannot reliably be done here. The alternative to denying the application would be to return it to Aqua with the directive that it organize its expenditures by project and public water or sewer system with an explanation as to how the costs are eligible for a SIC, that it link its supporting information to the model it uses, and that it include an explanation of how each project has improved or will improve service.⁴³³

⁴³² WWT Ex. 100 (Stannard Dir.) at 23.

⁴³³ See Intervenor Associations Initial Brief at 16.

In short, the alternative to denying the application is to return it to Aqua to comply with Rule 24.76(d) and the Commission's final order in Docket No. 53428.

Based on the foregoing, the ALJs make the following findings of fact and conclusions of law.

VI. FINDINGS OF FACT

Applicant

1. Aqua Texas, Inc. (Aqua Texas) is a domestic for-profit corporation registered with the Texas Secretary of State under filing number 800304878.
2. Aqua Texas holds water certificate of convenience and necessity (CCN) numbers 13201, 13202, and 13254 and sewer CCN numbers 21059, 21065, and 21116 that obligate it to provide retail water and sewer service in its certificated areas.
3. Aqua Texas provides retail water service to approximately 72,400 water connections and retail sewer service to approximately 22,700 sewer connections.

Application

4. On October 26, 2023, Aqua Texas filed an application with the Public Utility Commission of Texas (Commission) to amend its system improvement charges for its water and sewer service tariffs.
5. The application seeks recovery of the original costs of plant installed between January 1, 2022, and July 31, 2023.
6. Aqua Texas seeks to recover approximately \$86 million (\$44 million for water and \$42 million for wastewater) in capital expenditures, net of contributions in aid of construction.

7. Aqua Texas seeks to collect approximately \$8.8 million annually in system improvement charges revenue (\$4.7 million for water and \$4.1 million for sewer) from affected customers above what is currently included in Aqua Texas's current base rates and system improvement charges.
8. In Order No. 6 filed on December 4, 2023, the Commission administrative law judge (ALJ) required Aqua Texas to file supplemental information.
9. On December 21, 2023, Aqua Texas filed supplemental application information.
10. On January 30, 2024, the Commission ALJ found the application as supplemented administratively complete.

Eligibility to Apply for System Improvement Charges

11. Aqua Texas does not have a comprehensive rate proceeding pending before the Commission.
12. On October 3, 2023, Aqua Texas was granted a good-cause exception to file a system improvement charge application in the fourth quarter of 2023.

Notice of the Application

13. On or about October 27, 2023, Aqua Texas sent notice of the application by first-class mail to all affected ratepayers of Aqua Texas's subdivisions and service areas in its North, Southwest, and Southeast Regions.
14. On November 8, 2023, Aqua Texas filed an affidavit attesting to the provision of notice of the application of all affected ratepayers.
15. Notice of the application is sufficient.

Interventions and Protests

16. From October 30, 2023, to April 4, 2024, more than 780 protests were filed with the Commission, and approximately 45 motions to intervene were filed.
17. In Order No. 6, filed on December 4, 2023, the Commission ALJ granted the interventions of the Office of Public Utility Counsel (OPUC); Karen Ricks;

and the Wimberley Valley Watershed Association, Woodcreek Property Owners Association, and Trinity Edwards Springs Protection Association (collectively, the Intervenor Associations), as well as of 24 customers.

18. In Order No. 7, filed on January 10, 2024, the Commission ALJ granted the interventions of Del Webb, The Woodlands Homeowners Association, and an additional five customers.
19. On March 20, 2024, the Commission ALJ denied six customer interventions as untimely.
20. In State Office of Administrative Hearings (SOAH) Order No. 5, filed on July 17, 2024, the SOAH ALJs dismissed multiple customer intervenors and Del Webb The Woodlands Homeowners Association for failure to timely file direct testimony or a statement of position.
21. The only remaining intervenors in this proceeding are OPUC, Intervenor Associations, and Karen Ricks.

Statements of Position and Testimony

22. On October 26, 2023, Aqua Texas filed the direct testimonies of Craig L. Blanchette, president of Aqua Texas; Rasool Ahmadibeni, manager of rates and planning for Aqua Texas; and Cameron Alden, state engineer for Aqua Texas at the time Aqua Texas filed its application.
23. On December 6, 2023, Aqua Texas filed its first correction to the direct testimony of Mr. Ahmadibeni.
24. On April 26, 2024, Aqua Texas filed the direct testimony of Brian Gresehover, vice president of engineering for Aqua Services, Inc., an affiliate of Aqua Texas, in which Mr. Gresehover adopted the previously filed testimony of Mr. Alden, who was unavailable to testify at the hearing on the merits.
25. On June 28, 2024, Aqua Texas filed its second correction to the direct testimony of Mr. Ahmadibeni.
26. On July 11, 2024, the Intervenor Associations filed the direct testimony of William Stannard.

27. On July 11, 2024, OPUC filed the direct testimony of Nelisa Heddin.
28. On July 23, 2024, Karen Ricks filed a statement of position.
29. On July 23, 2024, Commission Staff filed the direct testimonies of Kathryn Eiland, David A. Lopez, III, and Emily Sears.
30. On July 26, 2024, Aqua Texas filed the rebuttal testimonies of Mr. Ahmadibeni and Mr. Gresehover.

Referral to SOAH

31. On April 10, 2024, the Commission referred this docket to SOAH for assignment of an ALJ to conduct the hearing.
32. On April 11, 2024, the Commission issued a preliminary order listing issues to be addressed in this proceeding.
33. In SOAH Order No. 2, filed on May 6, 2024, the SOAH ALJs memorialized the prehearing conference in which the ALJs found that good cause did not exist to extend the deadline for this proceeding beyond 120 days and found that good cause did not exist to determine whether the eligible costs were prudent, reasonable, or necessary.
34. In SOAH Order No. 3, filed on May 9, 2024, the ALJs found that there was good cause to extend the deadline in this proceeding beyond 120 days based on the parties' agreement, adopted a procedural schedule, and approved interim rates effective August 8, 2024.
35. On August 5, 2024, the SOAH ALJs conducted a prehearing conference.
36. On August 7-8, 2024, ALJs Christiaan Siano and Daniel Wiseman held the hearing on the merits by videoconference.
37. On September 13, 2024, Aqua Texas, OPUC, Commission Staff, and the Intervenor Associations filed their post-hearing initial briefs.
38. On September 17, 2024, Karen Ricks filed a post-hearing initial brief.

39. On September 20, 2024, Aqua Texas, OPUC, Commission Staff, and Intervenor Associations timely filed post-hearing reply briefs.
40. On September 20, 2024, the record closed with the submission of post-hearing briefs.

The Utility

41. The entity or combination of entities that constitutes the utility for purposes of the application is Aqua Texas, Inc.
42. The legal name and assumed names, if any, of the entity or entities constituting the utility for purposes of the application is Aqua Texas, Inc.
43. Aqua Texas, Inc. no longer has an assumed name.
44. The entity or combination of entities that hold water CCN numbers 13201, 13203, and 13254 is Aqua Texas, Inc.
45. The entity or combination of entities that hold sewer CCN numbers 21059, 21065, and 21116 is Aqua Texas, Inc.
46. The entity or entities that own the equipment and facilities used to provide water service under water CCN numbers 13201, 13203, and 13254 is Aqua Texas, Inc.
47. The entity or entities that own the equipment and facilities used to provide sewer service under sewer CCN numbers 21059, 21065, and 21116 is Aqua Texas, Inc.
48. The entity or entities that operate the equipment and facilities used to provide water service under water CCN numbers 13201, 13203, and 13254 is Aqua Texas, Inc., using its own personnel, contract operators, and supplemental support services provided by Essential Utilities Services Inc. on a contract basis.
49. The entity or entities that operate the equipment and facilities used to provide sewer service under sewer CCN numbers 21059, 21065, and 21116 is Aqua Texas, Inc., using its own personnel, contract operators, and

supplemental support services provided by Essential Utilities Services Inc. on a contract basis.

50. Aqua Texas provided a list of its employees and officers with the October 26, 2023 direct testimony of Mr. Blanchette.
51. The entity listed on the annual report filed with the application is Aqua Texas, Inc.
52. Aqua Texas, Inc. is the only utility entity for purposes of the application.
53. Aqua Texas, Inc. is a domestic for-profit corporation incorporated on February 13, 2004; its Texas Filing No. is 8000304878; and its Tax ID No. is 32014405503.
54. There is no combination of entities that constitutes the utility, and no entity should be joined with Aqua Texas, Inc. in this proceeding under 16 Texas Administrative Code (TAC) § 22.104(a).

Calculation of the System Improvement Charges

55. Aqua Texas's current base rates were set by final orders issued from 2008 to 2014, before the ending date of the 2019 reporting period reflected in the utility's annual report and more than three years before the application was filed.
56. No costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction are sought to be included in the reconcilable cost used to calculate the revenue requirement for the system improvement charges.
57. Aqua Texas's existing system improvement charges were set by Commission order on September 23, 2023.

Interim Rates

58. In SOAH Order No. 3, filed on May 9, 2024, the SOAH ALJs authorized Aqua Texas to charge the interim rates set forth in the proposed tariff, Attachment 4 to its application, beginning on August 8, 2024.

59. On August 19, 2024, Aqua Texas filed clean tariffs for its North, Southeast, and Southwest Regions implementing the interim SIC rates.
60. On September 17, 2024, Aqua Texas filed an affidavit of notice of the interim system improvement charge rates that was provided to every affected ratepayer in their August or September 2024 bill.

Sufficiency of the Application

61. Aqua Texas provided with its application the written direct testimony of Mr. Alden, which described some of Aqua Texas's major projects and provided a brief explanation of how those few projects had improved or would improve services.
62. Mr. Alden's testimony identifies some wastewater systems by name in the Southwest Region, but it is not possible to determine which of those projects was associated with which system.
63. Aqua Texas did not include a description of the eligible plant, description of each project, or explanation of how each project has improved or will improve service as a part of Mr. Alden's testimony, nor elsewhere in its application, or in the course of the evidentiary hearing.
64. Aqua Texas included with its application a series of schedules that identified individual expenditures for which cost recovery is sought through the system improvement charges.
65. Operation and maintenance expenses are not capitalizable unless they are part of a larger capital project.
66. Neither Aqua Texas's application nor supporting schedules establish whether any of the individual operation and maintenance expenditures for which cost recovery is sought are a part of a larger project.
67. Aqua Texas has failed to provide a sufficient description for what it claims is the eligible plant for which cost recovery is sought through the system improvement charges.

68. Aqua Texas has failed to provide information that supports including the operation and maintenance expenses described in its schedules in the eligible cost of the system improvement charges.

Federal Income Tax

69. Aqua Texas's federal income tax rate of 21%, after reflecting flow-through adjustments for federal income tax expense, is appropriate.

After-Tax Overall Rate of Return

70. A weighted cost of debt of 2.64% is appropriate.
71. An after-tax overall rate of return of 6.94% is appropriate.

Other Revenue Related Expenses

72. Aqua Texas's Texas State Gross Margin Tax, after reflecting the flow-through adjustments, is appropriate.

Annual Meter Equivalents

73. Aqua Texas's meter equivalents for 3" meters should be adjusted by using a meter size multiplier of 15.

Ad Valorem Taxes

74. Aqua Texas did not include amounts associated with ad valorem taxes in its application.

Annual Depreciation Expense

75. Aqua Texas's annual depreciation expenses, as adjusted based on other system improvement charge calculation adjustments, are appropriate.

VII. CONCLUSIONS OF LAW

1. The Commission has authority over this proceeding under Texas Water Code §§ 13.041(a), 13.182, and 13.183(c).

2. Aqua Texas is a utility, public utility, and water and sewer utility as those terms are defined in Texas Water Code § 13.002(23) and 16 TAC § 24.3(38).
3. Aqua Texas is a Class A utility as defined by Texas Water Code § 13.002(4-a) and 16 TAC § 24.3(5).
4. The Commission processed this application as required by chapter 13 of the Texas Water Code, the Administrative Procedure Act, and Commission rules.
5. Aqua Texas is eligible to file this application for system improvement charge amendments under 16 TAC § 24.76.
6. Aqua Texas provided notice of the application in compliance with 16 TAC § 24.76(f).
7. Absent good cause or agreement of the parties, the SOAH ALJ must set a procedural schedule that will enable the Commission to issue a final order within 120 days after the application is referred to SOAH. 16 TAC § 24.76(g)(5).
8. A determination that an application is administratively complete does not establish that an application was sufficient under all statutory and regulatory requirements. 16 TAC § 24.8.
9. An administrative completeness determination establishes only that an application is sufficient for further substantive review. 16 TAC § 24.8.
10. The issue of whether eligible costs included in an application for a system improvement charge or an amendment to a system improvement charge are prudent, reasonable, or necessary, will not be addressed in a system improvement charge proceeding unless the presiding officer finds that good cause exists to address those issues. 16 TAC § 24.76(h).
11. Costs recovered through a system improvement charge are subject to reconciliation in the utility's next comprehensive rate case. Any amounts recovered through the system improvement charge that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. 16 TAC § 24.76(i).

12. A system improvement charge implemented in compliance with applicable rules followed by reconciliation in the utility's next comprehensive rate case assures that rates, operations, and services are just and reasonable to the consumers and to the utilities. TWC § 13.183(e).
13. Eligible plant is plant properly recorded in the National Association of Regulatory Utility Commissioners System of Accounts, accounts 304 through 339 for water utility service or accounts 354 through 389 for sewer utility service. 16 TAC § 24.76(b)(1).
14. A system improvement charge may only recover the portion of the cost of a utility's eligible plant that is not already included in the utility's rates. 16 TAC § 24.76(b)(2).
15. A system improvement charge proceeding does not address accounting for replacing retired plant, which would require reconciliation.
16. An application to establish or amend a system improvement charge must include a description of the eligible plant for which cost recovery is sought through the system improvement charge, including the project or projects included in the request and an explanation of how each project has improved or will improve service. 16 TAC § 24.76(d)(1).
17. An application to establish or amend a system improvement charge must include information that sufficiently supports the eligible cost, such as invoices, receipts, and direct testimony, and that sufficiently addresses the exclusion of costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction. 16 TAC § 24.76(d)(3).
18. Aqua Texas had the burden of proof to demonstrate that the application meets each applicable statutory and regulatory requirement by a preponderance of the evidence. Tex. Water Code § 13.184(c); 16 TAC § 24.12; Tex. Gov't Code § 2003.049(g)(1)(B); *Sw. Pub. Serv. Co./Pub. Util. Comm'n of Tex. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213 (Tex. App. — Austin 1998, pet. denied).
19. Aqua Texas did not meet its burden of proof to demonstrate that the plant was eligible plant properly recorded in the National Association of Regulatory Utility Commissioners System of Accounts, accounts 304 through 339 for

water utility service or accounts 354 through 389 for sewer utility service. 16 TAC § 24.76(b)(1).

20. Aqua Texas failed to include a sufficient description of the eligible plant for which cost recovery is sought through the system improvement charge.
21. Aqua Texas failed to include a sufficient description of the project or projects included in the request.
22. Aqua Texas failed to include a sufficient explanation of how each project has improved or will improve service.
23. Aqua Texas failed to provide information that sufficiently supports the eligible plant cost.
24. Aqua Texas failed to meet its burden of proof to establish that its application for a system improvement charge was sufficient. 16 TAC § 24.76(d).
25. Aqua Texas bears the burden to prove compliance with 16 TAC § 24.76(d) and enjoys no presumption that the costs it seeks to recover through a system improvement charge are eligible plant by simply opening its books and records to inspection. *Entergy Gulf States, Inc. v. Pub. Util. Comm'n*, 112 S.W.3d 208, 214 (Tex. App.—Austin 2003, pet. denied).
26. Aqua Texas's system improvement charge application is subject to the requirements found in the Commission Order from PUC Docket No. 53428, dated September 28, 2023, including Ordering Paragraph No. 3, which required Aqua Texas to only include in the application assets for which it is seeking recovery of investment and also required that the listed assets for recovery be well organized by project and public water or sewer system, with the data appropriately linked to the model used by Aqua Texas.
27. Aqua Texas failed to comply with the Order from PUC Docket No. 53428, because it failed to well organize its listed assets for which it seeks recovery by project in its application and because it failed to link its supporting documentation to the schedules it claimed provided the information regarding its listed assets.

28. Because Aqua Texas failed to provide information in its application necessary to determine whether its listed expenditures for which cost recovery is sought are eligible for inclusion in a system improvement charge, Aqua Texas has failed to demonstrate that its application complies with the applicable rules. 16 TAC § 24.76.
29. Because the deficiencies in Aqua Texas's application prevent a reliable adjustment of the system improvement charge based on costs that would be eligible for cost recovery under a system improvement charge, Aqua Texas's application should be denied.
30. Aqua Texas will need to refund or credit against future bills of affected customers all sums collected in excess of the system improvement charge amendments finally ordered plus interest as determined by the Commission in a reasonable number of monthly installments. 16 TAC §§ 24.37(h), 22.125(e).
31. Aqua Texas must file a comprehensive rate proceeding by September 26, 2025, two years from September 28, 2023. *See Application of Aqua Texas, Inc. for System Improvement Charges*, Docket No. 53428, Order (Sep. 28, 2023).

VIII. PROPOSED ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

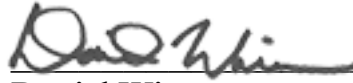
1. Aqua Texas's application is denied.
2. Aqua Texas must file a comprehensive rate case by September 26, 2025.
3. In its next comprehensive rate case, Aqua Texas shall thoroughly justify its capitalization policy.
4. Aqua Texas must refund or credit against future affected customer bills all sums collected in excess of the system improvement charge amendments finally ordered plus interest as determined by the Commission in a reasonable number of monthly installments.

5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed November 14, 2024



Christiaan Siano
Administrative Law Judge



Daniel Wiseman
Administrative Law Judge