



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 28, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v.
Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2021-3027385 and R-2021-3027386
I&E Exceptions

Dear Secretary Chiavetta,

Enclosed for electronic filing please find the **Exceptions of the Bureau of Investigation and Enforcement (I&E)** for the above-captioned proceedings.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Scott B. Granger'.

Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov

SBG/ac
Enclosures

cc: Administrative Law Judge Mary D. Long (*via First-Class and Electronic Mail*)
Office of Special Assistants (*via e-mail – ra-osa@pa.gov*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc. –	:	C-2021-3028466
Water & Wastewater Division	:	C-2021-3028509

**EXCEPTIONS OF
THE BUREAU OF INVESTIGATION & ENFORCEMENT**

Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: February 28, 2022

TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXCEPTIONS 3

 A. I&E Exception No. 1: The ALJ erred in concluding that Schwenksville Borough provided sufficient evidence to demonstrate that the competitive contract satisfies the language of Rider DRS regarding the availability of competitive alternatives. R.D. at 49..... 3

 B. I&E Exception No. 2: The ALJ erred in using I&E’s rebuttal wastewater increase by class recommendation instead of I&E’s updated surrebuttal wastewater increase by class recommendation as set forth in I&E Exhibit 5-SR Schedule 1. R.D. at 88..... 4

 C. I&E Exception No. 3: The ALJ erred in rejecting I&E’s recommended income verification for Customer Assistance Programs eligibility. R.D. at 115..... 6

III. CONCLUSION 8

TABLE OF CITATIONS

Statutes

66 Pa. C.S. § 332(h)..... 1
66 Pa. C.S. §§ 1401-1419 7

Regulations

52 Pa. Code § 5.533..... 1

I. INTRODUCTION

Pursuant to 66 Pa. C.S. § 332(h) of the Public Utility Code and 52 Pa. Code § 5.533 of the Public Utility Commission regulations, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits these Exceptions to the Recommended Decision of Administrative Law Judge Mary D. Long (“ALJ” or “ALJ Long”) issued on February 18, 2022 (“Recommended Decision” or “R.D.”).

On August 20, 2021, Aqua Pennsylvania, Inc. (collectively “Aqua” or “AP” or the “Company”) on its own behalf and on behalf of its wholly-owned subsidiary Aqua Pennsylvania Wastewater, Inc., filed, respectively, Original Tariff Water - PA P.U.C. No. 3 (“Tariff Water No. 3”) and Original Tariff Sewer - PA P.U.C. No. 3 (“Tariff Sewer No. 3”) to become effective on October 19, 2021.¹

The parties to this base rate proceeding are Aqua, the Commission’s Bureau of Investigation and Enforcement (“I&E”); the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); the Aqua Large Users Group (“Aqua LUG”); and the Masthope Mountain Community Association (“Masthope” or “MMCA”). Additionally, there were dozens of formal complaints filed by Aqua ratepayers that were consolidated into this proceeding.

By Order entered on October 7, 2021, the Commission suspended the rate filings until May 19, 2022 and directed an investigation to determine the lawfulness, justness,

¹ I&E MB, p. 1.

and reasonableness of the rates, rules and regulations contained in this rate filing. The matter was assigned to the Office of Administrative Law Judge, ALJ Long presiding, which culminated in the issuance of the February 18, 2022 Recommended Decision.

Pursuant to the established litigation schedule, I&E filed the following pieces of direct, rebuttal and surrebuttal testimony on November 10, 2021, December 2, 2021 and December 14, 2021 respectively:

Christine Wilson

- I&E Statement No. 1
- I&E Exhibit No. 1 (PROPRIETARY/Non-Proprietary)
- I&E Statement No. 1-R
- I&E Statement No. 1-SR
- I&E Exhibit No. 1-SR (PROPRIETARY/Non-Proprietary)

Anthony Spadaccio

- I&E Statement No. 2
- I&E Exhibit No. 2
- I&E Statement No. 2-SR

Esyon Sakaya

- I&E Statement No. 3
- I&E Exhibit No. 3
- I&E Statement No. 3-SR

Ethan Cline

- I&E Statement No. 4 (PROPRIETARY/Non-Proprietary)
- I&E Exhibit No. 4 (PROPRIETARY/Non-Proprietary)
- I&E Statement No. 4-SR (PROPRIETARY/Non-Proprietary)
- I&E Exhibit No. 4-SR

Joseph Kubas

- I&E Statement No. 5
- I&E Exhibit No. 5
- I&E Statement No. 5-R
- I&E Exhibit No. 5-R
- I&E Statement No. 5-SR
- I&E Exhibit No. 5-SR

On Monday, December 20, 2021, at the time and place set for the evidentiary hearing, the parties appeared telephonically before ALJ Long. After the conclusion of the hearing and the closing of the record, the active parties submitted briefs according to the briefing schedule. I&E submitted its Main Brief on January 11, 2022 (“I&E MB”) as did the other active parties. I&E then submitted its Reply Brief on January 21, 2022 (“I&E RB”) as did the other active parties.

Finally, and as stated previously, on February 18, 2022, ALJ Long issued her Recommended Decision. Although I&E supports the majority of ALJ Long’s well-reasoned recommendations, I&E requests that the Commission revise the RD in response to the exceptions and arguments raised by I&E as set forth below.

II. EXCEPTIONS

A. **I&E Exception No. 1: The ALJ erred in concluding that Schwenksville Borough provided sufficient evidence to demonstrate that the competitive contract satisfies the language of Rider DRS regarding the availability of competitive alternatives. R.D. at 49.**

In her Recommended Decision, ALJ Long, erroneously finds that “the documentation provided by the Executive Director of Schwenksville Borough is sufficient to demonstrate that the competitive contract satisfies the language of Rider DRS regarding the availability of competitive alternatives.”² ALJ Long erroneously concluded that, “[a]lthough not in the form of an affidavit, the letter is sufficiently reliable for the purpose of determining Schwenksville’s qualification for Rider DRS.”³

² R.D., p. 49.

³ *Id.*

ALJ Long then finds that “it is reasonable for the Company to be satisfied by this description of a competitive alternative for the purpose of offering discounted service.”⁴

I&E disagrees and, through these exceptions, continues to assert that the letter provided by Schwenksville Borough does not rise to the level of an affidavit and therefore is not sufficiently reliable for the purpose of determining Schwenksville’s qualification for a Rider DRS.⁵ Specifically, the document provided by Aqua is merely a cover letter and not an affidavit.⁶ I&E argued, that because there is no oath or affirmation language in the cover letter, it does not rise to the level of an affidavit and does not meet the standard required to be considered valid documentation supporting a competitive alternative under the plain language in Aqua’s tariff.⁷

Therefore, the Commission should overturn the ALJ’s recommendation and find that the Schwenksville contract be canceled and that Schwenksville shall begin to pay full tariff rates when they go into effect pursuant to this base rate proceeding.⁸

B. I&E Exception No. 2: The ALJ erred in using I&E’s rebuttal wastewater increase by class recommendation instead of I&E’s updated surrebuttal wastewater increase by class recommendation as set forth in I&E Exhibit 5-SR Schedule 1. R.D. at 88.

In her Recommended Decision, ALJ Long correctly relies on I&E’s methodology for allocating revenue and designing wastewater rates.⁹ ALJ Long also correctly recognizes that I&E’s approach takes into consideration the number of water and

⁴ *Id.*

⁵ *See* I&E St. No. 4 PROPRIETARY, pp. 8-12; I&E St. No. 4-SR PROPRIETARY, pp. 5-10, 12-13.

⁶ *See* I&E St. No. 4-SR PROPRIETARY, P. 12, *citing* Aqua Exhibit EMF-1-R HIGHLY CONFIDENTIAL.

⁷ *Id.*, p. 12.

⁸ *Id.*, p. 13.

⁹ R.D., p. 91.

wastewater customers in each system; the benefits the ratepayers in each community received when their system was purchased by Aqua; and, balances the goal of moving rates toward alignment with the cost of service while also mitigating some of the large rate increases that would result if no allocation of wastewater revenue was approved.¹⁰ ALJ Long noted that I&E witness Joseph Kubas prepared a table in support of his rebuttal testimony which summarized each party's proposed allocation of revenue as set forth in the parties direct testimony.¹¹ Unfortunately the table referenced in the Recommended Decision at page 88 is the table prepared to support Mr. Kubas' rebuttal testimony¹² and not his final table submitted in support of his surrebuttal testimony.¹³

Mr. Kubas revised the I&E-proposed wastewater revenue increase by system in the surrebuttal phase of the case.¹⁴ Mr. Kubas' surrebuttal schedule reflects revisions to the Company's original claim; revisions in late payment revenues; I&E's revisions to proposed revenue; and revisions made to address other parties' positions. I&E Exh. No. 5-SR, Sch., 1 p. 1 summarizes I&E's final wastewater revenue increase.

Therefore, the Commission should rely on those wastewater increases by class that were subsequently updated in I&E Exh. No. 5-SR. Sch. 1, p. 1 in support of Mr. Kubas' surrebuttal testimony.

¹⁰ *Id.*

¹¹ *Id.* pp. 87-88.

¹² *See* I&E St. No. 5-R, pp. 1-23; I&E Exhibit 5-R, Sch. 1, col. D.

¹³ *See* I&E St. No. 5-SR, p. 4; I&E Exhibit 5-SR, Sch. 1, p. 1 of 3, col. I.

¹⁴ *Id.*

C. I&E Exception No. 3: The ALJ erred in rejecting I&E’s recommended income verification for Customer Assistance Programs eligibility. R.D. at 115.

ALJ Long erroneously accepted Aqua’s reasoning that the benefit of removing a barrier to low-income customers outweighs the risk of abuse or harm to paying customers and recommended that I&E’s proposed income verification be rejected.¹⁵ ALJ Long recognized that I&E recommended that the Company be required to verify enrollees’ income for them to be eligible for CAP.¹⁶ Further, ALJ Long acknowledged Aqua’s argument that discount water programs do not typically require income documentation for participation and that providing income documentation can be a barrier to enrollment for eligible households.¹⁷ The ALJ added that Aqua testified that during the periods where self-attestation of income was utilized, that the Peoples Companies did not see a spike in enrollment levels as a result of this flexibility and participation levels, year over year, are relatively flat.¹⁸ However, when asked about Peoples’ CAP program during discovery, Aqua verified that “Peoples CAP requires income documentation from an interested customer to certify income eligibility for participation”¹⁹ and upon recertification.²⁰ Further, ALJ Long also acknowledged that as with any income-based programs, there may be individuals that attempt to perpetrate fraud.²¹ And this is precisely I&E’s concern.

¹⁵ R.D., p. 115.

¹⁶ *Id.*, pp. 114-115.

¹⁷ *Id.*, p. 115, *citing* AP St. 10-R, p. 3.

¹⁸ *Id.*

¹⁹ *See* I&E St. No. 1, p. 46, *citing* I&E Exh. No. 1 PROPRIETARY, Sch. 9, p. 1.

²⁰ *Id.*, *citing* I&E Exh. No. 1 PROPRIETARY, Sch. 9, p. 2.

²¹ R.D., p. 115, *citing* AP St. 10-R, p. 3.

I&E reasoned that the program proposed by Aqua will now be a full-scale Universal Service Plan that will be funded by ratepayers.²² Further, I&E argued, the program as proposed and recommended is based on a specific level of benefits matched to a specific percentage of the federal poverty level.²³ Logic dictates that incomes must be verified in order to properly administer and award the graduated program benefits. A failure of the Company to perform income verifications would subject the Universal Service Plan to potential abuse that would harm responsible customers that pay their bill.

Additionally, I&E argued, support for income verification can be found in the Public Utility Code and Commission regulations.²⁴ I&E added that in enacting Chapter 14, Responsible Utility Customer Protection,²⁵ the Pennsylvania General Assembly intended to protect responsible bill paying customers from rate increases attributable to other customers' delinquencies.²⁶ Any abuse of the CAP programs through income self-attestation by ineligible customers would have the same negative affect on the responsible customers and may harm eligible customers as well. Finally, I&E argued, as we learned through Aqua's rejoinder testimony, Aqua's provider of administrative services, Dollar Energy Fund, already has the cost of income verification built into their proposal.²⁷

Therefore, the Commission should accept I&E's recommendation regarding the application of income verification to CAP eligibility.

²² See I&E MB, p. 62. See also R.D., pp. 109-111.

²³ See *Id.* See also *Id.*, pp. 111-112.

²⁴ I&E MB, p. 62.

²⁵ 66 Pa. C.S. §§ 1401-1419.

²⁶ I&E MB, p. 62.

²⁷ *Id.*

III. CONCLUSION

Wherefore, I&E respectfully submits that for all the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Recommended Decision of Administrative Law Judge Mary D. Long, issued on February 18, 2022, be modified as recommended above.

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott B. Granger".

Scott B. Granger
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 63641

Dated: February 28, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos.: R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc. and	:	
Aqua Pennsylvania Wastewater, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated February 28, 2022,
in the manner and upon the persons listed below:

Served via First-Class and Electronic Mail

Administrative Law Judge Mary D. Long
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place
301 5th Avenue, Suite 220
Pittsburgh, PA 15222
malong@pa.gov

Served via Electronic Mail Only

Paul Zander
Matthew Lamb
Marc Hoffer
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services
pzander@pa.gov
mlamb@pa.gov
mhoffer@pa.gov

Michael W. Hassell, Esq.
Garrett P. Lent, Esq.
Post & Schell P.C.
17 North Second Street
Harrisburg, PA 17101-1601
mhassell@postschell.com
glent@postschell.com

Kimberly A. Joyce, Esq.
Mary McFall Hopper, Esq.
Alexander R. Stahl, Esq.
Aqua Pennsylvania
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
kajoyce@essential.co
mmhopper@aquaamerica.com
astahl@aquaamerica.com
Counsel for Aqua Pennsylvania

John W. Sweet, Esq.
Ria M. Pereira, Esq.
Elizabeth R. Marx, Esq.
Lauren Berman, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Steven C. Gray, Esq.
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101
sgray@pa.gov

Harrison W. Breitman, Esq.
Lauren E. Guerra, Esq.
Erin L. Gannon, Esq.
Christy M. Appleby, Esq.
Christine Maloni Hoover, Esq.
Mackenzie C. Battle, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
OCAAqua2021@paoca.org

George A. Bibikos, Esq.
GA Bibikos LLC
5901 Jonestown Road #6330
Harrisburg, PA 17112
gbibikos@gabibikos.com
*Counsel for Masthope Mountain
Community Association*

Adeolu A. Bakare, Esq.
Charis Mincavage, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mcneeslaw.com
cmincavage@mcneeslaw.com
Counsel for Aqua Large Users Group

Terry Fought, P.E.
780 Cardinal Drive
Harrisburg, PA 17111
OCAAqua2021@paoca.org
Consultant for OCA

David J. Garrett
Resolve Utility Consulting, PLLC
101 Park Avenue, Suite 1125
Oklahoma City, OK 73102
OCAAqua2021@paoca.org
Consultant for OCA

Roger D. Colton
Fisher Sheehen & Colton
34 Warwick Road
Belmont, MA 02478
OCAAqua2021@paoca.org
Consultant for OCA

Barbara Alexander
Barbara Alexander Consulting, LLC
83 Wedgewood Drive
Winthrop, ME 04364
OCAAqua2021@paoca.org
Consultant for OCA

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720
St. Louis, MO 63105
excel.consulting@sbcglobal.net
Consultant for OSBA

Robert Rosenthal
R.A. Rosenthal, Inc.
524 Strathmore Drive
Mechanicsburg, PA 17050
ask-rosey@comcast.net
*Consultant for Masthope Mountain
Community Association*

John Day
614 Runyon Avenue
Piscataway, NJ 08854
john@johnday.us

Richard J. Gage
120 Treaty Drive
Chesterbrook, PA 19087
brittagage@aol.com

Francine Weiner
1903 2nd Street
Langhorne, PA 19047
fhwhome@gmail.com



Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov