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& Darnall** LLP
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MARGARET A. MORRIS
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November 9, 2011

resubmitted

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary

Pennsylvania Public Utility Commission
Commonwealth Keystone Building—2 North
P.O. Box 3265
Harrisburg, PA 17105

2268/19
**Re: Docket No. C-2011-228119
Dale Sattar v Aqua PA, Inc.
Preliminary Objections of Aqua Pennsylvania, Inc.**

Dear Secretary Chiavetta:

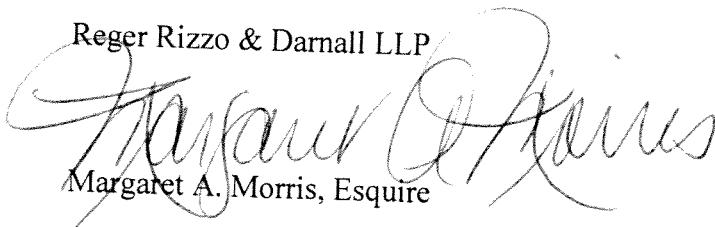
Enclosed for filing, please find the original of the Preliminary Objections of Aqua Pennsylvania, Inc. in the above-captioned proceeding.

As indicated on the certificate of service, a copy of the Preliminary Objections has been provided to the Complainant in the manner indicated.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris, Esquire

Enclosures

cc: Dale Sattar

Re: **Docket No. C-2011-228119** 2268119
Dale Sattar v Aqua PA, Inc.
Preliminary Objections of Aqua Pennsylvania, Inc.

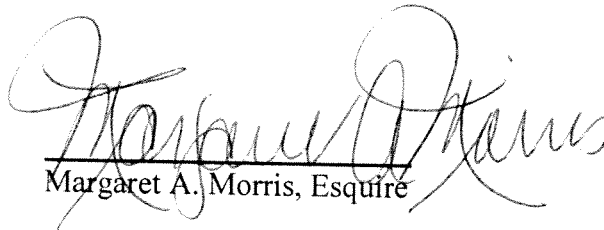
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class Mail

Dale Sattar
504 Marian Court
Conshohocken, PA 19428-3718

Dated: November 9, 2011


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DALE SATTAR

Complainant

v

AQUA PENNSYLVANIA, INC.

Respondent

Docket No. C-2011-2268119

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that, if you do not file a written response answering the enclosed Preliminary Objection of Aqua Pennsylvania, Inc. within ten (10) days from service of this notice, the facts set forth by Aqua Pennsylvania, Inc. in the Preliminary Objection may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania, Inc., Margaret A. Morris

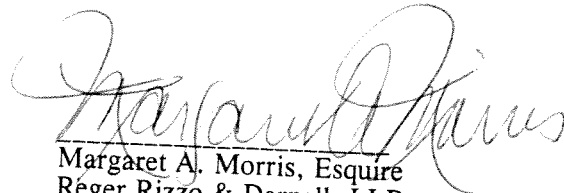
File with:

Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building - 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall, LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Dated: November 9, 2011



Margaret A. Morris, Esquire
Reger Rizzo & Darnall, LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (voice)
(215) 495-6600 (fax)
mmorris@regerlaw.com
Counsel for Aqua Pennsylvania, Inc.

withdrew that Complaint and filed a separate complaint, Docket No. C-2010-2150570 (“2009 Rate Case Complaint”) in the Company’s then pending rate proceeding at Docket No. R-2009-2132019 which *inter alia* considered an increase to the customer charge.

3. The Complainant participated in Aqua’s rate case and opposed the Joint Settlement, entered into by several of the parties, which the presiding administrative law judge recommended be approved. He specifically filed Exceptions to the Recommended Decision regarding the increase to the customer charge. A copy of the Complainant’s Exception Letter is attached as Exhibit B.

4. The Commission approved the Joint Settlement which *inter alia* approved the increase to the customer charge. The rate case Complainant was dismissed. A copy of the 2009 Rate Case Complaint and the Commission’s Order in Docket No. R-2009-2132019 is attached as Exhibit C.

5. In Docket No. C-2010-2169756, Order entered July 28, 2011 (“2010 Complaint”) the Complainant sought to avoid paying the customer charge altogether by prepaying his water bill annually. A copy of the 2010 Complaint and the Commission’s Order dismissing the 2010 Complaint is attached as Exhibit D.

6. The present Complaint raises the very same claim concerning the Respondent’s customer charge for the Main Division as presented in the rate case Complaint. The Complainant had an adequate opportunity to participate in the rate case and he did so. He submitted his objection to the Commission and as set forth above, his rate case Complaint was dismissed. The Complainant has had his opportunity to be heard regarding his objection to the Respondent’s customer charge.

7. The Commission need not address the Complainant's claim again and the Respondent should not be required to re-litigate with the same Complainant the very same issue that was part of the last rate case. The Complainant's attempt to re-litigate **the identical issue** is not a reasonable use of the Commission or the Respondent's time or resources, nor is it required by the Public Utility Code or Commission Regulations.

8. Section 5.101 of the Commission Regulations provides for the preliminary dismissal of an action based on prior pending proceedings. A prior proceeding has already addressed the allegation by the Complainant in his 2009 Rate Case Complaint. The Complainant had an adequate opportunity to participate in Aqua's rate case proceeding. His objection to the customer charge was submitted to the Commission and his 2009 RateCase Complaint was dismissed.

9. The unwillingness to allow a second action based on a prior proceeding is consistent with established principles of *res judicata* (or claim preclusion) and collateral estoppel (or issue preclusion). See *Rita & Ray Royce c/o/ Safeguard International, Inc. v PECO*, Docket No. C-20067158 (Order entered August 26, 2008); *Schuylkill Twp. v Borough of Phoenixville*, Docket No. R-00932770, et al. (Order entered October 1, 1993). The Commission has applied these principles to prevent reconsideration of administrative matters in which a final judgment has already been entered. *O'Toole v Bell Telephone Company of PA*, 77 Pa. PUC 98 (1992); *Tomazin v PAWC*, 1997 Pa. PUC LEXIS 52 (1997).

10. *Res judicata* (or claim preclusion) bars the subsequent re-litigation of matters that were actually litigated, as well as matters that should have been litigated, in a prior action as part of the same cause of action. *Borough of Phoenixville, supra*. The doctrine applies when the following four conditions are met: (1) identity of the subject matter; (2) identity of

the cause(s) of action; (3) identity of parties to the action; and (4) identity of the quality or capacity of the parties suing or being sued. *Id. Safeguard International, supra.*

11. In a similar vein, the doctrine of collateral estoppel (or issue preclusion) seeks to prevent the re-litigation of an issue of fact or law which was previously litigated in a prior proceeding and subject to a final Commission Order. *Safeguard International, supra.* A plea for collateral estoppel requires that: (1) the issue(s) decided by a prior final order is identical with the one(s) presented in the later action; (2) there was final judgment on the merits; (3) the party against whom the pleas is asserted was a party or in privity with a party to the prior litigation; and (4) the party against whom the plea is asserted had a full and fair opportunity to litigate the issue in question in the prior action. *Id.*

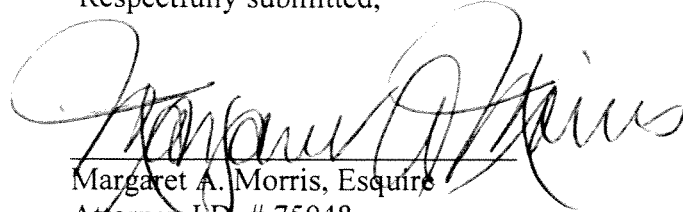
12. In the instant matter, it is clear that the Commission is presented with the same Complainant, the same Respondent and the same allegations. The Complainant has had a full and fair opportunity to litigate his concerns regarding the appropriate customer charge. The Commission dismissed his 2009 Rate Case Complaint. An identical Complaint and further litigation is neither necessary nor reasonable, nor is it required by the Public Utility Code or Commission Regulations.

13. The Complainant had his concerns heard and addressed by the Commission. Established legal principles and a common sense approach justify the dismissal of the present identical Complaint.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully

requests that this Honorable Court, in the absence of a hearing, grant these preliminary objections and dismiss the Complaint of Dale Sattar in Docket No. C-2011-2268119.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Margaret A. Morris", written over a horizontal line.

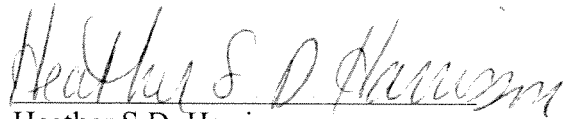
Dated: November 9, 2011

Margaret A. Morris, Esquire
Attorney I.D. # 75048
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (voice)
(215) 495-6600 (fax)
mmorris@regerlaw.com

Counsel for Aqua Pennsylvania, Inc.

AFFIDAVIT

I, Heather S.D. Harrisson, Paralegal, at Aqua Pennsylvania, Inc., am authorized to make this affidavit on its behalf, and I verify that the information provided in the foregoing document(s) is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

A handwritten signature in cursive script that reads "Heather S.D. Harrisson".

Heather S.D. Harrisson
Paralegal
Aqua Pennsylvania, Inc.

Dale Sattar v Aqua Pennsylvania, Inc.
Docket No. Docket No. C-2011-2268119

EXHIBIT A

PUC 2011 Formal Complaint

COPY RECEIVED

OCT 11 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name DALE SATTAR

Street/P.O. Box 5DA MARIAN COURT Apt # _____

City CONSHOHOCKEN State PA Zip 19428

County _____

Daytime Telephone Number Where We Can Contact You: (610) 828-1348

E-mail Address (optional): NONE

Utility Account Number 001543917 0623049
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

AQUA PENNSYLVANIA, INC.

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

78392

YOPY COPY

TELEPHONE
(local, long distance)

(e.g., taxi, moving company, limousine)

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

Other (explain). *SEE ATTACHMENT*

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

SEE ATTACHMENT

ATTACHMENT TO PUC FORMAL COMPLAINT FORM

RESPONSE TO ITEM 4A: " In general, what is your complaint? "

My monthly charge for the amount of water used is about \$4. Often the charge for the amount of water used is even less than \$4 per month. My customer charge is fixed at \$17.56 per month.

The monthly customer charge is well over four (4) times the cost of water used.

This is extremely unfair, unreasonable, and unjust.

RESPONSE TO ITEM 4B: " State the facts of your complaint. "

It is my understanding that PUC has approved a tariff that allows Aqua Pennsylvania Inc. (Aqua) to charge a residential monthly customer charge to each customer regardless of the amount of water used for the month. This may not be unreasonable for majority of residential customers who have a family and people who use enough water every month that the cost of water exceeds the monthly customer charge. But for certain customers such as myself who is a retired senior citizen, lives on Social Security, has no family, and uses very little water in a month, the cost of monthly customer charge is over four (4) times the cost of water used for the month. This is outrageously unfair, unreasonable, and unjust.

My latest monthly bill from Aqua Pennsylvania, Inc. (Aqua), submitted as Exhibit A, indicates that the charge for the 500 gallons of water used is \$3.99. But the charge for "customer charge" is \$17.56.

As you can see the customer charge is 4.4 times ($17.56/3.99$) the cost of water.

Consider that you go to a restaurant and order a meal for \$10. A service charge of \$44.4 (4.4×10) is added to your bill (for serving you the food) for a total charge of \$54.4. How would that make you feel? You are not going to that restaurant again? But what if that was the law of the land and no matter what restaurant you go to you must pay 4.4 times the cost of food for service charge. **What do you think of the regulatory body that made or approved that law?**

RESPONSE TO ITEM 4B CONT.

In this example you might give up, completely, to ever again to go to a restaurant and cook at home. But with Aqua one does not have any other option and all one can do is take up the matter with the regulatory body that made or approved the law and hope that they can see that the law is unreasonable, unfair, and unjust and they do something about it.

If the PUC amend the law, as an example, that the service charge can not be higher than the cost of water for those residential customers whose cost of water consumption is less than the service charge, it would be somewhat, more fair. Therefore, in the example of going to a restaurant, one must pay no more than 100% per cent of the cost of food for the service charge. It may, still, be not fair or reasonable, but it is not as bad as paying over four (4) times more than the cost of food.

There is also another disadvantage with the current law. There is no incentive for one to conserve water. If an effort is made to conserve water by 10%, the charge for water consumption, as the law currently is, becomes, $3.99 - 3.99 \times 10\% = 3.59$. The total charge would be $\$17.56 + \$3.59 = \$21.15$. The savings for conserving water by 10% becomes $21.15 - (17.56 + 3.59) = 0.41$. As you can see if one conserves our water resource by 10%, the savings in the total cost is only 1.856%. But if the law is amended, again as an example, that the service charge can not be higher than the charge for water consumption, then the savings for conserving 10% water becomes $7.18 - (3.99 + 3.59) = 0.60$. Now there is a direct ratio between the rate of conserving water and the cost associated it with. IF THE PUC HAS ANY INTEREST IN CONSERVING WATER, THEN SPECIAL ATTENTION SHOULD PAID TO THE EXPLANATION PROVIDED HERE.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

I am a senior citizen and live on Social Security. I live alone and do not have any family.

To pay over 4.4 times the cost of water used for customer charge every month is extremely unfair, unreasonable, and unjust.

I propose that for senior citizens who do not use much water, like me, the monthly customer charge be reduced to no more than the cost of water. That means I would pay an additional 100% the cost of water for customer charge instead of 440% the cost of water as the case is currently.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)
*I called AQUA on October 6, 2011 & discussed my complaint
NO with Kja (EXT 53439) of AQUA.*

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I Dale Sattar, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dale Sattar
(Signature)

10-10-2011
(Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.



DALE SATTAR
0504 MARIAN CT
CONSHOHOCKEN, PA 19428

001543917 0623049

MAIN DIVISION
1101010 PWSID # PA1460073

Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010-3489

Tel: **877.987.2782**
Fax: **866.780.8292**
e Mail: **custserv@aquaamerica.com**

Questions about your fire service?... Contact us before the due date.
Bill Date **September 27, 2011** Total Amount Due **\$ 22.46** Current Charges Due Date **October 19, 2011**

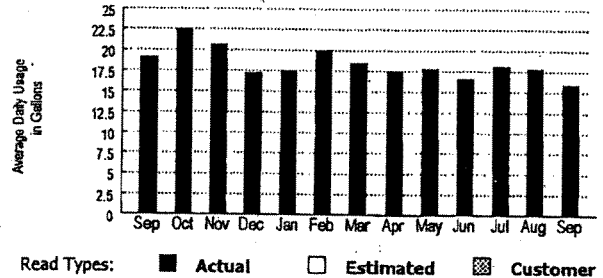
Meter Data

Meter	Size	Billing Period	Days	Read Type	Meter Readings	Usage	Units
56620208	5/8" x 1"	09/23/11	31	Actual	10700	500	Gallon
		08/23/11		Actual	10200		
61620024	5/8" x 1"	09/23/11	31	Actual	296100	0	Gallon
		08/23/11		Actual	296100		
Average Daily Usage = 16 Gallons		Total Days: 31		Total Usage:		500	Gallon

Billing Detail

Amount Owed from Last Bill \$ 22.46
 Total Payments Received..... 22.46
Remaining Balance **0.00**
 Customer Charge..... 17.56
 500 gallons @ \$.00798 per gallon 3.99
 Total Water Charges 21.55
 Distribution System Improvement Charge (DSIC)..... 0.91
Amount Due..... **\$ 22.46**

Water Usage History



Message Center (see reverse side for other information)

- Effective July 1, 2011 the allowable DSIC charge is 4.20 percent. This reflects \$140 million in system improvements made by the company since July 2010. These improvements include the replacement of aging water pipes and other infrastructure, as well as improvements to the quality of the water that we serve. Effective April 1, 2011, the STAS surcharge rate is .0189% reflects the retroactive change in the 2009 Capital Stock and Franchise Tax rate from 1.89 mills to 2.89 mills.
- For us, being green comes naturally. That's why we're happy to introduce Aqua Online. Now you can enjoy the convenience of paperless billing while helping us take care of the environment. Visit www.aquaamerica.com/aquaonline today to make the switch!

Keep top portion for your records.
Return this portion with your payment.

Service To:
DALE SATTAR
0504 MARIAN CT
CONSHOHOCKEN, PA 19428

AQUA Fire Service

Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue • Bryn Mawr, PA 19010-3489

Account Number
001543917 0623049
Amount Due **\$ 22.46** Withdrawn On or After **October 19, 2011**

Seq=21920 Cyc=2018 1up=1065184 21920 1 AB 0.368

0623049

****AUTO**SCH 3-DIGIT 193 C 69 P 76
DALE SATTAR
504 MARIAN CT
CONSHOHOCKEN PA 19428-3718



Do Not Pay
Your bill will be paid through ZipCheck Automatic Payment Program.

Go paperless! You can keep Zipcheck for payment and reduce your clutter. Visit www.aquaamerica.com/aquaonline for more information.

EXHIBIT A



Dale Sattar v Aqua Pennsylvania, Inc.
Docket No. Docket No. C-2011-2268119

EXHIBIT B

Sattar Exception to Joint Settlement

Filed in Aqua's last rate case

Docket R-2009-2132019

RECEIVED

APR 28 2010

Public Utility Commission
Philadelphia Office
Administrative Law Judge

Dale Sattar
6326 fox court
Coopersburg, PA. 18036
610-967-6266

DOCKET NO. C-2010-2150570

April 25, 2010

DALE SATTAR VS AQUA PA. INC. – DOCKET NO. R-2009-2132019

Honorable Angela T. Jones
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia PA. 19107

This is to inform you that I oppose the terms of the settlement. **Specifically I oppose very strongly increasing the customer charge to \$15 per month. I filed my complaint because the current customer charge of \$13.15 for one meter is very excessive and outrageous. I had requested a significant decrease in the monthly customer charge. THE MONTHLY CUSOMER CHARGE FROM PECO FOR ELECTRIC SERVICE IS \$5.31 AND PECO IS NOT KNOWN FOR LOW PRICES. I am horribly disappointed that not only the monthly customer charge is not decreased, it is actually increased.**

Please note the followings:

- ◆ I purchased the townhouse/condo located at 504 Marian Court in Conshohocken on March 4, 2009. The place is vacant and I have not yet moved in. I plan to move in near future. My monthly bill from Aqua Pennsylvania Inc (Aqua), with no water consumption at all, has been about \$17 of which \$15.71 is for customer charge (there is also a monthly charge for DSIC – distribution system improvement charge, even though there has not been any water consumption). This is basically a charge to read the meter and issue the bill. According to Aqua the current monthly customer charge for one meter is \$13.15 and for me is \$15.71 because I have two meters – one for consumption and one for the sprinkler system. Aqua has imposed this requirement on their own even though there is no basis or valid reason for that. The township has informed me in writing that they do not require two separate meters. I think Aqua is out to cheat the residents and enrich themselves as much as they can.

RECEIVED

MAY 28 2010

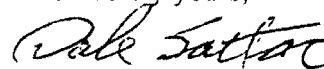
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

- ◆ **During the last twelve months I have paid Aqua over \$200 for absolutely nothing. THIS IS COMPLETELY OUTRAGEOUS. Aqua's current monthly service charge of \$13.15 even for one meter IS A VERY EXCESSIVE AND OUTRAGEOUS. THE MONTHLY CUSOMER CHARGE FROM PECO FOR ELECTRIC SERVICE IS \$5.31 AND PECO IS NOT KNOWN FOR LOW PRICES. NOW YOU CAN SEE HOW UNFAIR, UNREASONABLE, AND OUTRAGEOUS AQUA,S CURRENT MONTHLY SERVICE CHARGE OF \$15.71 IS (WITH NO WATER CONSUMPTION) FOR MY CONDO. PLEASE TELL ME HOW PECO CAN DO IT FOR 5.31 AND I MUST PAY AQUA THREE (3) THREE TIMES AS MUCH. PLEASE TELL ME.**

- ◆ I originally filed my complaint, Docket No. 2009-2133592, prior to the request for rate increase. The Chief Administrative Law Judge issued an interim order "setting conference between parties" assigned to Mediator Cynthia Lehman. I was told by Aqua, during the conference call, that the current monthly customer charge is already approved by the PUC and it is in the tariff. I then withdrew my complaint and filed a new one (the current which is the subject of this letter) because I was told everything would be on the table including the monthly service charge during the request for a rate increase. **I was looking to PUC to do something about the outrageous and excessive current monthly service charge.**

- ◆ Apparently all my effort has been an exercise in futility. There is no question on my mind that Aqua is given the license to steal from the residents. **And now they can steal even more.** I ask you why it should cost so much to read the meter once a month and issue a bill? With the new agreement I have to pay more than three times (Aqua charges me for two meters) than the monthly charge from PECO. I ask you why? Aqua is, at best, inefficient in reading the meter and issue a bill or, at worse, are stealing from the residents. I ask you why I had to pay over \$200 in the past year to Aqua for just customer charge with no water consumption?

Sincerely yours,



Dale Sattar

Dale Sattar v Aqua Pennsylvania, Inc.
Docket No. Docket No. C-2011-2268119

EXHIBIT C

Complainant's Rate Case Complaint

And

PUC entered Order in

Aqua's last rate case

Docket R-2009-2132019

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

R-2009-2132019

Please print or type.

ORIGINAL

1. CUSTOMER NAME (COMPLAINANT)

C-2010-2150570

Your name, mailing address, county, telephone number, utility account number and service address:

Name DALE SATTAR

Street/P.O. Box 0326 FOX COURT Apt #

City COOPERSBURG State PA. Zip 18036

County LEHIGH VALLEY

Area Code/HOME Phone 610-967-6266

Area Code/WORK Phone NA

Utility Account Number (from your bill) 001543917 0423049

SECRETARY'S BUREAU
2009 DEC 20 PM 9:12

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name DALE SATTAR

Street/P.O. Box 504 MARIAN COURT

City CONSHOHOCKEN State PA. Zip 19428

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: AQUA PENNSYLVANIA, INC.

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(taxi, moving company, limousine)

TELEPHONE

(local, long distance)

COMPLAINT (check one) ⁽¹¹⁾

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase. *Additionally, THE MONTHLY CUSTOMER CHARGE IS OUTRAGED AS AND SHOULD BE DECREASED SIGNIFICANTLY*
- There are incorrect charges on my bill. *SEE ATTACHMENT*
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other.
(explain)

B. State the facts of your complaint.

Include any specific dates, times or places that are important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

SEE ATTACHMENT

5. RELIEF

What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

SEE ATTACHMENT

PROTECTION FROM ABUSE - NA

Answer the following question if your complaint is against a natural gas distribution company, an electric distribution company or a water company AND your complaint is about a billing problem, an application for service problem, a termination of service problem or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I DALE SATTAR, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dale Sattar
(Signature)

12-20-2019
(Date)

ATTACHMENT TO PUC FORMAL COMPLAINT FORM

RESPONSE TO ITEM 4A:

I oppose the Aqua PA.'s proposed rate increase for water consumption. Additionally, the current (existing) customer charge of \$15.71 which Aqua Pennsylvania, Inc. (Aqua) charges me every month for just the "customer charge", excluding the charges for water consumptions is very very excessive and outrageous. Please note that I have two meters – one for consumption and one for the sprinkler in case of fire. If I had only one meter, the monthly customer charge would be \$13.15 for the consumption meter which also would be very very excessive and outrageous.

THE MONTHLY CUSOMER CHARGE FROM PECO FOR ELECTRIC SERVICE IS \$5.31 AND PECO IS NOT KNOWN FOR LOW PRICES. THE MONTHLY CUSTOMER CHAGE EVEN FOR THE GAS SERVICE WHICH IS HAZARDEOUS MATERIAL – BOTH COMBUSTIBLE AND POISIONEOUS – AND ITS DISTRIBUTION AND MAINTENANCE IS A LOT MORE INVOLVED AND COMPLICATED THAN WATER SYSTEM, IS \$10.75, see attached copy of the statement from PECO. NOW YOU CAN SEE HOW UNFAIR, UNREASONABLE, AND OUTRAGEOUS AQUA,S MONTHLY SERVICE CHARGE OF \$15.71 IS (WITH NO WATER CONSUMPTION) FOR MY CONDO.

RESPONSE TO ITEM 4B:

I request that you reduce significantly the outrageous monthly customer charge that Aqua Pennsylvania, Inc. is collecting from me and all the residents.

I purchased the townhouse/condo located at 504 Marian Court in Conshohocken on March 4, 2009. The place is vacant and I do not know when I will move in because my house where I reside now is not sold yet.

I received my first water bill at the end of April covering 51 days. Much to my disappointment, even though there was no water consumption (0 gallons), there was a customer charge of \$27.75 which is outrageous, see copy of the attached bill from Aqua. My monthly bill from Aqua with no water consumption at all has been about \$16.50 - \$15.71 of which is for customer charge. This is basically a charge to read the meter and issue the bill. The monthly charge should not be more for having the sprinkler system because Aqua does not have to read the meter for the sprinkler every month for no reason at all.

There are several ways that you can stop Aqua collecting extra customer charge every month for reading the meter for the sprinkler and are presented to you in the preferred order :

(11) (S)

Aqua's monthly service charge of 13.15 even for one meter IS A VERY EXCESSIVE AND OUTRAGEOUS.

THE MONTHLY CUSOMER CHARGE FROM PECO FOR ELECTRIC SERVICE IS \$5.31 AND PECO IS NOT KNOWN FOR LOW PRICES. THE MONTHLY CUSTOMER CHAGE EVEN FOR THE GAS SERVICE WHICH IS HAZARDEOUS MATERIAL – BOTH COMBUSTIBLE AND POISIONEIOUS – AND ITS DISTRIBUTION AND MAINTENANCE IS A LOT MORE INVOLVED AND COMPLICATED THAN WATER SYSTEM, IS \$10.75, see attached copy of the statement from PECO. NOW YOU CAN SEE HOW UNFAIR, UNREASONABLE, AND OUTRAGEOUS AQUA,S MONTHLY SERVICE CHARGE OF \$15.71 IS (WITH NO WATER CONSUMPTION) FOR MY CONDO AND \$13.15 FOR ONE METER, IF AQUA WAS TO CHARGE ME FOR ONE INSTEAD OF TWO AS THE CASE IS NOW .

“Aqua is requesting an overall rate increase of \$43.2 million per year.” This is to “...recover the Company’s investment of \$500 million...” in the water system. Aqua does not state for how many years they plan to collect the proposed increase amount and whether it is permanent or after some years it would be abolished.

Aqua is claiming that they have to replace “...250 miles of aging water main, as well as valves, service lines and other parts of its 5,100-mile distribution system.” The question that begs asking why use a material that ages and need to be replaced. We do not live in dark ages. The technology exist to use material that does not need to be replaced. What about the balance of the 5,100 miles? Is Aqua going to come back again and again every year for rate increase because they plan to do something else?

I live on Social Security check. In 2009, there was no cost of living adjustment because there was no inflation (the CPI not only did not increase, it actually decreased).

According to Aqua's own calculation, the typical customer's bill increases from \$48.28 to \$53.79. That is an increase of over 11.4% in a year that there is no inflation and no cost of living adjustment (COLA) in my SS income.

I have not been a customer of Aqua for long. There is absolutely no question on my mind that Aqua is out to charge the residents as much as it can to get the most money as opposed to serving the residents. The perfect example of that is Aqua's customer charge. Aqua currently charges me a monthly customer charge of \$15.71 because of two meters and \$13.15 for those with one meter which is very excessive and outrageous as opposed to PECO's monthly customer charge of \$5.31. Yet Aqua is requesting an increase in the monthly customer charge from \$13.15 to \$16.00 for those with one meter and about \$20 for my condo. THIS IS TRULY AUDACIOUS, UNBELIEVABLE, AND OUTRAGEOUS.

RESPONSE TO ITEM 5:

I request the following relief:

1)-**The customer charge from Aqua is very excessive and outrageous and should be no more than PECO's monthly customer charge. THE MONTHLY CUSTOMER CHARGE FROM PECO FOR ELECTRIC SERVICE IS \$5.31 AND PECO IS NOT KNOWN FOR LOW PRICES.**

2)- Aqua's request for rate increase should be denied.

I hope you realize that the amount Aqua is permitted to collect for customer charge is a tremendous waste of money for the residents of the township. I really hope you take immediate action to stop Aqua from stealing from the residents of townships they sell water to.

RESPONSE TO ITEM 7:

I have made numerous phone calls to Aqua to find out why the monthly service charge is so high. I was told part of the reason is because of having two meters – one for consumption and one for the sprinkler system. I had asked Aqua to stop reading the meter for the sprinkler system every month for no reason at all but I was not successful.

On May 20, 2009, I finally spoke to a manager by name of George Carmack who confirmed to me that if I had one meter, the service charge would be half as much.

On September 14, 2009, I faxed copy of a letter from PUC to Aqua.

The PUC letter states that I can combine the two lines at my own expense. I followed up with calling George Carmack on September 16, 2009. In response to my question whether the customer charge would be reduced by, at least, one half, he initially stated yes. But when I requested him to send me a letter to that effect, he declined. When I pressed him to confirm that, in fact, the customer charge would be less than \$8 (1/2 of the current charge) per month after hiring a plumber to combine the two lines resulting in having only one meter, he put me on hold. He came back on the phone to tell me that the monthly customer charge after the modification would be \$13.15. When I told him that he had told me during my first phone conversation with him on May 20, 2009 that the customer charge for one meter would be half as much, he stated "that was a misunderstanding". It is very disappointing to me when I learn that someone I have been interfacing with is less than honest. **Aqua has wasted much of my time by playing games and giving me the run around.**

THE \$13.15 MONTHLY CUSTOMER CHARGE AFTER COMBINING THE TWO LINES IS A VERY EXCESSIVE AND OUTRAGEOUS. I SEE NO REASON WHY CUSTOMER CHARGE FOR AQUA SHOULD BE HIGHER THAN THE \$5.31 PECO CHARGES.



Page 1

Name: DALE SATTAR
Service Address: LOT 39, 504 MARIAN CT, CONSHOHOCKEN
Phone Number: 610-967-6266
Account Number: 76030-33199
Issue Date: 07/07/2009

General Information

Next scheduled meter reading: **August 5, 2009**
Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to www.peco.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Diff	Mult X	Usage
				Previous	Present			
07/06	015719966	General Service	Total Ccf	402 ACT	402 ACT	0	1.03	0
07/06	029407454	General Service	Tot kWh	1395 ACT	1395 ACT	0	1	0
Total Ccf Used				0				
Total kWh Used				0				

Current Period

Gas Residential Heating Service	Service 06/04/2009 to 07/06/2009 - 32 Days
Customer charge	\$10.75
State Tax Adjustment	0.01
Total current charges	\$10.76
Electric Residential Service	Service 06/04/2009 to 07/06/2009 - 32 Days
Customer charge	\$5.31
State Tax Adjustment	-0.03
Total current charges	\$5.28

Other Basic Charges

Thank you for your payment of \$22.73

Total amount due **\$16.04**

When paying in person, please bring the entire bill.



Service To:
DALE SATTAR
 0504 MARIAN CT
 CONSHOHOCKEN, PA 19428

Account Number
001543917 0623049

MAIN DIVISION
 1101010

Aqua Pennsylvania, Inc.
 762 W. Lancaster Avenue
 Bryn Mawr, PA 19010-3489

Tel: **877.987.2782**
 Fax: **866.780.8292**

e Mail: **custserv@aquaamerica.com**

Questions about your fire service?... Contact us before the due date.

Bill Date
April 28, 2009

Total Amount Due
\$ 27.75

Due Date
May 20, 2009

Meter Data

Meter	Size	Billing Period	Days	Read Type	Meter Readings	Usage	Units
56620208	5/8" x 1"	04/24/09	51	Actual	400	0	Gallons
		03/04/09		Actual	400		
61620024	5/8" x 1"	04/24/09	51	Actual	296100	0	Gallons
		03/04/09		Actual	296100		

Total Days: 51

Total Usage:

0 Gallons

5/11 SENEY

5/13 MELISA. 15 IS NOT CANCELLED

Billing Detail

Amount Owed from Last Bill	\$ 0.00
Total Payments Received	0.00
Balance	0.00
Customer Charge	26.71
Total Water Charges	26.71
DSIC Charge	1.04
Amount Due 05/20/09	\$ 27.75

~ \$17 FOR 30 DAYS

5/15 TELISA JENNA

*5/16 JENNA: 1- someone will call to see if I can cancel one
 2- will mail form for withdrawal from CHECKING*

*5/20 MARINE { GEORGE CATMACK THE CUSTOMER CHARGE IS
 MANAGER double for 2 meters. With one to
 service charge would one half*

Message Center (see reverse side for other information)

- Effective April 1, 2009 the allowable DSIC charge is 3.88 %. This reflects \$ 104 million in system improvements made by the company since June 2008. These improvements include the replacement of aging water pipes and other infrastructure as well as improvements to the quality of the water that we serve.
- Please note, your account number is a 16-digit number. The full 16-digits including any zeros must be provided to ensure correct and prompt posting to your Aqua account
- If you are a low-income customer and you are unable to pay your past-due account, please call 877.987.2782 for more information about Aqua Pennsylvania's low-income customer assistance "Helping Hand" program.

Return this portion with your payment.
 Keep too cortion for your records.

Service To:
DALE SATTAR

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Public Meeting held June 16, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Wayne E. Gardner
Robert F. Powelson

Pennsylvania Public Utility Commission, et al.

v.

Aqua Pennsylvania, Inc.

R-2009-2132019
C-2009-2143650
C-2009-2143666
C-2009-2144650
C-2009-2144761
C-2009-2145028
C-2009-2145047
C-2009-2145066
C-2009-2145909
C-2009-2146020
C-2009-2146026
C-2009-2146031
C-2009-2146243
C-2009-2146228
C-2009-2147601
C-2009-2148524
C-2009-2148289
C-2009-2148691
C-2009-2149813
C-2009-2150065
C-2009-2150185
C-2009-2150206
C-2009-2150218
C-2010-2150646
C-2010-2150570
C-2010-2150858
C-2010-2151877
C-2010-2151954

C-2010-2152051
C-2010-2152328
C-2010-2152596
C-2010-2153365
C-2010-2153419
C-2010-2154289
C-2010-2154319
C-2010-2155875
C-2010-2155913
C-2010-2167238

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OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition is the Recommended Decision of Administrative Law Judge (ALJ) Angela T. Jones, issued on May 25, 2010, relative to the above-captioned general rate increase proceeding, and the Exceptions and Replies filed with respect thereto.

On June 4, 2010, Mr. Jerome Linden filed Exceptions to the ALJ's Recommended Decision (R.D.). Those Exceptions were filed by the Office of Consumer Advocate (OCA) at the request of and as a courtesy to Mr. Linden. On June 9, 2010, the following Parties each filed Reply Exceptions: Aqua Pennsylvania, Inc. (Aqua or Company) and the Office of Small Business Advocate (OSBA). The OCA and Aqua Large Users Group (Aqua LUG) filed Letters notifying the Commission that they would not be filing Reply Exceptions.

I. History of the Proceeding

On November 18, 2009, Aqua filed¹ with the Commission Supplement No. 100 to Tariff Water –Pa. P.U.C. No. 1 to become effective January 18, 2010,² reflecting an annual increase in revenues of \$43.2 million or 11.8%. The Company alleged the proposed increase is needed to help recover its investment of \$500 million to improve water quality service and reliability for more than 400,000 customers throughout Pennsylvania since its last rate increase. Aqua's capital investments include the

¹ For a full and complete history, please refer to the Recommended Decision at 1-4.

² On December 21, 2009, Aqua filed proposed tariff pages to replace previously filed tariff pages.

replacement or rehabilitation of more than 250 miles of aging water mains, valves, service lines and other parts of its 5,100 mile distribution system.

By Order entered January 14, 2010, the Commission instituted a formal investigation to determine whether the proposed tariff filing and the proposed changes in rates, rules and regulations are unlawful, unjust, unreasonable and contrary to the public interest. In addition, the investigation includes a consideration of whether the Company's existing rates, rules and regulations are reasonable. Accordingly, pursuant to 66 Pa. C.S. § 1308(d), the Commission suspended Tariff Supplement No. 100 until August 18, 2010, unless otherwise directed by Commission Order.

The case was assigned to the Office of Administrative Law Judge for prompt scheduling of hearings and for the issuance of a Recommended Decision. There were thirty-seven Formal Complaints filed against the proposed rate increase. On November 23, 2009, counsel for the OCA entered a notice of appearance and filed a Formal Complaint and public statement against the proposed rate increase. On November 25, 2009, counsel for Aqua entered their Notice of Appearance. On December 8, 2009, the OSBA filed a Formal Complaint and its Notice of Appearance and a public statement opposing the proposed rate increase. On January 14, 2010, counsel for the Office of Trial Staff (OTS) filed their notice of appearance. Counsel for Aqua LUG filed its Formal Complaint on January 22, 2010. The following *pro se* Complainants elected to be active participants:

1. Dr. Jonathan Briskin, Esq., at Docket No. C-2010-2155875;³
2. Pastor William Burris at Docket No. C-2009-2146020;
3. Mrs. Zarrin Damavandi at Docket No. C-2009-2148691;
4. Mr. William Frazier at Docket No. C-2010-2151954;

³ By letter dated March 5, 2010, Dr. Briskin acknowledged that he is an attorney and a member in good standing of the bar of the Commonwealth of Pennsylvania.

5. Mr. Jerome Linden at Docket No. C-2010-2152328;
6. Mr. Joseph Monaghan at Docket No. C-2009-2144761; and
7. Mr. Emilio Rende at Docket No. C-2009-2146020.⁴

ALJ Jones granted the Petition to Intervene filed by counsel on behalf of Masthope Property Owners Council (MPO) on February 1, 2010.

A Prehearing Conference was held in Philadelphia and Harrisburg, joined telephonically, on February 1, 2010. Public Input hearings were discussed and a schedule was set for hearings and formal testimony by the Parties. The schedule included five in-person Public Input sessions and one telephonic session. The in-person Public Input hearings were held on February 24, 2010, in Honesdale, PA, and in Shavertown, PA; on March 3, 2010, in Radnor Township, PA and in Hatboro, PA; and on March 4, 2010, in West Chester, PA. The telephonic Public Input session was held on March 8, 2010. Below is a section devoted to summarizing the testimony heard at the Public Input sessions.

On February 23, 2010, Aqua filed a Petition for Protective Order to limit disclosure of confidential information in this proceeding. No active Party objected to the Petition and it was granted by ALJ Jones by Order dated March 16, 2010.

The Parties submitted direct and rebuttal testimony in accordance with the procedural schedule. The OCA requested that it be permitted to extend the due date for surrebuttal testimony. No active Party opposed the request and ALJ Jones granted it by Order dated March 31, 2010.

⁴ Mr. Rende decided to testify at a Public Input session knowledgeable that the consequence was to change his status to an inactive participant.

By electronic mail dated March 31, 2010, ALJ Jones was informed of a non-unanimous Settlement between all Parties represented by counsel, excluding Dr. Briskin. As a consequence, the evidentiary hearings were convened for one day on April 8, 2010, and were abbreviated to allow cross examination by Dr. Briskin and testimony by Pastor Burris. The settling Parties stipulated to pre-filed testimonies that were admitted into the record without objection. The following active Parties were signatories to a Petition for Joint Settlement (Joint Settlement) submitted on April 20, 2010: (1) Aqua; (2) Aqua LUG; (3) MPO; (4) the OCA; (5) the OSBA; and (6) the OTS (collectively Joint Parties).⁵

Access to the non-unanimous, proposed Joint Settlement was provided through an Internet website to all Parties to this proceeding. A letter was sent to the non-signatory Parties asking them to sign to accept the Settlement, indicate whether they opposed the Settlement or indicate whether they chose not to oppose the Settlement. The letter also stated that the Party could choose to do nothing. The following Parties chose to support the Settlement:

1. Borough of Athens at Docket No. C-2010-2154289;
2. Borough of Sayre at Docket No. C-2010-2153365;
3. Borough of South Waverly at Docket No. C-2010-2153419; and
4. B. D. Pollard at Docket No. C-2009-2150218.

The following Parties chose to not oppose the Settlement:

1. Mark Green at Docket No. C-2010-2152051;
2. David Holmes at Docket No. C-2009-2145066; and
3. Emilio Rende at Docket No. C-2009-2146020.

⁵ Although the Joint Settlement was submitted on April 20, 2010, it was not filed until May 5, 2010, due to an oversight.

The following Parties chose to oppose the Settlement:

1. Dr. Jonathan Briskin, Esq. at Docket No. C-2010-2155875;
2. Pastor William Burris at Docket No. C-2009-2146020;⁶
3. William Frazier at Docket No. C-2010-2151954;⁷
4. Paul Kalna at Docket No. C-2010-2152596;
5. Mr. Jerome Linden at Docket No. C-2010-2152328;
6. Dale Sattar at Docket No. C-2010-2150570;
7. Kevin Tracey at Docket No. C-2009-2150206; and
8. Ronald Ziebig at Docket No. C-2009-2148289.

In compliance with the procedural schedule, Aqua, Dr. Briskin, and Mr. Linden filed Main Briefs on or before April 29, 2010. Reply Briefs were filed by Aqua, Dr. Briskin, Mrs. Damavandi, and the OSBA on May 10, 2010. The record closed on May 10, 2010.

ALJ Jones's Recommended Decision was issued on May 25, 2010. In her Recommended Decision, the ALJ found, *inter alia*, that the Joint Settlement submitted by the Joint Parties is just and reasonable and should be approved. The ALJ further found that, upon the Commission's approval of the Settlement, the Company will receive a stipulated increase in annual revenues of \$23.6 million, in lieu of the Company's original base rate increase request for \$43.2 million. R.D. at 48.

Exceptions and Reply Exceptions to the Recommended Decision were filed as above noted. As duly noted in our determinations herein, we are adopting the ALJ's Recommended Decision, consistent with this Opinion and Order, and, hence, approving the Joint Settlement agreement.

⁶ Pastor Burris is an active Party and filed a letter in opposition in lieu of a Brief to both the rate increase and the proposed Joint Settlement.

⁷ Mr. Frazier is an active Party to this proceeding and filed a letter in opposition in lieu of a Brief.

II. Description of the Company

Aqua is a regulated Pennsylvania public utility and is a wholly-owned subsidiary of Aqua America, Inc. (AA).⁸ The Company furnishes water service to approximately 408,923 customers in a service territory covering portions of twenty-two counties across the Commonwealth. Its principal executive offices are located in Bryn Mawr, Pennsylvania. Aqua M.B. at 1.

III. Discussion

A. Public Input Hearings

The dates and locations of the public input hearings have been described above. A sampling of the testimony will be provided.⁹

Some testimony concerned the quality of the water. For example, Mr. Wendell Kay, a Commissioner of Wayne County, testified that there is, specifically over the summer months, a sulfurous and chlorine odor present in the water. Other witnesses complained of poor water pressure.

In addition, some witnesses challenged the rate increase in view of the poor economic conditions in the Commonwealth at this time. Tr. at 63-65. Other people testified that Aqua has come for (1) a rate increase in 2007; (2) another increase, the Distribution System Improvement Charge (DSIC) in 2008; and now (3) this instant proposed rate increase in 2009. Several witnesses, however, asserted that Aqua was to be applauded for

⁸ Prior to January 16, 2004, Aqua was known as the Pennsylvania Suburban Water Company (PSW) and, before that, as the Philadelphia Suburban Water Company.

⁹ For a more detailed discussion of the public input hearings, see pages 5-11 of the Recommended Decision.

its efforts in improving the infrastructure and its interest in protecting the natural environment.

Ms. Sara Karlowicz, State Representative Phyllis Mundy's aide, read a statement from the state representative into the record. Rep. Mundy not only opposed the proposed rate increase but also the proposed tariffs that would automatically adjust customer rates to reflect changes in purchased water costs and purchased electricity costs. These proposed new tariffs she likens to the DSIC and she also avers that the tariffs do not take into account reduced operating costs or other cost savings. She contends that the proposed increases in rates are not just or reasonable particularly in these difficult financial times. Tr. at 220-23.

B. Terms and Conditions of the Joint Settlement

The Joint Parties agree to the following pertinent terms and conditions for the Settlement regarding Aqua's proposed rate increase:

1. That Aqua be permitted to implement the water rates as proposed in the tariff supplement, attached as Appendix A to the settlement to become effective for service on one day's notice, following the entry of a Commission Order approving the Joint Settlement. The tariff supplement produces additional annual operating revenue of \$23.6 million with total annual water revenue of approximately \$389.06 million. A proof of revenue is attached to the Joint Settlement Petition as Appendix B.
2. That Aqua will forego another water rate increase under Section 1308(d) of the Public Utility Code prior to November 18, 2011. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes which directly and substantially affect the Company's rates, the Joint

Settlement shall not prohibit the Company from filing tariff supplements to the extent necessary. The Joint Parties agreed that if Aqua files a general base rate water case on or after November 18, 2011 but before January 1, 2012, Aqua will be permitted to use historic test year data for the twelve month period ending June 30, 2011.

3. That the rates set forth in Appendix A to the Joint Settlement Petition reflect the Joint Parties' agreement regarding rate structure, rate design and the distribution of increase in revenues as follows:

a. Main Division

Customer Charge		
5/8" meter	Up to 1" meter	1.5" & greater
\$15.00 (Increased 14.1%)	Increased by 14.1%	Increased by 7.5%

The fourth block for the public class is \$0.5382 per hundred gallons.

b. Applewood and Marienville

Customer Charge/month		
5/8" meter	Up to 1" meter	1.5" & greater
\$15.00 (Increased 14.1%)	Increased by 14.1%	Increased by 7.5%

Residential class usage rate is \$0.700 per hundred gallons for all usage. Commercial and Industrial class usage rates are \$0.810 per hundred gallons for the first block with the settlement rates for the Main Division used for the remaining blocks.

c. Clarendon

Customer Charge/month			
5/8" meter	3/4" meter	1"/1.5"/2" meters	3" meter
\$15.00	\$20.00	\$25.00	\$40.00

The Residential, Commercial and Industrial class usage rates are \$0.5345 per hundred gallons for all usage.

d. Emlenton

Same rates as apply for Applewood and Marienville.

e. Garbush

Same rates as apply for Main Division.

f. Honesdale

For the Residential class, 5/8" meters minimum charge of \$60.00 per quarter and a water allowance of 3,000 gallons per quarter. All other usage rates for the Residential class are:

Usage/quarter	Rate
More than 3,000 up to 30,000 gallons	\$0.5500 per 100 gallons
Next 70,000 gallons	\$0.4500 per 100 gallons
All usage over 100,000 gallons ¹⁰	\$0.3000 per 100 gallons

¹⁰ The Joint Settlement Petition read 70,000 gallons, but ALJ Jones interpreted that figure as a typographical error and, therefore, not a substantive change to a settlement term.

For all other meter sizes and other classes the rates will be as proposed in Appendices A and B of the Joint Settlement Petition.

g. Kratzerville

Customer charge for 5/8" meters is \$15.00 per month. The usage charge for the Residential and Commercial classes is [S]0.5345 per 100 gallons.

h. Stanton and Wapwallopen

Same rates as apply for Main Division.

i. Bensalem

Same customer charges as apply for Main Division. The Residential class usage rate is \$0.710 per 100 gallons for all usage. The first and second blocks of the Commercial and Industrial usage above 3,333 gallons per month are the same as the corresponding blocks for the Main Division in the Joint Settlement Petition.

j. Chalfont

Rates are increased by 7.5% which reflects the roll-in of the Distribution System Improvement Charge (DISC) of Aqua. In subsequent water base rate filings Aqua will propose rates designed to move Chalfont rates to existing Main Division rates over the next two base rate cases.

k. White Haven

Rates are increased by 7.5% which reflects the roll-in of the DISC of Aqua. In subsequent water base rate filings Aqua will propose rates designed to move a White Haven

residential customer with average consumption to pay approximately the same amount as a customer with the same consumption in the Main Division.

l. Country Club Gardens

The customer charges for 5/8", 3/4" and 1" meters are \$12.00 per month. Residential class usage rate is \$0.325 per 100 gallons for the first 2,000 gallons per month and \$0.4031 per 100 gallons for all usage over 2,000 gallons per month. The Commercial class usage rate is \$0.500 per 100 for all usage.

m. Shenango

The first block of the Sales to Other Utilities class usage rate is set equal to the first block of the Commercial class usage rate for the Main Division of the Joint Settlement Petition. The second block of the Sales to Other Utilities class usage rate is increased by the same percentage as the increase in the first block.

n. Midway Manor, Rivercrest and NUI-3

Same rates as apply for Main Division.

o. Seasonal Customers – Western, Fawn Lake and Woodledge Village Divisions

The customer charges for 5/8", 3/4" and 1" meters are \$25.00 per month. The first block usage charge, which applies to usage up to 4,000 gallons per month, is such that a residential customer using 4,000 gallons per month will pay a total bill (customer charge and usage charge) equal to the total bill (customer charge and usage charge) paid by a Main Division residential customer using the same 4,000 gallons per month. All usage over 4,000 gallons per month is priced at the second

block rate, which is the same as the Main Division second block residential rate in the Joint Settlement Petition.

p. Quasi-Seasonal Customers – Eagle Rock, Oakland Beach, Lakeside, CS Water and Pinecrest

(1) Eagle Rock – The customer charges for 5/8” and 3/4” meters are \$25.00 per month. The usage charges are the same as set in the Joint Settlement Petition for Seasonal Customers.

(2) Oakland Beach and Lakeside – The charges and usage rates are those proposed by Aqua in its initial filing.

(3) CS Water – The minimum charges for 5/8” and 3/4” meters are \$25.00 per month and the associated water allowance is 2,000 gallons per month. Usage above the allowance will be priced as follows:

(i) up to 6,000 gallons per month, at the first block rate of \$0.400 per 100 gallons; and

(ii) all usage over 6,000 gallons per month, at the second block rate of \$0.700 per 100 gallons.

(4) Pinecrest – The customer charges for 5/8” and 3/4” meters are \$25.00 per month. The usage charge is \$0.550 per 100 gallons and applies to all usage.

q. Public Fire Service

(1) The rate in the Main Division is \$25.25 per hydrant per month.

(2) The rate is \$19.00 per month for the following divisions:

- (i) LaReserve,
- (ii) Uwchlan,
- (iii) West Whiteland,
- (iv) Susquehanna,
- (v) Shenango,
- (vi) Monroe Manor,
- (vii) White Haven,
- (viii) Waymart,
- (ix) Rolling Green,
- (x) Oakland Beach,
- (xi) Hawley, and
- (xii) Eagle Rock.

(3) The rate is increased by 35% in the following divisions:

- (i) Honesdale,
- (ii) Fawn Lake,
- (iii) Bristol,
- (iv) Kratzerville,
- (v) Chalfont, and
- (vi) Bensalem.

r. Private Fire Service

Main Division Private Fire Service base rates are not being increased. The existing DSIC is not being rolled-in to the existing base rates. The Private Fire Service rates in Bensalem and Honesdale are as proposed by the Company in its initial filing.

s. Competitive Rate Rider Contract Customers

Boeing Helicopter is to be billed at the Main Division Industrial class rates and not a previously contracted rate under Aqua's Competitive Rate Rider (CRR). Regarding Montenay Resources, a customer furnished service under Aqua's CRR, the Company will obtain a competitive alternative supply analysis and provide the analysis in its next water base rate case. Aqua will obtain competitive alternative

supply analyses from Montenay Resources at least once every five years thereafter.

t. Allocation of Revenues

The percentage increases to each customer class under the Joint Settlement Petition and a comparison of the class cost of service to class revenues under the Joint Settlement Petition for each customer class are shown in Appendix B.

4. Aqua will amortize the following acquisition adjustments in the manner shown below:

Acquisition	Adjustment	Amount Amortized	Amortization Period	Annual Amortization	Effect On Revenue Requirement
Sleepy Hollow	Negative	\$99,921	Through June 30, 2030	\$4,996	Reduction
Washington Park	Negative	\$11,493	Through June 30, 2030	\$575	Reduction
Cove Village	Negative	\$154,358	Through June 30, 2030	\$7,718	Reduction
Clarendon	Positive	\$201,107	Through June 30, 2030	\$10,055	Increase
Kratzerville	Positive	\$56,599	Through June 30, 2030	\$2,830	Increase
Honesdale	Positive	\$1,521,927	Through June 30, 2030	\$76,096	Increase

5. Quality of Service

a. Honesdale

Aqua will submit semi-annual reports on the status of its construction projects, water quality complaints and Company responses to those complaints. Aqua will provide treatment for arsenic at the Quarry Well. Aqua will provide treatment for manganese and hydrogen sulfide at the Weidner Well. Aqua will notify customers in advance when scheduled,

major construction activities occur and will fully comply with the Pennsylvania Dept. of Environmental Protection's (DEP) notification procedures regarding the loss of positive pressure, as set forth in DEP Document No. 383-2129-004.

b. Michael Ciocco

Aqua will evaluate the feasibility of creating a separate booster zone to increase pressure to the residential area in which Mr. Ciocco currently resides. Aqua will provide the results of its analysis to Mr. Ciocco and to the Joint Parties within 120 days of the Commission's approval of the Joint Settlement. Aqua will confirm that all public fire hydrants in Mr. Ciocco's current neighborhood flow at least 500 gallons per minute, with residual pressure of 20 pounds per square inch.

c. Deerfield Knoll

Aqua will evaluate the feasibility of replacing the existing 2" main that feeds the upper elevations in Deerfield Knoll. Aqua will report the results of this analysis to the Deerfield Knoll community and the Joint Parties within 120 days of Commission approval of the Joint Settlement Petition.

d. Saddle Ridge

Aqua will evaluate the feasibility of installing fire hydrants within the Saddle Ridge development and will report the results of its analysis to the Saddle Ridge community and the Joint Parties within 120 days of Commission approval of the Joint Settlement Petition.

e. Conneaut Lake

Aqua will submit semi-annual reports on the status of its construction projects, water quality complaints and Company responses to those complaints. Aqua will install sequestering equipment at the Oakland Beach Well and notify customers in

advance when scheduled, major construction activities occur. Aqua will fully comply with DEP notification procedures regarding the loss of positive pressure, as set forth in DEP Document No. 383-2129-004.

e. Oneida

Aqua will submit semi-annual reports on the status of its construction projects, water quality complaints and Company responses to those complaints. Aqua will notify customers in advance when scheduled, major construction activities occur and will fully comply with the DEP notification procedures regarding the loss of positive pressure, as set forth in DEP Document No. 383-2129-004.

6. Aqua withdraws its proposed Energy Cost Adjustment and Purchased Water Adjustment, and the Joint Parties agree that the withdrawal is without prejudice to Aqua's right to propose such adjustments in the future.

7. Aqua will evaluate decreasing the usage exceedance that triggers a notification on customers' bills and will develop an Internet website to be linked to the bill message focused on conservation and possible causes of high usage.

8. Aqua will match the current Helping Hand contribution donated directly by customers up to a total of \$50,000.00 over the next two years. Aqua will continue to promote awareness of the program to customers and local agencies for each county within the Company's service territory.

R.D. at 12-21.

The Joint Settlement is proposed by the Joint Parties to settle the instant case and is made without any admission against, or prejudice to, any position which any joint party might adopt during subsequent litigation, including further litigation of this proceeding. It is understood, however, that the amortizations of acquisitions adjustments

in paragraph 4, *supra*, shall be binding upon the Joint Parties in future proceedings, should the Joint Settlement be approved. The Joint Settlement is conditioned upon the Commission's approval of the terms and conditions contained therein without modification. If the Commission should disapprove the Joint Settlement or modify the terms and conditions therein, the Joint Settlement may be withdrawn upon written notice to the Commission and all active Parties within three business days following entry of the Commission's Order by any of the Joint Parties and, in such event, shall be of no force and effect. In the event that the Commission should disapprove the Joint Settlement or that the Company or any other Joint Party should elect to withdraw, as provided above, the Joint Parties reserve their respective rights to fully litigate this case, including but not limited to presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

C. Applicable Law

The purpose of this investigation is to establish rates for Aqua customers which are "just and reasonable" pursuant to Section 1301 of the Public Utility Code (Code), 66 Pa. C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pennsylvania Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the

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

Bluefield, 262 U.S. at 692-3.

Commission policy promotes settlements, 52 Pa. Code § 5.231.

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

Section 315(a) of the Code reads as follows:

§ 315. Burden of proof

(a) Reasonableness of rates.—In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a). Consequently in this proceeding, Aqua has the burden to prove that the rate increase it has proposed through the Joint Settlement is just and reasonable. The Joint Parties have reached an accord on the issues and claims that arose in this proceeding and submitted a Joint Settlement Petition for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Parties have the burden to prove that the Joint Settlement is in the public interest.

D. Issues Presented – Specific

As noted above, Mr. Jerome Linden filed Exceptions to the Recommended Decision and several Parties filed Reply Exceptions thereto. We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Current Financial Climate

a. Positions of the Parties

Many citizens in the Public Input hearings contended that the current economic situation, with unemployment at approximately 9% in the Commonwealth, is reason to prohibit the proposed rate increase. Tr. at 63-65, 113-15, 220-23, 479, Damavandi M.B. at 4. Dr. Briskin contended that Aqua's expert, Mr. Paul Moul, failed to consider the impact of his recommendations on the customer base. In addition, Dr. Briskin argued that no consideration was given to various income levels of residential customers, or customer classes and corresponding usage in cost and expense allocations. Briskin M.B. at 6. Mrs. Damavandi added that Aqua customers do not enjoy the benefits of competition for lower rates. Mrs. Damavandi also stated that Aqua has had several rate increases over the past six years and may well request another rate increase on or shortly after November 18, 2011. The cumulative effect of these rate increases is "outrageous" or unsustainable and the current proposed rate increase should not be approved. Damavandi M.B. at 5.

The Joint Parties did not specifically address this issue. However, the proposed Joint Settlement provides for an increase in operating revenues of \$23.6 million or 6.46%. Noting that Aqua's last increase in base rate occurred in July 2008, the settlement rate is approximately 3.23% on an annual basis over the period since the Company's last base rate increase. Aqua St. in Support at 1, ¶ 1. The OCA stated that the Joint Settlement represents an approximate 45.4% reduction in Aqua's initially requested \$43.2 million rate increase and also represents an amount within the range likely of litigation outcomes. OCA St. in Support at 2.

b. ALJ's Recommendation

The ALJ stated that she found this argument emotionally compelling but not legally sustainable. Also, she stated that the argument did not address reasons the increase is unjustified; rather it suggests reasons why an increase cannot be maintained by some ratepayers. The argument failed to show that Aqua's cost to distribute and deliver water service has not increased through various expenses made by the Company, such as improvement to infrastructure. Furthermore, she stated that the action taken to reduce the proposed increase, through the Joint Settlement, reasonably accounts for the current difficult financial environment. Thus, she concluded that this argument is not meritorious. R.D. at 28.

c. Disposition

No Party filed Exceptions on this issue. Since no Exceptions were filed, and finding the ALJ's recommendation to be otherwise reasonable, the ALJ's recommendation is adopted.

2. Pay and Remuneration to Executives and Others is Unsupported

a. Positions of the Parties

Dr. Briskin contended that the executive pay, other remuneration and benefits to directors and shareholder dividends represent millions of dollars from Aqua revenues that have not been clearly disclosed in this proceeding. Briskin M.B. at 7. Dr. Briskin suggested that these facts are relevant and affect the issue of whether it is reasonable to raise base water rates. Briskin M.B. at 10. Dr. Briskin also asserted that Aqua failed to include the relevant cost records and accounts of its affiliated interests. Thus, according to Dr. Briskin, the sum of \$7,658,109 paid to Aqua Services Inc., and dividends of approximately \$20 to \$30 million per year to AA are in violation of the Code at 66 Pa. C.S. § 2106 and should be removed as an expense. Briskin M.B. at 9.

In response, Aqua contended that extensive data on these items was contained in its initial filing, direct testimony and Exhibits. Specifically, Aqua indicated that affiliated service fees are discussed in Aqua St. 3, attachment 1, executive compensation is discussed in Aqua Exh. 2-A; OE 5; OE 22 and dividend payments are found at RR 24. Aqua also suggested that extensive information was shared through discovery requests concerning executive compensation and affiliate charges. See Aqua R.B. at 4, note 3.

b. ALJ's Recommendation

ALJ Jones state that she found the argument of Dr. Briskin unconvincing. She continued that Dr. Briskin may be unfamiliar with the filing requirements in a rate case, or he may simply have failed to examine the filing by Aqua in its entirety. In any case, the ALJ pointed to the Commission's Regulations at 52 Pa. Code § 53.53 (a) and (c), which read as follows:

§ 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million.

(a) When a public utility, other than a canal, turnpike, tunnel, bridge or wharf company, files a tariff or tariff supplement seeking a general rate increase within the meaning of 66 Pa. C.S. § 1308(d) (relating to voluntary changes in rates), and the general rate increase exceeds \$1 million in gross annual revenues, in addition to the data required by other provisions of this chapter, the tariff or tariff supplement shall be accompanied by responses to the data requests contained in the following exhibits which apply to the utility types indicated.

(1) Exhibit A—Utilities except communications, electric, water and wastewater utilities.

(2) Exhibit B—Communications utilities.

(3) Exhibit C—Electric utilities.

(4) Exhibit D—Water and wastewater utilities.

* * *

(c) Initial utility direct testimony of a witness who shall testify in support of the utility's position shall be provided as part of the filing materials. The testimony of the filing utility shall include a complete explanation and justification of claims which depart from the unadjusted test year results of operations, including the methodology and rationale. The testimony shall be accompanied by supporting worksheets, if necessary, and shall refer to supporting exhibits to which the testimony relates. The explanation and documentation of the proposed adjustments shall enable a reasonably informed party to determine how the amount was calculated and to understand why the amount is being claimed.

See, specifically, requirements contained in Exhibit D, III. Operating Expense 5 and 6 (salary, wage and fringe benefit increases; and analysis by functional accounts of charges by affiliates, respectively). ALJ Jones concluded that Aqua filed in compliance with Commission regulations and, accordingly, Dr. Briskin's contentions on this point are mistaken. R.D. at 29-30.

c. Disposition

No Party excepts to the ALJ's recommendation on this issue. As such, and finding the ALJ's recommendation to be otherwise reasonable, it is adopted.

3. Failure to Propose Appropriate Revenue Requirement

a. Positions of the Parties

Dr. Briskin asserted that, based on the testimony of Aqua's witness Moul, the rate of return should not exceed 4.75 to 5%, which is the rate payable on the \$74.685 million raised by a tax exempt bond issue on November 15, 2009, by Aqua. Briskin

M.B. at 7-8. Dr. Briskin implied that any rate of return that exceeds this range is unreasonable. He also criticized Mr. Moul's objectivity and whether his recommendations account for the perspective of the customer. Briskin M.B. at 8.

Mr. Linden acknowledged that there is no explicit rate of return in the Joint Settlement. However, he noted that the proposed increase in revenue is about half of what was requested and, therefore, estimates that the return on equity to the Company in the Joint Settlement equates to about 10.5%. Mr. Linden asserted that a ROE of 10.5% would over-compensate shareholders. Linden M.B. at 1-3. He also asserted that Aqua has no need to raise capital because its present rate of equity return is comparable to that of York Water Company when that company issued common equity in September 2009. Linden M.B. at 2. Finally, he asserted that York Water Company is directly comparable to Aqua as a regulated entity by the Commission.

Aqua responded with the following points:

- (1) The Company has been financed through several issuances of debt and infusions of equity over the years;
- (2) The Company's rate base approximates \$1.63 billion; not \$74.685 million as referenced by Dr. Briskin;
- (3) There is no record support that the Company has available to it unlimited quantities of tax exempt debt; and
- (4) It is suspected that the Commission would not approve the Company maintaining a capital structure composed entirely of debt.

Aqua R.B. at 2. Aqua further defended its witness Moul, by stating that his recommendations have been reviewed by the OTS, a review which recognized the

perspective of all customer classes, and by the OCA, a review which recognized the perspective of the residential customers. Aqua R.B. at 2-3.

Aqua also noted that the Joint Settlement is a “black box” without any specified equity return rate. Moreover, the asserted 10.5% attributed to the equity return rate in the instant case is below that approved by the Commission in the Company’s last water base rate case. Aqua R.B. at 7, *citing, Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Opinion and Order entered July 31, 2008) (*Aqua’s 2008 Rate Order*). Aqua also pointed out that the analysis that Mr. Linden attempted to make in direct comparison with York Water Company are for different periods; that is, the twelve months ending in June, 2009, for York Water Company and the twelve months ending in June, 2010, for Aqua. Aqua R.B. at 6.

The OSBA stated that its witness Kalcic testified that the Commission awarded Aqua an 11.0% rate of return in Aqua’s previous rate case, which concluded in July 2008. OSBA St. 1 at 13. The OSBA reasoned that because the Joint Settlement provides Aqua a lower rate of return than previously awarded by the Commission, the Settlement is in the public interest. OSBA R.B. at 5-6.

b. ALJ’s Recommendation

ALJ Jones stated that she failed to find any justification to limit the rate of return to the rate payable on approximately \$74 million in tax exempt bonds issued by the Company in November 2009. Also, she noted that Dr. Briskin did not provide any information as to why the Company should maintain a capital structure composed entirely of debt, or any evidence that the Company is ready and able to do so. Moreover, his attempt to discredit the Company witness is not meritorious.

The ALJ continued that the argument regarding the level of the return on equity proposed through the Joint Settlement of approximately 10.5% is more persuasive. Nevertheless, she noted that the Commission approved a rate of return of 11.0% in *Aqua's 2008 Rate Order*. Accordingly, the rate of return, if approved in this proceeding, would be 50 basis points less. The ALJ concluded that Mr. Linden's argument was refuted by the sound reasoning presented by the OSBA. R.D. at 32.

The ALJ concluded that the arguments regarding revenue requirement posited against the Joint Settlement by Dr. Briskin and Mr. Linden have been adequately rebutted. R.D. at 32.

c. Exceptions and Replies

In his Exceptions, Mr. Linden argues that Aqua has not demonstrated that the return on present rates is inadequate to attract the capital needed to finance future plant improvements. Mr. Linden states "that the Recommended Decision is devoid of any analysis of Aqua's claim that it cannot come close to raising capital at the indicated rate of return." Mr. Linden submits that it is not clear if the ALJ relied on Aqua's criticism of his comparison to York Water Company. Mr. Linden avers that even if his comparison with York Water Company is rejected, the burden of proof is still on Aqua that a rate increase is needed, not upon the Complainants to prove that it is not. Linden Exc. at 4.

Mr. Linden states that the ALJ erred by not addressing his position that the 10.5% return on equity that would result from the proposed Settlement unfairly overcompensates shareholders. He points out that in his Main Brief, he noted that AA shareholders have realized stock appreciation returns well in excess of the S&P 500. Mr. Linden argues that dismissing his argument solely by saying the return is less than the 11% granted in the last case is "wholly inadequate." *Id.* at 5.

Mr. Linden also avers that the Recommended Decision does not adequately address his argument that Aqua ratepayers are subsidizing other AA subsidiaries in other states. Mr. Linden points to his Main Brief where he notes that Aqua is providing only 54% of AA's revenues while Aqua provides 80% of its net income. *Id.* at 6.

In response to Mr. Linden's Exceptions, Aqua avers that it has demonstrated its need for rate relief and points to pages 5-12 of its Main Brief. Aqua also submits that there is no basis for Mr. Linden's arguments based on his 10.5% equity cost rate estimate. Aqua states that the signatory parties have agreed to a "black box" settlement under which individual revenue requirement components are not quantified or stipulated. In addition, there is no evidence that Aqua achieved "anything close" to Mr. Linden's 10.5% return during the period in question. Aqua R.Exc. At 3-4.

Aqua also argues that Mr. Linden's comparison of Aqua's contribution of revenue and income to AA does not prove that Aqua is subsidizing other AA affiliates. Aqua states that if Mr. Linden's comparison has any probative value, it indicates that AA's affiliates "were badly in need of rate relief," not that Aqua was earning too much. *Id.* at 4.

d. Disposition

In considering the proposed Joint Settlement, we are determining, *inter alia*, whether an increase of \$26.3 million in annual operating revenue is in the public interest without making a determination of any specific components that may have led to the calculation of the specific revenue requirement. Consequently, we are unable to make any determination regarding the rate of return on equity that Aqua may ultimately realize from the rates adopted under the proposed Settlement. Accordingly, we cannot adopt the ALJ's finding that an estimated 10.5% rate of return that may be the result of

the proposed Joint Settlement is preferable to the *pro forma* rate of return granted in Aqua's prior rate proceeding.

Similarly, there is no basis to address Mr. Linden's positions that the rate of return that may result from this Settlement will provide an excessive return. Therefore, we deny Mr. Linden's Exceptions and reject the ALJ's findings that are based on an estimated rate of return that may result from the proposed Joint Settlement.

4. Inappropriate Depreciation Expense

a. Positions of the Parties

Dr. Briskin asserted that the depreciation expense claim by Aqua of \$52,774,920, is initially paid by the ratepayers for the cost of the capital expenditure and then claimed a second time for depreciation of that same capital expenditure for purposes of a requested rate increase. Briskin M.B. at 9. He furthermore contended that an amortization average of thirty-six years is an unreasonably short period and that the record is deficient in complying with the requirements of 66 Pa. C.S. § 1703, by its use of an accounting technique which is appropriate for business planning and taxation purposes, but not appropriate for ratemaking purposes. Briskin M.B. at 9. Finally, he contended that the entire depreciation expense claim should be denied as unjust and unreasonable "double dipping." Briskin M.B. 8-9.

Aqua responded that its investment to construct or replace plant and equipment is not expensed but is added to rate base. Aqua noted that basic ratemaking principles entitle utilities a return on, and a return of, any utility investment. Aqua R.B. at 3. As Mr. Moul testified, the return of investment occurs over the life of the plant or equipment through annual depreciation accruals. Aqua also stated that its depreciation expense claim is based on straight-line book depreciation, not accelerated tax depreciation, contrary to the allegation by Dr. Briskin. Aqua R.B. at 4, citing Aqua St. 6; Aqua Exh. 6-A,

Parts I and II. Moreover, the depreciation lives adopted by Mr. Spanos, the witness that testified to the method of depreciation, are the results of a detailed service life study. Aqua R.B. at 4. Finally, Aqua asserted that Dr. Briskin made the bald statement that the depreciation lives used by Aqua are low, but that he provided no explanation or support for that statement.

b. ALJ's Recommendation

ALJ Jones noted that Section 1703 of the Code reads as follows:

§ 1703. Depreciation accounts; reports

(a) ACCOUNTS.-- Every public utility shall carry on its books or records of account, proper and reasonable sums representing the annual depreciation on its property used or useful in the public service, which sums shall be based upon the average estimated life of each of the several units or class of depreciable property. The commission, by appropriate order, after hearing, shall, except where found to be inappropriate, establish for each class of public utilities, the units of depreciable property, the loss upon the retirement of which shall be charged to the depreciation reserve.

(b) STATEMENTS.-- Every public utility shall file with the commission, at such times and in such form as the commission may prescribe, statements setting forth the details supporting its computation of annual depreciation, as recorded on the books or records of accounts of the public utility. If the commission, upon review of such statements, is of the opinion that the amount of annual depreciation so recorded by any public utility is not reasonable and proper, it may, after hearing, require that provision be made for annual depreciation in such sums as may be found by it to be reasonable and proper. In making its findings, the commission shall give consideration to the experience of the public utility, and the predecessors of the public utility in accumulating depreciation reserves, the retirements actually made, and such other factors as may be deemed relevant.

(c) USE OF ESTIMATES.-- The commission shall not be bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual depreciation established under the provisions of this section, but in such rate proceedings it shall give consideration to statements submitted under this section, in addition to such other factors as may be relevant.

The ALJ stated that she failed to find any evidence that Aqua did not comply with the above referenced statute. The ALJ further noted that Section 1703(c) explicitly permits other factors to be considered in addition to statements of estimates of annual depreciation. Aqua used straight-line depreciation, not accelerated tax depreciation.

Finally, the ALJ stated that she agreed with Aqua that Dr. Briskin's statement that the Company used an accounting technique designed for business planning and taxation purposes is mistaken. No evidence or support was offered for the assertion that thirty-six years is an unreasonably low amortization average and Dr. Briskin has not qualified himself as an expert in this field. In short, the ALJ found that Dr. Briskin's assertions on this issue were not meritorious. R.D. at 34.

c. Disposition

No Party excepts to the ALJ's recommendation on this issue. As such, and finding that recommendation to be otherwise reasonable, it is adopted.

5. Plant Investment in Public Fire Protection

a. Positions of the Parties

In support of his position, Dr. Briskin cited Section 1328 of the Code, which reads as follows:

§ 1328. Determination of public fire hydrant rates

(a) GENERAL RULE.-- A public utility that furnishes water to or for the public shall be allowed to recover in rates the full cost of service related to public fire hydrants.

(b) CHARGE TO MUNICIPALITIES AND OTHER CUSTOMERS OF THE PUBLIC UTILITY.--

(1) In determining the rates to be charged for public fire hydrants by a public utility that furnishes water to or for the public, the commission shall as part of a utility's general rate proceeding provide for the recovery of the costs of public fire hydrants in such a manner that the municipalities in which those public fire hydrants are located are not charged for more than 25% of the cost of service for those public fire hydrants, as such cost of service is reasonably determined by the commission.

(2) The commission shall also as part of the utility's general rate proceeding provide for the recovery of the remaining cost of service for those public fire hydrants not recovered from the municipalities under paragraph (1) by assessing all customers of the public utility the remaining cost of service to the public fire hydrants. The remaining cost of service for those public fire hydrants shall be included in the public utility's fixed or service charge or minimum bill.

(c) EFFECT ON CURRENT RATES.-- The legal rates charged to municipalities for public fire hydrants in effect on the effective date of this section shall remain frozen and shall not be changed until the present rates for those public fire hydrants are determined to be below the 25% ceiling established under subsection (b). The remaining cost of service for those public fire hydrants not recovered from the municipality shall be recovered from all customers of the public utility in the public utility's fixed or service charge or minimum bill.

(d) DEFINITION.-- As used in this section, the term "public fire hydrant" means a fire hydrant that is charged, at

least in part, to a municipality such as a city, borough, town or township.

Dr. Briskin argued that Subsection (a) of the statute delineates that permissible rate recovery is of the “cost of service” not the “cost of construction.” Briskin M.B. at 9. He also asserted that the recovery of construction costs is not permitted by Commission statute and, therefore, said expense should be eliminated. Dr. Briskin concluded that, because of these failings in the record, Aqua did not meet its burden of proving that its assessment method is just and reasonable. Briskin M.B. at 10.

In response, Aqua merely stated that cost of construction for investment property that is used and useful for utility service is considered part of the cost of service. Aqua R.B. at 5. Aqua contends that it is permitted to recoup the costs of construction at issue.

b. ALJ’s Recommendation

ALJ Jones stated that Aqua is correct in noting that the cost of construction is encompassed in cost of service related to fire hydrants. Pursuant to Section 1102(a)(3) of the Code, costs for equipment “used and useful” for the service provided by the utility are considered in the cost of service. The ALJ noted that “used and useful” is a term of art indicative of whether the cost is considered worthy to be reimbursed because of the devotion of the pertinent asset to service of the public. R.D. at 35-36.

c. Disposition

No Party excepts to the ALJ’s recommendation on this issue. As such, and finding that recommendation to be otherwise reasonable, it is adopted.

6. DSIC Proceeds without approval by the Commission

a. Positions of the Parties

Dr. Briskin asserted that the record evidence fails to show a comprehensive plan, approved by the Commission, for the sum of \$500 million spent by Aqua. That sum increased the Company's physical assets by 24.8% in less than two years. Briskin R.B. at 4. Dr. Briskin implied that a comprehensive plan of spending the DSIC proceeds is required by Section 1307(g) of the Code. He also stated that the "DSIC reimbursement should be applied toward customer refunds" and he concluded that, because there is no record evidence of spending the DSIC proceeds, the violation of the statute is evident. Diskin R.B. at 4.

This issue was first raised in the Reply Brief claiming to be in response to Aqua's Main Brief. However, the Joint Parties could not respond to this argument because it was raised for the first time in Dr. Briskin's Reply Brief.

b. ALJ's Recommendation

ALJ Jones noted initially that Dr. Briskin was procedurally out-of-order in raising an issue for the first time in a Reply Brief. She furthermore observed that there was no reason why this issue could not have been raised in Dr. Briskin's Main Brief, thus allowing due process for the Company and any other Party to this proceeding to respond. The ALJ concluded that, due to this procedural transgression, the matter should not be addressed. R.D. at 37.

ALJ Jones did, however, in an abundance of caution, outline the counter-arguments to Dr. Briskin's assertions on this issue. R.D. at 37-38. She concluded that there is a Commission approved plan for the DSIC proceeds and that there was no evidence

presented by Dr. Briskin that that plan was not being followed. To the contrary, opined the ALJ, the Company has provided evidence that the plan is being followed and the allegation that Aqua has violated Section 1307(g) of the Code is not supported. R.D. at 38.

c. Disposition

No Party excepts to the ALJ's recommendation on this issue. As such, and finding that recommendation to be otherwise reasonable, it is adopted.

7. Requested Trial by Jury

a. Positions of the Parties

Dr. Briskin requested a trial by jury, which, he asserted would be in compliance with 66 Pa. C.S. § 901. He first made the request known in his Main Brief filed on April 29, 2010. Briskin M.B. at 3, 11. Dr. Briskin stated there are factual issues in dispute in this proceeding to which a jury trial should address. Briskin R.B. at 4-5.

Section 901 of the Code reads as follows:

§ 901. Right to trial by jury

Nothing in this part shall be construed to deprive any party, upon any judicial review of the proceedings and orders of the commission, of the right to trial by jury of any issue of fact raised thereby or therein, where such right is secured either by the Constitution of Pennsylvania or the Constitution of the United States, but in every such case such right of trial by jury shall remain inviolate. When any judicial review is sought, such right shall be deemed to be waived upon all issues, unless expressly reserved in such manner as shall be prescribed by the court.

66 Pa. C.S. § 901.

In response, Aqua asserted that “section 901...preserves the right to a trial by jury ‘where such right is secured either by the Constitution of Pennsylvania or the Constitution of the United States’.” Aqua R.B. at 5. Aqua argued that the U.S. Constitution does not provide for jury trials in matters before the Commission, and that neither does the Pennsylvania Constitution, which was adopted prior to the legislation which created the Public Utility Service Agency. The Public Utility Service Agency was the predecessor agency of the Public Utility Commission.

b. ALJ’s Recommendation

ALJ Jones states that Aqua’s response on this issue is accurate and correct. She furthermore noted that Dr. Briskin has had his evidentiary hearing, and that the factual issues raised therein were determined by her. She also noted that, if Dr. Briskin felt compelled to request factual determinations that were in dispute from the pre-filed testimony that he reviewed, he should have made his request known prior to the evidentiary hearing. The request made at this stage of the proceeding is untimely.

Succinctly put, the ALJ concluded that the request for a trial by jury is inappropriate to this proceeding and is denied. *See, Elizabeth Twp. v. Municipal Authority of City of McKeesport*, 447 A.2d 245 (Pa. Super. 1982) (right to jury trial unavailable where seeking review of ratemaking discretion of administrative agency); *W.J. Dillner Transfer Co. v. Pa.P.U.C.*, 155 A.2d 429 (Pa. Super.1959) (only matters entitled to a jury before enactment of agency statute). R.D. at 39-40.

c. Disposition

No Party excepts to the ALJ’s recommendation on this issue. As such, and finding that recommendation to be otherwise reasonable, it is adopted.

8. Impact of Joint Settlement Rate Increase and DSIC

a. Positions of the Parties

Mr. Linden asserted that the increase in the DSIC, from 5% to 7.5%, in 2009 and the increase in rates from the last base rate case in 2008 equates to a total increase in revenue in excess of \$25 million. Linden M.B. at 4. Mr. Linden contended that the Joint Settlement would allow the DSIC to reset and, in effect, authorize an increase in excess of \$48 million, or approximately 14%. Mr. Linden arrived at these figures by comparing the proposed tariff for the Joint Settlement with the currently effective tariff. Mr. Linden also stated that the Joint Settlement would permit another 7.5% increase through the DSIC going forward. He requested that the significant rate impacts of the DSIC be considered in evaluating the fairness of the proposed Joint Settlement. He also averred that the impact should be described in plain language in public documents and press releases. Linden M.B. at 5.

In response, Aqua stated that the DSIC's impact is "fully understood and presumably taken into account by the OTS, the OCA, the OSBA, and other parties that traditionally participate in [Aqua's] base rate proceedings." Aqua R.B. at 7. Aqua further stated that the DSIC has been in place as a surcharge for fourteen years.

The OCA stated that the impact of the DSIC of up to 7.5% "will likely double the effect Aqua ratepayers will experience . . . regardless of how much or how little water a customer may use." OCA St. in Support, Joint Settlement Appendix E at 3. However, noted the OCA, the DSIC rate is capped at 7.5%. The cumulative effect of the cap and the stay-out provision, which is that Aqua refrain from filing a water base rate case prior to

November 18, 2011,¹¹ will cause the rates to stabilize at a minimum through November 11, 2011 or approximately 18 months. The OCA attributes value to this rate limitation.

b. ALJ's Recommendation

ALJ Jones noted initially that Mr. Linden's argument was confusing because he presented elements from previous cases in making a point of whether an action is reasonable in the instant case. Secondly, she noted, the figure he asserted of \$48 million seems to be the compound effect of the approved action by the Commission in 2009 of the increase in the DSIC cap, at roughly \$25 million, plus the increase asserted by the Joint Settlement in rates of \$23.6 million.

The ALJ asserted that the rationale which prompted the creation of the DSIC is still valid. Section 1307(g) of the Code expressly authorized a DSIC for water utilities. 66 Pa. C.S. § 1307(g). At *Aqua DSIC*, Docket No. R-2008-2079310 (Order entered July 31, 2009) the Commission approved the rate cap for the DSIC charge. Furthermore, the OCA recognized the cumulative impact of the rate increase and the DSIC, yet maintained that the negotiated rate limitation in the Joint Settlement made the overall effect valuable and reasonable. The ALJ concluded that the argument presented by the OCA on this issue is entitled to more weight than Mr. Linden's allegation that the cumulative effect of the proposed Joint Settlement rate increase and the DSIC is unreasonable. R.D. at 41.

c. Disposition

No Party excepts to the ALJ's recommendation on this issue. As such, and finding that recommendation to be otherwise reasonable, it is adopted.

¹¹ Joint Settlement at 5, ¶ 8.c.

9. Proposed Rate Increase Exceeds Inflation

a. Positions of the Parties

Mr. Linden argued that the Joint Settlement , if approved, compounded with the increases through the DSIC, would result in an increase of approximately 14% when inflation is close to zero. Mr. Linden asserted that this increase continues a “trend over the last ten years well over the [inflation rate].” Linden M.B. at 5. He furthermore contended that rates have almost doubled over the last ten years, and that this series of increases in excess of inflation is unreasonable. Any Commission decision, according to Mr. Linden, should address the long term trend of rates in the past and in the future. Mr. Linden also opined that the method used by Aqua to fund any capital expenditures with equity, magnified by an income tax effect, is simply too expensive when compared with government issued debt.

Aqua responded that the cost of providing water service frequently bears little relation to the rate of inflation because of the capital-intensive nature of the business. Aqua R.B. at 7-8. Aqua further contended that water companies must install new plant and equipment and replace aging infrastructure on an as-needed basis, without regard to where they may stand in the economic cycle. Aqua also stated that the Company finances plant additions with a mix of debt and equity, not just equity alone.

b. ALJ’s Recommendation

The ALJ noted that it is understandable that Mr. Linden would be frustrated with a history of increases over a period of ten years. However, she also noted that past increases have been approved by the Commission and, thus, found reasonable.

The ALJ further noted that Aqua is accurate in stating that there is no nexus between the need to install or replace plant and equipment and the rate of inflation. The

record evidence also demonstrates that Aqua finances plant and equipment through a mixture of debt and equity. Accordingly, the ALJ concluded that Mr. Linden's assertion of financing through equity alone is mistaken and that Mr. Linden's argument was not meritorious. R.D. at 42

c. Exceptions and Replies

In his Exceptions, Mr. Linden states that the ALJ dismissed his argument regarding the comparison of Aqua's rate increases to the rate of inflation based on Aqua's misreading of his Main Brief. Mr. Linden avers that Aqua and the ALJ contend that he believes that Aqua funds capital improvements only with equity. Mr. Linden submits that he is aware that Aqua utilizes a mixture of debt and equity financing and he renews his request that the Commission commence a study of alternative capital funding mechanisms for Aqua, such as Pennvest. Linden Exc. at 8.

In response to Mr. Linden's Exceptions, Aqua avers that experts for both the OTS and the OCA carefully reviewed Aqua's claimed capital structure and found it to be reasonable. In addition, Aqua points out that the Commission periodically conducts management audits of Aqua, and "to the best of [Aqua's] recollection," the manner in which Aqua raises and deploys capital has never been criticized. Aqua R. Exc. at 5.

d. Disposition

We concur with Aqua that the ratemaking process provides all Parties with a full opportunity to scrutinize and address Aqua's capital structure. By reaching a proposed Joint Settlement, the Parties have concluded that recommending a specific annual revenue requirement was preferable for ratepayers than seeking specific adjustments to Aqua's proposed rate filing, including adjustments to Aqua's cost of capital. We believe that, in lieu of commissioning a study, it would be more cost

effective for ratepayers to work with the respective statutory advocates, such as the OCA and the OSBA, that are already committing considerable resources for independent experts to review utility rate filings. Accordingly, Mr. Linden's Exceptions are denied.

10. Violation of Fourteenth Amendment Rights

a. Positions of the Parties

Mrs. Damavandi argued that the need for major improvements to the system, which was asserted by Aqua as a rationale for higher rates, is not present in Delaware County, where she resides. Accordingly, she argued that to force residents where improvements are not needed to pay for the expenditures where major improvements are needed, is a taking and, thus, a violation of the 14th Amendment of the U.S. Constitution. Mrs. Damavandi further contended that the 14th Amendment also prohibits the public, which does not have the option of selecting a different water provider, from bearing the costs of this publicly traded corporation.

b. ALJ's Recommendation

ALJ Jones noted initially that this issue was first raised by Mrs. Damavandi in her Reply Brief. The issue was not announced in the Formal Complaint filed by Mrs. Damavandi, at Docket No. C-2009-2148691, and she did not submit any testimony regarding this issue. Since the Joint Parties could not anticipate this argument, they could not respond to the assertion.

The ALJ noted that, much like Dr. Briskin above, regarding DSIC proceeds, Mrs. Damavandi is procedurally out-of-order in raising an issue for the first time in a Reply Brief. She noted that there is no reason why the issue could not have been raised in a Main Brief, thus affording the Joint Parties an opportunity to respond to the issue. For this procedural transgression alone, the matter should not be addressed. Additionally, the ALJ

noted that the Commission is not the proper forum to ascertain whether constitutional rights have been violated. R.D. at 43

c. Disposition

No Party excepts to the ALJ's recommendation on this issue. As such, and finding that recommendation to be otherwise reasonable, it is adopted.

11. Mr. Linden's Suggestions for Joint Settlement

a. Positions of the Parties

Mr. Linden had four suggestions to amend the Joint Settlement, as follows:

- (1) Implement an Aqua Pennsylvania Consumer Advisory Committee organized by the OCA with a PUC Commissioner as a liaison to the committee;
- (2) Direct Aqua to develop five, ten and twenty-five year projections of revenues, expenditures and associated rate and capital requirement;
- (3) Require all public notices of rate increases by Aqua to include information regarding the DSIC, that is, if reset, rolled-in or otherwise treated with the proposed increase; and
- (4) Require all Aqua customers to be informed of public input hearings at least fourteen days prior to their commencement.

Linden M.B. at 8.

The OSBA, the only Party to respond to Mr. Linden's suggestions, stated generally that it opposed any modifications to the Joint Settlement because any modification could lead to Aqua or another Party withdrawing the offer of Joint Settlement. OSBA

R.B. at 14. More specifically, the OSBA also averred that the suggestion to form an Aqua Consumer Advisory Committee is logistically difficult because the service territory covers twenty-two counties and includes in excess of 400,000 customers, with diverse rates and service quality issues. Accordingly, argued the OSBA, it would be difficult for the committee to represent the interests of all Aqua customers. OSBA R.B. at 14.

The OSBA also objected to the suggestion that the OCA should organize and select members of the classes of customers and representatives of geographic locations, because the OCA does not represent the interests of non-residential customers. Additionally, the OSBA contended that it is unclear from the suggestion on what issues or subject matter the committee would advise Aqua. *Id.* at 14-15.

b. ALJ's Recommendation

The ALJ agreed with the OSBA that the implementation of the suggestions provided by Mr. Linden are logistically difficult, and may additionally cause the dismantling of the proposed Joint Settlement. She further noted that the problems pointed to by the OSBA with regard to the Consumer Advisory Committee are realistic. Regarding the notice of the Public Input hearings, noted the ALJ, the time frame for a rate base case is mandated by statute. To work in the required time frame for the resolution of the rate proceeding and obtain the input of specific locations, quantity of hearings and accommodations requires efficiency and flexibility. Instituting rigid time frames for notice when several sources are needed to gather the information together on a case-by-case basis could prove to be difficult and costly.

However, continued the ALJ, it is understood that for the public to effectively participate, informative and effective notice is essential. Regarding the request for projections to be made by Aqua for revenues, expenditures, rate and capital requirements to be made for five, ten and twenty-five years, the ALJ noted that projections outside of five

years become less concrete and objective. Accordingly, this requirement could well become a mere exercise when meaningful time, money and resources could be better spent elsewhere.

The ALJ looked more favorably on the suggestion that the Company be required to provide more substantive information about the DSIC and the effect that the rate increase may have on it. Nevertheless, she stated that she was reluctant to recommend that such information be included in the public notice, because there was no testimony on the record that Aqua is not providing that information in the materials that it already provides through its website and at its headquarters, both of which are available to the public. Furthermore, as previously noted by the OTS, the very nature of a settlement requires compromise on the part of all parties. OTS St. in Support, Joint Settlement Appendix D at 9. The Commission should strive to avoid an outcome where, once it has directed that this substantive information be included in the notice to the public, a joint settlement would dissolve as a consequence. R.D. at 44-45.

c. Exceptions and Replies

In the Conclusion of his Exceptions, Mr. Linden renewed his request that the Commission give consideration to forming a Consumer Advisory Committee. He states that concerns raised by the OSBA and the ALJ regarding the Committee can be easily resolved with some minor changes and further explanation. Linden Exc. at 9.

For the reasons presented in its Reply Brief and discussed *supra*, the OSBA states that the ALJ's recommendation was correct and argues that Mr. Linden's request for an Committee Advisory should be denied. OSBA R. Exc. at 6.

d. Disposition

For the reasons presented by the OSBA, *supra*, we find that the creation of a Consumer Advisory Committee would not be an effective means to address water service concerns for Aqua's customers, particularly for a company with such a diverse service area. A number of water quality issues have been addressed in the proposed Joint Settlement. Moreover, we are not convinced that the current avenues for addressing service complaints, such as interaction with the Company and, if necessary, interaction with the Commission's Bureau of Consumer Services, the OCA, the OSBA and the DEP, are not adequate vehicles to address water service issues. Accordingly, Mr. Linden's Exception is denied.

12. Additional Rationale to Adopt Joint Settlement

Aqua stated that its forecasted earnings, over the twelve-month period ending June 30, 2010, produced an overall return of 7.47%. Aqua averred that the additional revenues provided through the settlement rates will give the Company a reasonable opportunity to earn a fair rate of return and attract additional capital with which to finance future plant improvements. Aqua St. in Support, Joint Settlement Appendix C at 2. Aqua also asserted that the rate design and rate structure distribute fairly, reasonably and equitably the revenue increase among various customer classes and rate divisions, and that it also incorporates gradualism in order to make the customer charges and volumetric rates more uniform across all the divisions of the Company. Additionally, Aqua has committed to contribute up to \$50,000 towards its Helping Hand program for payment troubled customers. In the past, the program has been supported solely by the charitable contributions of the Company's customers.

The OTS noted that the Company has withdrawn the Energy Cost Adjustment and the Purchased Water Adjustment. The OTS asserted that these charges constituted

single tariff charges and, thus, it would advocate against the Commission adopting those adjustments as to do so would constitute single issue ratemaking. The OTS averred that the adjustments should be recovered through base rates rather than a separate charge. Finally, the OTS opined that the settlement resulted in a favorable outcome, without the need to expend time, resources and costs on litigation. OTS St. in Support, Joint Settlement Appendix D at 9.

The OCA asserted that the outcome regarding revenues through the Joint Settlement is within the range of revenues that would be achieved if the dispute were to be fully litigated, *i.e.*, an increase of approximately 6.5%. OCA St. in Support, Appendix E at 2. The OCA noted that the provision that Aqua will forego filing a rate base case prior to November 18, 2011, provides rate stability for ratepayers for about twenty-four months. The OCA confirmed that the Joint Settlement does not remove the DSIC, but that the DSIC cap at 7.5% remains in effect and, thus, the OCA expects that the DSIC will be capped during the twenty-four months of rate stability. The OCA opined that this circumstance is valuable to Aqua customers.

The OCA was in favor of the expense adjustments and accounting treatment of six acquired small water systems, which were adopted through the Joint Settlement. The OCA noted that this result was achieved without expending the cost, time, labor and uncertainty of a fully litigated dispute. The OCA noted that the previous Aqua base rate case, in 2008, resulted in 11% common equity and the Commission approved about 82% of the Company's requested claim. The instant Joint Settlement result produces a significant reduction of the Company's requested overall revenue increase, that is, an increase of about 6.5%, and is more than an 18% reduction to the Company's original request. Lastly, noted the OCA, the Joint Settlement addresses quality of service issues, aired during the various Public Input sessions, and requires the Company to communicate with its customers through reporting and notice procedures.

The OSBA noted that it was concerned about the Company's proposed revenue allocation, which provided an increased subsidy by the Public Authority class. The testimony revealed the Parties' differing views of this concern. Consequently, the OSBA advocated a first dollar relief to the Public Authority class, in order to set the class rates closer to cost of service. OSBA St. 1 at 5-6. The OSBA noted that the Joint Settlement provides for a first dollar relief for the Public Authority class, without expending the labor, cost, time and uncertainty of a fully litigated proceeding. OSBA St. in Support, Joint Settlement Appendix F at 7. The OSBA also noted that the OCA disputed the Company's proposal to not roll-in the current 7.5% DSIC into the Private Fire base rates. The OSBA supported the Company's proposal because the rates for this class were substantially above the cost of service. OSBA St. 2 at 2-3. The Joint Settlement adopted the Company's proposal, which was supported by the OSBA, which moves the Private Fire rate closer to cost of service. OSBA St. in Support, Joint Settlement Appendix F at 10.

MPO was concerned about the rate design for the CS Water Division customers.¹² MPO noted that the Joint Settlement adopted a decrease in the customer charge and expanded the volumetric block to the level MPO advocated at 6,000 gallons from 4,000 gallons. The concerns of MPO were addressed, and resolved on an amicable basis, thus conserving the resources of the Parties and the Commission. Masthope St. in Support, Joint Settlement Appendix H at 2-3; R.D. at 45-47.

IV. Conclusion

We have reviewed the record as developed in this proceeding, including the ALJ's Recommended Decision and the Exceptions and Reply Exceptions filed thereto. The Company requested an overall revenue increase of \$43.2 million, or 11.8%. The ALJ

¹² CS Water Division is Aqua's rate area 91 in Pike County. The area is made up of about 18.5% year-round residents, 15-20% seasonal residents and 50% vacation residents. Masthope St. 1 at 1, 3.

recommended that the Commission adopt the Joint Settlement herein, submitted by the Company, Aqua LUG, MPO, the OCA, the OSBA and the OTS. R.D. at 48. Adoption of the Joint Settlement would result in the Company receiving a stipulated increase in annual revenues of \$23.6 million, without specific identification of adjustments. The ALJ further recommended that the Company be authorized to file a tariff or tariff supplement in substantially the same form as that attached as Appendix "A" to the Joint Settlement Petition of the Rate Investigation to become effective for service on one day's notice, following the entry of the instant Opinion and Order. R.D. at 48.

Based on our review, evaluation and analysis of the record evidence, we shall adopt the ALJ's recommendations, to the extent consistent with this Opinion and Order. The resulting allowable revenue increase is \$23.6 million or a 6.46 % increase. As such, the Exceptions of Jerome Linden will be denied; **THEREFORE;**

IT IS ORDERED:

1. That the Exceptions filed by Jerome Linden on June 4, 2010, to the Recommended Decision of Administrative Law Judge Angela T. Jones are denied.
2. That the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on May 25, 2010, is adopted, to the extent consistent with this Opinion and Order.
3. That Aqua Pennsylvania, Inc., shall not place into effect the rates, rules, and regulations contained in Supplement No. 100 to Tariff Water - Pa. P.U.C. No. 1 concerning its purchase water cost recovery base rate as filed on November 18, 2009, the same having been found to be unjust, unreasonable, and therefore, unlawful.

4. That the rates, terms and conditions contained in the Joint Settlement Petition filed by Aqua Pennsylvania, Inc., Aqua Large Users Group, Masthope Property Owners Council, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff be approved and adopted consistent with the discussion contained herein.

5. That Aqua Pennsylvania, Inc. will be permitted to charge the rates for water service set forth in the proposed Tariff Supplement No. 104 to Tariff Water – Pa. P.U.C. No. 1 which is attached to the Joint Settlement Petition as Appendix “A.”

6. That Aqua Pennsylvania, Inc. file a tariff or tariff supplement in substantially the same form as that attached as Appendix “A” to the Joint Settlement Petition of the Rate Investigation reflecting the rates, rules, and regulations to become effective for service on one day’s notice, following the entry of the instant Opinion and Order.

7. That upon acceptance of the appropriate compliance filing, the Investigation at Docket No. R-2009-2132019 should be marked closed.

8. That Aqua Pennsylvania, Inc., shall not file another base rate case, under Section 1308 of the Public Utility Code, prior to November 18, 2011.

9. That the Formal Complaint filed at Docket No. C-2009-2143666 by the Office of Consumer Advocate is dismissed.

10. That the Formal Complaint filed by Mr. Joseph A. Monaghan at Docket No. C-2009-2144761 is dismissed.

11. That the Formal Complaint filed by Mr. Emilio Rende at Docket No. C-2009-2146020 is dismissed.
12. That the Formal Complaint filed by Pastor William Burris at Docket No. C-2009-2146243 is dismissed.
13. That the Formal Complaint filed by Mrs. Zarrin Damavandi at Docket No. C-2009-2148691 is dismissed.
14. That the Formal Complaint filed by Mr. William Frazier at Docket No. C-2010-2151954 is dismissed.
15. That the Formal Complaint filed by Mr. Jerome Linden at Docket No. C-2010-2152328 is dismissed.
16. That the Formal Complaint filed by Dr. Jonathan Briskin, Esquire, at Docket No. C-2010-2155875 is dismissed.
17. That the Formal Complaint filed by Aqua Large Users Group at Docket No. C-2010-2155913 is dismissed.
18. That the Formal Complaint filed by the Borough of Athens at Docket No. C-2010-2154289 is dismissed.
19. That the Formal Complaint filed by the Borough of Sayre at Docket No. C-2010-2153365 is dismissed.
20. That the Formal Complaint filed by the Borough of South Waverly at Docket No. C-2010-2153419 is dismissed.

21. That the Formal Complaint filed by Mr. Marvin E. Buck at Docket No. C-2009-2150185 is dismissed.

22. That the Formal Complaint filed by Mr. David M. Conboy at Docket No. C-2009-2144650 is dismissed.

23. That the Formal Complaint filed by Mr. Peter Crane at Docket No. C-2009-2146026 is dismissed.

24. That the Formal Complaint filed by Mr. Michael & Mrs. Kathleen Ego at Docket No. C-2009-2146031 is dismissed.

25. That the Formal Complaint filed by Mr. Robert C. Geick at Docket No. C-2009-2145047 is dismissed.

26. That the Formal Complaint filed by Mr. Mark Green at Docket No. C-2010-2152051 is dismissed.

27. That the Formal Complaint filed by Mr. Kenneth Grenseman at Docket No. C-2009-2149813 is dismissed.

28. That the Formal Complaint filed by Ms. Patricia A. Grill at Docket No. C-2009-2143650 is dismissed.

29. That the Formal Complaint filed by Mr. David G. Holmes at Docket No. C-2009-2145066 is dismissed.

30. That the Formal Complaint filed by Mr. Iftekhar Hussan at Docket No. C-2009-2145028 is dismissed.

31. That the Formal Complaint filed by Ms. Barbara Johnson at Docket No. C-2009-2145909 is dismissed.

32. That the Formal Complaint filed by Mr. Paul Kalna at Docket No. C-2010-2152596 is dismissed.

33. That the Formal Complaint filed by Ms. Laura M. Komara at Docket No. C-2010-2154319 is dismissed.

34. That the Formal Complaint filed by Mr. Scott Taylor Mead at Docket No. C-2010-2150646 is dismissed.

35. That the Formal Complaint filed by Nem-Pak, LLC, at Docket No. C-2009-2150065 is dismissed.

36. That the Formal Complaint filed by Ms. Clara Perry at Docket No. C-2010-2150858 is dismissed.

37. That the Formal Complaint filed by B. D. Pollard at Docket No. C-2009-2150218 is dismissed.

38. That the Formal Complaint filed by Mr. Kenneth W. Reeves at Docket No. C-2009-2148524 is dismissed.

39. That the Formal Complaint filed by Mr. Dale Sattar at Docket No. C-2010-2150570 is dismissed.

40. That the Formal Complaint filed by Ms. Catherine Schwab at Docket No. C-2010-2151877 is dismissed.

41. That the Formal Complaint filed by Mr. Robert Solkoff at Docket No. C-2009-2147601 is dismissed.

42. That the Formal Complaint filed by Mr. Kevin J. Tracey at Docket No. C-2009-2150206 is dismissed.

43. That the Formal Complaint filed by Mr. Ronald Ziebig at Docket No. C-2009-2148289 is dismissed.

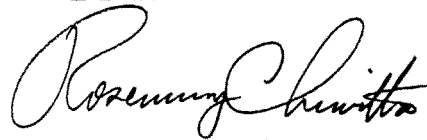
44. That the Formal Complaint filed by Mr. William G. Fellin at Docket No. C-2010-2167238 is dismissed.

45. That the Formal Complaint filed by the Office of Small Business Advocate at Docket No. C-2009-2146228 is dismissed.

46. That the Secretary's Bureau mark the following dockets closed:
R-2009-2132019; C-2009-2143650; C-2009-2143666; C-2009-2144650;
C-2009-2144761; C-2009-2145028; C-2009-2145047; C-2009-2145066;
C-2009-2145909; C-2009-2146020; C-2009-2146026; C-2009-2146031;
C-2009-2146243; C-2009-2146228; C-2009-2147601; C-2009-2148524;
C-2009-2148289; C-2009-2148691; C-2009-2149813; C-2009-2150065;
C-2009-2150185; C-2009-2150206; C-2009-2150218; C-2010-2150646;
C-2010-2150570; C-2010-2150858; C-2010-2151877; C-2010-2151954;
C-2010-2152051; C-2010-2152328; C-2010-2152596; C-2010-2153365;

C-2010-2153419; C-2010-2154289; C-2010-2154319; C-2010-2155875;
C-2010-2155913; and C-2010-2167238.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2010

ORDER ENTERED: **June 16, 2010**

Dale Sattar v Aqua Pennsylvania, Inc.
Docket No. Docket No. C-2011-2268119

EXHIBIT D

Complainant's 2010 Complaint

And

PUC entered Order

2010 Complaint

Docket No. C-2010-2169756

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

COPY

Please print in ink or type.

C-2010-2169756

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name DALE SATTAR

Street/P.O. Box 504 MARIAN COURT Apt #

City CONSHOHOCKEN State PA Zip 19428

County MONTGOMERY

Daytime Telephone Number Where We Can Contact You: (610) 967-0266

E-mail Address (optional): NONE

Utility Account Number (from your bill) 0015439170623049

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

AQUA PENNSYLVANIA, INC.

210104

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APR 6 2010

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

TELEPHONE (local, long distance)

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PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

48714

4. **COMPLAINT** (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

Other (explain). *SEE ATTACHMENT*

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. **RELIEF**

How do you want your complaint to be resolved? Use additional paper if you need more space.

SEE ATTACHMENT

ATTACHMENT TO PUC FORMAL COMPLAINT FORM
March 15, 2010

RESPONSE TO ITEM 4A:

I request that you amend the tariff to give the consumers the option of paying the water bill for a whole year in advance in order to eliminate the outrageous monthly service charge. This can easily be done by Aqua Pennsylvania, Inc. (Aqua) by adding the water consumption charges for the previous twelve months or simply by a conservative estimate of the water consumption for the size of the dwelling. At the end of the twelve months Aqua can determine the exact charge based on the actual amount of water consumption and refund or credit the balance. The cycle start new again by paying in advance for the next twelve months.

RESPONSE TO ITEM 4B:

The basis for my request is to eliminate the outrageous monthly customer charge that Aqua is collecting from me and all the residents.

I purchased the townhouse/condo located at 504 Marian Court in Conshohocken on March 4, 2009. The place is vacant and I have not yet moved in. I plan to move in in near future.

My monthly bill from Aqua, with no water consumption at all, has been about \$17 of which \$15.71 is for customer charge (there is also a monthly charge for DSIC – distribution system improvement charge, even though there has not been any water consumption). This is basically a charge to read the meter and issue the bill. According to Aqua the monthly customer charge for one meter is \$13.15 and for me is \$15.71 because I have two meters – one for consumption and one for the sprinkler system even though there is no basis for that because Aqua has imposed this requirement on their own (the township has informed me in writing that they do not require two separate meters).

During the last twelve months I have paid Aqua about \$200 for absolutely nothing. THIS IS COMPLETELY OUTRAGEOUS. Aqua's monthly service charge of \$13.15 even for one meter IS A VERY EXCESSIVE AND OUTRAGEOUS. THE MONTHLY CUSOMER CHARGE FROM PECO FOR ELECTRIC SERVICE IS \$5.31 AND PECO IS NOT KNOWN FOR LOW PRICES. NOW YOU CAN SEE HOW UNFAIR, UNREASONABLE, AND OUTRAGEOUS AQUA,S MONTHLY SERVICE CHARGE OF \$15.71 IS (WITH NO WATER CONSUMPTION) FOR MY CONDO.

I am very disappointed that PUC had approved the outrageous monthly service charge for Aqua. This is simply a fee that Aqua charges every month the residents to let them know how much they owe.

I believe my proposal is a novel and viable one in order to eliminate the monthly service charge. As compensation for that Aqua collects an entire year's of charge for water consumption in advance. I live on Social Security check. We have to find a way to significantly reduce or eliminate the outrageous and excessive Aqua's monthly service charge specially in this economy and high unemployment.

RESPONSE TO ITEM 5:

I request that you amend the tariff to give the consumers the option of paying the water bill for a whole year in advance in order to eliminate the outrageous monthly service charge. This can easily be done by Aqua by adding the water consumption charges for the previous twelve months or simply by a conservative estimate of the water consumption for the size of the dwelling.

At the end of the twelve months Aqua can determine the exact charge based on the actual amount of water consumption and refund or credit the balance.

The cycle start new again by paying in advance for the next twelve months.

AMENDMENT

1. Are you a victim under a "Protection from Abuse" Order?

YES

NO

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

2. Have you contacted the utility company regarding this complaint?

YES ON 4-6-2010 WITH
MS. MARY HARPER OF AQUA.

NO - If No, you must contact the utility company before you
can file this complaint with the Commission.

3. You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

Dale Sattar hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dale Sattar
(SIGNATURE)

4-6-2010
(DATE)

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

Public Meeting held July 28, 2011

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Dale Sattar

C-2010-2169756

v.

Aqua Pennsylvania, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Dale Sattar (Complainant), filed on April 10, 2011, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ky Van Nguyen, issued March 24, 2011, in the above-captioned proceeding. Aqua Pennsylvania, Inc. (Aqua or Company) filed Replies to Exceptions¹ on April 29, 2011.

¹ Aqua was granted an extension until April 29, 2011 to file Replies to Exceptions as the Company did not receive the Complainant's Exceptions and did not become aware of them until April 19, 2011.

History of the Proceeding

On April 6, 2010, the Complainant filed a Formal Complaint (Complaint) with the Commission against Aqua, requesting that the Commission amend Aqua's tariff to give consumers the option of paying the water bill for a whole year in advance to eliminate the monthly service charge. The Complainant avers that his monthly bill from Aqua, with no water consumption at all, includes \$15.71 for a customer charge. According to the Complainant, the customer charge is basically a charge to read the meter and issue the bill. The Complainant states that during the last twelve months he has paid Aqua about \$200 for nothing, which, in his opinion, is completely outrageous. Also, the Complainant notes his disagreement with Aqua for requiring him to have two meters, one for consumption and one for his sprinkler system.

On May 5, 2010, Aqua filed an Answer to the Complaint denying the allegations within the Complaint. In its Answer, Aqua indicated that the customer charge paid by the Complainant is part of the monthly basic distribution charge that partially covers the costs for billing, meter reading, equipment and service line maintenance. Aqua notes that its current customer charge is included within its Commission-approved tariff and is payable whether or not the customer uses any water. Aqua admits that the customer is billed for domestic water and fire services via two separate meters, but denies that it has improperly imposed the requirement of a separate meter for each service. Aqua avers that the Complainant's township of residence does in fact require a sprinkler system for the premise.

On November 17, 2010, a hearing was held before ALJ Nguyen. The Complainant appeared *pro se*, and Aqua was represented by counsel. The Complainant testified on his own behalf and introduced five exhibits into the record. The Respondent presented the testimony of one witness and introduced six exhibits into the record.

By letter dated December 16, 2010, the ALJ directed that main briefs shall be filed on January 14, 2011, and reply briefs shall be filed on January 31, 2011. Aqua timely filed its Main Brief on January 14, 2011. The Complainant did not file a Main Brief, but on January 31, 2011, timely filed a Reply Brief. On February 4, 2011, Aqua filed a Motion to Strike Portions of the Complainant's Reply Brief.

As noted, on March 24, 2011, ALJ Nguyen's Initial Decision was issued, whereby the Complaint was dismissed for failure by the Complainant to satisfy his burden of proof. The ALJ also recommended that the Complainant's Reply Brief be stricken from the record. The Complainant filed Exceptions on April 10, 2011. Aqua filed Replies to Exceptions on April 29, 2011.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

The ALJ made fourteen Findings of Fact and reached three Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, it is noted that any issue or exception that we do not specifically discuss shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993).

We note initially that the Complainant's Exceptions are not in strict conformance with our Regulation at 52 Pa. Code § 5.533(b) which states, in pertinent part, as follows:

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

This Commission has long recognized the mitigating affect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *See, e.g., Carlock v. The United Telephone Company of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993). Accordingly, despite the technical defects of the Exceptions, we shall entertain them as filed, pursuant to Section 1.2(c) of our Regulations. 52 Pa. Code § 1.2(c).

In the Initial Decision, the ALJ first addressed the failure of the Complainant to file a main brief. The ALJ references 52 Pa. Code § 5.502, which provides the following, in pertinent part:

(c) *Filing of briefs in nonrate proceedings.*

(1) *Initial brief.* An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) *Reply brief.* A party may file a response brief to the initial brief.

Based on the above, the ALJ ruled that the Complainant was precluded from filing a Reply Brief because he did not file a Main Brief, and his Reply Brief improperly raised issues that could have or should have been raised in his Main Brief. The ALJ recommended that the Complainant's Reply Brief be stricken from the record. Because of this decision, the ALJ recommended that it was unnecessary to rule on Aqua's Motion to Strike Portions of the Complainant's Reply Brief. I.D. at 4-6.

In his Exceptions No. 1 and 2, the Complainant states that when requested by the ALJ at the hearing to file a Main Brief, he responded that he did not have the qualifications to file a brief and that the ALJ admitted such on page five of his Initial Decision. The Complainant avers that the ALJ is not being fair at all as he did not inform him at the hearing that he would be precluded from filing a Reply Brief if a main brief was not filed. Additionally, the Complainant questions why the ALJ would request him to file a brief at all as he is participating on a *pro se* basis. The Complainant avers that he has participated on a *pro se* basis in various courts and was never asked to file a Main Brief. The Complainant questions the reason for the hearing and why the ALJ did not rule based on the presentations at the hearing. Exc. at 1-2.

In reply, Aqua states that the ALJ's ruling which struck the Complainant's Reply Brief was consistent with Commission precedent and law. Aqua claims that the ALJ has the authority to regulate the course of the hearing, 52 Pa. Code § 5.483, and consistent with that authority, requested the parties to file briefs. R.Exc. at 2-4. Aqua

further averred that due process requires that the issues raised in the Complainant's Reply Brief should be stricken because Aqua did not have the opportunity to respond to the newly raised issues. Aqua stated that the Complainant was deemed to have waived the opportunity to raise these issues because he chose not to file a Main Brief.

We agree with Aqua that our consideration of the Complainant's Reply Brief may result in a violation of due process since Aqua has not been provided with the opportunity to respond directly to all of the issues raised in the Complainant's Reply Brief. Regardless of this finding, we believe that under the specific factual circumstances in this case, the ALJ should not have required the Parties to submit briefs. Review of the record reveals that at two separate occasions during the hearing the ALJ asked the Complainant if he would submit a brief, and, in both instances, the Complainant responded that he was not an attorney and did not have the facilities to do that. On both occasions, the ALJ's response was "[o]kay". Tr. at 65, 76.

Moreover, pursuant to Section 1.2 of our Regulations, it was not necessary to employ 52 Pa. Code § 5.502 and have the Parties file briefs in this proceeding, particularly because the Complainant has been appearing *pro se*.² Accordingly, we will not base our decision on the Parties briefs, but we will base our decision on the evidence that was developed during the evidentiary hearing in this proceeding. Based on this

² Section 1.2 of our Regulations, 52 Pa. Code § 1.2, provides the following, in pertinent part:

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving *pro se* litigants.

evidence, we agree with the ALJ that the Complainant did not satisfy his burden of proof. Our decision is amply supported by the record in this proceeding, and, as such, our determination not to consider the Parties' briefs does not affect the substantive rights of the Parties. Therefore, the Complainant's first Exception is granted to the extent that the Complainant should not have been required to file a brief under the circumstances in this case. Based on our decision, it is not necessary to reach a determination regarding Aqua's Motion to Strike Portions of Reply Brief of Dale Sattar.

In his Exception No. 3, the Complainant reiterates the fact that he paid Aqua over \$200.00 for absolutely nothing and expressed his concern that the ALJ had questioned him on how he arrived at this amount. Exc. at 2.

In reply, Aqua states that the ALJ's questions during the hearing were appropriate as he acted within his authority to question any witness regarding testimony or exhibits. R. Exc. at 4-5.

We will deny this Exception. The Complainant presented the ALJ with five exhibits during the hearing of November 16, 2010. Exhibit C1 was the Complainant's bill dated April 28, 2009, showing a customer charge of \$26.71. The Complainant's Exhibit C2 was the Complainant's bill dated March 26, 2010, showing a customer charge of \$15.71 and water consumption of 100 gallons. None of the intervening bills which the Complainant may have received during the interim period were submitted into evidence. The ALJ was simply asking the Complainant how he had paid Aqua over \$200 when only two actual bills were submitted. Tr. at 14-15. We agree with Aqua that the ALJ properly acted within his capacity to ascertain the facts behind the Complainant's averments. The amount of the two bills submitted was only \$62.30, and the ALJ inquired on the basis of the Complainant's assertion that he had actually paid over \$200.00.

In his Exception No. 4, the Complainant avers that the ALJ's statement on page three of his Initial Decision, that the March 26, 2010 bill was the second bill he received, is in error. The Complainant notes that this bill was the thirteenth bill he received. Exc. at 2.

In reply, Aqua avers that the ALJ's statement referenced the Complainant's second exhibit, and his use of the word "bill" rather than "exhibit" does not negate the findings based on the record evidence. Aqua states that the Complainant contacted Aqua to initiate service so that work could be performed before he moved into the premise. It was the Complainant who chose to initiate service, and, as a result, he was assessed a customer charge each month even though no water was being consumed.

The ALJ's statement in Finding of Fact No. 5, that the bill dated March 26, 2010 (Exhibit C2) was the second bill the Complainant received from the Company, is incorrect. This bill was the second exhibit presented by the Complainant as he chose not to submit each and every bill he received from Aqua while his house was vacant. He submitted the first bill he received and the first bill which included water consumption, but not the bills received between these bills. The Complainant explained to the ALJ on the record that he paid Aqua the customer charge each month during that period. Tr. at 15. Therefore, we will grant this Exception.

In his Exception No. 5, the Complainant reiterates his opinion that Aqua's defense for not reading his meter once a year, that water leaks could go undetected for several months, is absurd and criticizes the ALJ for using this as a reason for dismissing his Complaint. Exc. at 2.

In reply, Aqua avers that the ALJ properly weighed the evidence and found Aqua's position more credible than the Complainant's opinion on this issue. Aqua states

that the Commission's Regulations and Aqua's approved tariff prohibit Aqua from issuing the Complainant only one bill per year. R. Exc. at 5-6.

We will deny this Exception. As noted by the ALJ, the Company's customer charge was approved by the Commission in *Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.*, Docket No. R-2009-2132019 (Order entered June 16, 2010). A customer charge is a commonly accepted regulatory mechanism designed to allow a public utility to collect the cost of operations, maintenance, meter reading and other necessary services, whether its product is consumed or not. Furthermore, Aqua is required to bill its customers according to the Commission's Regulations. Pursuant to 52 Pa. Code § 56.11, a public utility is required to render a bill once every billing period to residential customers. According to 52 Pa. Code § 56.2, "billing month" is defined as a period of not less than twenty-six and not more than thirty-five days. Additionally, as explained by Aqua and noted by the ALJ, water is a finite resource, and monthly billing enables all customers to monitor their usage for unexplained increases in usage and to prevent wasted water consumption. *See* 52 Pa. Code § 65.20.

Conclusion

Based on the foregoing discussion and our review of the record evidence, we shall grant, in part, and deny, in part, the Complainant's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order, which dismisses the Complaint;

THEREFORE,

IT IS ORDERED:

1. That the Exceptions of Dale Sattar to Administrative Law Judge

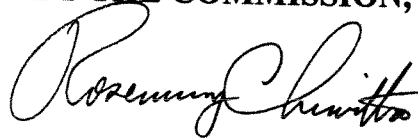
Ky Van Nguyen's Initial Decision, which was issued on March 24, 2011, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Ky Van Nguyen is modified, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Dale Sattar at Docket Number C-2010-2169756 against Aqua Pennsylvania, Inc. is dismissed for the failure to satisfy his burden of proof.

4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 28, 2011

ORDER ENTERED: July 28, 2011