



COMMONWEALTH OF PENNSYLVANIA

February 28, 2022

E-FILED

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, R-2021-3027386**

Dear Secretary Chiavetta:

Enclosed please find the Exceptions to the Recommended Decision, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic
Office of Special Assistants
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS TO THE RECOMMENDED DECISION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538**

**Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101**

Date: February 28, 2022

I. Introduction

On August 20, 2021, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively “Aqua PA” or the “Company”) filed Tariff Water-Pa. P.U.C. No. 3 and Original Tariff Sewer-Pa. P.U.C. No. 3 (collectively, the “Tariffs”) with the Pennsylvania Public Utility Commission (“Commission”). The Tariffs, if approved by the Commission, would increase Aqua PA’s total annual operating revenues by \$97,684,824.

On September 8, 2021, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint in opposition to the Tariffs.

On October 15, 2022, a prehearing conference was held before Administrative Law Judge (“ALJ”) Mary D. Long.

On October 19, 2021, ALJ Long issued her Prehearing Order.

On November 10, 2021, the OSBA served the Direct Testimony of Brian Kalcic.

On December 2, 2021, the OSBA served the Rebuttal Testimony of Mr. Kalcic.

On December 14, 2021, the OSBA served the Surrebuttal Testimony of Mr. Kalcic.

On December 20, 2021, ALJ Long conducted an evidentiary hearing, at which time Mr. Kalcic’s Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony were admitted into the record.

On January 11, 2022, the OSBA submitted its Main Brief.

On January 21, 2022, the OSBA submitted its Reply Brief.

On February 18, 2002, ALJ Long issued her Recommended Decision (“RD”).

The OSBA submits the following Exception in response to the RD.

II. Exceptions

Exception No. 1: The ALJ erred by adopting the Company's proposed revenue allocation for its water service customers. (RD, at 93)

1. The RD Violates *Lloyd*

The ALJ acknowledged that Aqua PA conducted a separate cost of service study (“COSS”) for both its water and wastewater services:

Aqua prepared a cost allocation study (AP Exhibit 5-A, Part I) for its water operations, as well as *separate* cost allocation studies (AP Exhibit 5-B, Part I) for its wastewater operations.

* * *

The cost-of-service study methods used by Aqua for its water and wastewater operation are reasonable and consistent with past practice.

RD, at 81 (emphasis added).

When developing a revenue allocation based upon an accepted COSS, the ALJ and the Commission must follow the requirements of the Commonwealth Court's decision set forth in *Lloyd*:¹

However, while permitted, gradualism is but one of many factors to be considered and weighed by the Commission in determining rate designs, and principles of gradualism cannot be allowed to trump all other valid ratemaking concerns and do not justify allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time.

* * *

[I]n effect, the Commission has determined that the principle of gradualism trumps all other ratemaking concerns - especially the polestar - cost of providing service.

Lloyd, at 1020.

¹ *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676 (2007).

Discussing the revenue allocation proposals for water service advocated by the parties, the ALJ incorrectly concluded that the “Company’s methodology better reflects cost of service” based upon the following observation:

Importantly, Aqua’s proposed allocation of revenues views cost of service *as a whole*, and does not attempt to exclude the Act 11 allocation from its analysis. Rather, Aqua moves each customer classification toward its appropriate percentage cost of service *including the Act 11 allocation*.

RD, at 92 (emphasis added) (citation omitted). In other words, the ALJ concluded that it is appropriate to evaluate a proposed water revenue allocation using a combined water and wastewater revenue, or “total bill,” evaluation.

The ALJ’s conclusion is a violation of the Commonwealth Court’s decision in *Lloyd* that ratemaking is to be conducted using each specific service’s cost of service. Ratemaking it not to be performed on a combined, total bill basis, as that “masks” the true impact of the revenue increases required by Aqua PA’s separate water and wastewater COSSs. *Lloyd*, at 1015. The Commonwealth Court continued, as follows:

To allow the principle of gradualism to be applied on a total bill basis *when each service is a stand-alone rate structure* would be like saying that the Commission could apply the principle of gradualism in an electric case based on a customer's total utility bill, i.e., the amount a rate payer would pay for electric, gas, water and telecommunications services.

Lloyd, at 1021 (emphasis added).

2. Act 11

The ALJ observed that “Act 11 became effective in 2012 and is codified in Section 1311(c) of the Public Utility Code. This section permits wastewater revenue to be allocated to a utility’s water customers which is in the public interest to do so.” RD, at 85. Specifically, Section 1311(c) states, as follows:

Segregation of property. — When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission when setting base rates, after notice and an opportunity to be heard, ***may allocate a portion of the wastewater revenue requirement*** to the combined water and wastewater customer base if in the public interest.

66 Pa. C.S. Section 1311(c) (emphasis added).

The plain language of Section 1311(c) sets the legal standard that must be met in this, and all other, combination Act 11 water/wastewater rate cases: a *portion of the wastewater revenue requirement* may be *allocated* to the combined water and wastewater customer base. However, Section 1311(c) does not provide the legal authority to violate the requirements of *Lloyd*, which requires rates for individual utility services to be based on separate cost of service determinations. Consequently, without any legal basis set forth in Act 11, the ALJ’s conclusion to approve Aqua PA’s water revenue allocation because it moves each class “toward its appropriate percentage cost of service including the Act 11 allocation” violates *Lloyd* and must be rejected by the Commission. RD, at 92-93.

3. The Company’s proposed Revenue Allocation violates *City of Bethlehem*

Not only does the RD violate the requirements of *Lloyd*, the RD ignores the Commission’s enunciated standard for measuring progress towards cost of service when designing a revenue allocation. Specifically, the Commission in *Pennsylvania Public Utility Commission v. City of Bethlehem -- Water Department*, Docket No. R-2020-3020256 (Order entered April 15, 2021) decided, as follows:

As noted by the OSBA, the proper yardstick for measuring the degree of movement toward cost of service is the change in the absolute level of class subsidies at present and proposed rates.

City of Bethlehem, at 36.

As discussed in the OSBA's Main Brief^[BK1], the OSBA's subsidy analysis^[BK2] shows unequivocally that the Company's proposed revenue allocation for water service would move the Residential, Public, Other Water Utilities and Private Fire classes away from cost of service, at Aqua's requested revenue requirement level.

Specifically, Mr. Kalcic summarized Aqua PA's proposed water service revenue allocation, as follows:

Schedule BK-1W provides a summary of the Company's proposed class revenue allocation for water service. The proposed system average increase in total water revenues is 16.9% (see line 11). The Company's proposed increases to individual customer classes (see lines 1-7) range from a low of 15.9% (Other Water Utilities) to a high of 20.6% (Public Fire).

* * *

At this time, the Company's projects that contract customers will be subject to contract-based increases amounting to \$303,705 or 4.2% (on average), which is reflected on line 9 of Schedule BK-1W.

OSBA Statement No. 1, at 4. Schedule BK-1W is set forth below.

AQUA PENNSYLVANIA, INC.

Company Proposed Allocation of its
Requested Increase in Water Revenues
(Future Test Period Ending March 31, 2023)

<u>Line</u>	<u>Classification</u>	<u>Present Revenue*</u>	<u>Proposed Increase</u>	
			<u>Amount</u>	<u>Percent</u>
		1	2	3
1	Residential	\$333,854,297	\$58,198,937	17.4%
2	Commercial	\$119,491,326	\$19,090,527	16.0%
3	Industrial	\$16,630,075	\$3,075,729	18.5%
4	Public	\$8,516,664	\$1,362,175	16.0%
5	Other Water Utilities	\$12,812	\$2,034	15.9%
6	Private Fire Prot.	\$16,153,537	\$2,822,598	17.5%
7	Public Fire Prot.	<u>\$6,438,592</u>	<u>\$1,329,034</u>	20.6%
8	Total Sales	\$501,097,303	\$85,881,034	17.1%
9	Contract Sales	\$7,262,995	\$303,705	4.2%
10	Other Revenues	<u>\$1,318,393</u>	<u>\$0</u>	0.0%
11	TOTAL	<u>\$509,678,691</u>	<u>\$86,184,739</u>	16.9%

Source: Exh. No. 5-A,
Part I, Sch. A

Notes:

* Includes DSIC at 7.5%.

While Aqua PA claimed that its proposed revenue allocation appropriately reflects class cost-of-service results, Mr. Kalcic undertook his own evaluation of the Company's proposed revenue allocation, exclusive of Act 11 considerations. Mr. Kalcic, echoing the Commission's decision in *City of Bethlehem*, stated, as follows:

By definition, if a class is not paying exactly its full cost of service, it is either: a) receiving a subsidy (i.e., paying too little); or b) providing a subsidy (i.e., paying too much). In order to determine whether or not a class is moving toward cost of service, one must ascertain whether the class's present subsidy is growing or shrinking at proposed rates. If its present subsidy is growing at proposed rates, the class is moving in the wrong direction (i.e., away from cost of service). Conversely, if its present subsidy is

shrinking at proposed rates, the class is moving closer to cost of service.

OSBA Statement No. 1, at 6-7.

Mr. Kalcic calculated the class subsidies at Aqua PA’s present and proposed water rates using the Company’s water COSS. Mr. Kalcic summarized those calculations in Schedule BK-3W, which is set forth below.

AQUA PENNSYLVANIA, INC.

Class Revenue Subsidies at
Present and Company Proposed Rates
Basis: Water Service Only
(Future Test Period Ending March 31, 2023)

<u>Line</u>	<u>Classification</u>	Present	Proposed
		Subsidy	Subsidy
		(\$000)	(\$000)
		1	2
1	Residential	(\$6,309)	(\$7,711)
2	Commercial	\$4,500	\$3,842
3	Industrial	(\$715)	(\$27)
4	Public	\$769	\$975
5	Other Water Utilities	\$11	\$12
6	Private Fire Prot.	\$2,188	\$2,907
7	Public Fire Prot.	(\$444)	\$0
8	Total Company	(\$0)	(\$2)

Source: Sch. BK-3W, pg. 2 of 2 Sch. BK-3W, pg. 2 of 2

Note: A positive subsidy figure indicates that a class is providing a subsidy; a negative figure indicates that it is receiving a subsidy.

Mr. Kalcic explained BK-3W, as follows:

The subsidies reported on page 1 of Schedule BK-3W are derived by subtracting each class’s cost-of-service based revenue

requirement, *exclusive of the unrecovered cost of wastewater service*, as measured by the Company's WCOSS, from that class's total revenue contribution (again, net of any proposed contributions toward wastewater service), at present and Company proposed rates. These calculations provide a dollar measure of the difference between actual class water revenues and those revenue levels that, if attained, would produce equalized class rates of return at present and Company proposed rates.

As previously discussed, classes that exhibit a reduction in the (absolute) magnitude of their respective subsidies are moving closer to cost of service. Conversely, those classes that exhibit an increase in the (absolute) magnitude of their respective subsidies are moving away from cost of service.

OSBA Statement No. 1, at 8 (emphasis in original) (footnote omitted). Mr. Kalcic continued, as follows:

Page 1 of Schedule BK-3W indicates that ***only the Commercial, Industrial and Public Fire classes*** would exhibit ***movement toward*** cost of service under the Company's proposed revenue allocation. Conversely, ***the Residential, Public, Other Water Utilities and Private Fire classes*** would ***move further from*** cost of service under Aqua's proposal.

OSBA Statement No. 1, at 8-9 (emphasis added).

Mr. Kalcic concluded that Aqua PA's proposed revenue allocation for water service, exclusive of Act 11 wastewater subsidies, was inappropriate as it failed to move all customer classes closer to their respective cost-based revenue levels. *Id.*, at 9. Therefore, the Company's proposed revenue allocation for water service, exclusive of Act 11 wastewater subsidies, is in violation of *Lloyd*, and therefore unjust and unreasonable.

4. Aqua PA's "Percentage of Cost of Service" Metric is Invalid

As set forth above, the ALJ concluded that Aqua PA's revenue allocation better reflects cost of service because the Company's proposal moves each customer classification toward its appropriate *percentage cost of service* when including the Act 11 allocation. However, the

OSBA's Reply Brief explained in detail why Aqua's preferred cost metric is, in fact, conceptually invalid. Yet, the ALJ inexplicably failed to address, or even acknowledge, the OSBA's critique of Aqua PA's baseless metric.

Specifically, Mr. Kalcic addressed Aqua PA's alternative cost-of-service metric, *i.e.*, the "percentage of cost of service recovered by each class," along with Aqua PA's claim that Act 11 revenues should be included when evaluating class revenue allocations, as follows:

Ms. Heppenstall's cost metric is depicted in Schedule A of Exhibit No. 5-A, Part I, at columns 5, 7 and 9. Column 5 shows each class's cost-based percentage of Aqua's claimed water cost of service, including Act 11. Column 7 shows each class's percentage contribution toward total water revenues at present rates; column 9 shows the corresponding percentages at proposed rates. I have summarized all of this information in Table 1S below.

* * *

According to Ms. Heppenstall, Aqua's revenue allocation proposal is cost based since the change in a class's percentage of revenue across columns 1-2, *i.e.*, present to proposed rates, move each class closer to the cost-based percentage shown in column 3.

OSBA Statement No. 1-S, at 4-5.²

Mr. Kalcic went on to explain why Aqua PA's "percentage of cost of service" metric is conceptually invalid, as follows:

The cost metric depicted in Table 1-S is deficient precisely because it includes Act 11 revenues in the calculation of the percentages shown in columns 2 and 3. Keep in mind that the class contributions to present revenue shown in column 1 do not include any Act 11 revenues. In contrast, since class contributions to proposed revenues (column 2) include Act 11 revenues, total class contributions at proposed rates will reflect each class's contribution toward *two* components: 1) assigned Act 11 revenue responsibility; and 2) allocated water cost of service responsibility.

Since Aqua appropriately assigns Act 11 revenue responsibility to water classes on a revenue neutral basis across (water and

² Table 1-S is attached in Appendix A to these Exceptions.

wastewater) classes, 100% of class contributions toward Act 11 revenues (i.e., the first component of total class contributions at proposed rates) goes towards paying for wastewater subsidies, with zero dollars “left over” to contribute toward a class’s allocated share of Aqua’s claimed water cost of service. In other words, giving water service classes full credit for paying for Act 11 subsidies tells us nothing about whether a given class is paying its allocated cost of water service.

In summary, since class contributions to present revenue only reflect class contributions toward water cost of service (as there are no Act 11 revenues included in present rates), while class contributions to proposed revenue include two separate components, the class percentages shown in columns 1 and 2 of Table 1-S are *not* comparable. Accordingly, one must conclude that the Company’s preferred cost metric is invalid.

OSBA Statement No. 1-S, 6-7 (emphasis in original).

To demonstrate how the inclusion of Act 11 revenues biases the “percentage of cost of service” metric favored by the Company, Mr. Kalcic revised Table 1-S to exclude Act 11 revenues, showing the results in Table 2-S.³ Mr. Kalcic explained, as follows:

Table 2-S shows that the Residential, Public and Private Fire protection classes would move away from cost of service under the Company’s revenue allocation proposal, using Aqua’s percentage of cost-of-service metric, corrected to remove Act 11 revenues.

OSBA Statement No. 1-S, at 7-8. Mr. Kalcic concluded his discussion of Table 2-S with the following observations:

Note that the share of revenues for the Residential class, exclusive of Act 11, declines from present to proposed rates. This decline follows from the fact that Company assigned the Residential class an increase of only 12.4%, exclusive of Act 11 revenues, which is less than the corresponding system average increase in sales revenue of 13.0%.

It is axiomatic that a necessary condition for an under-contributing class to move closer to cost of service is that the class receive an increase greater than the system average. Since Aqua proposes to assign the Residential class an increase that is less than the system

³ Table 2-S is attached in Appendix A to these Exceptions.

average, exclusive of Act 11 revenues, it is not possible for the Residential class to move closer to cost of service under Aqua's revenue allocation proposal. This outcome is confirmed by both the OSBA's subsidy analysis (discussed in OSBA Statement No. 1) and the percentage of revenue analysis shown in Table 2-S. To suggest that the Residential class would, in fact, move closer to cost of service under Aqua's proposed revenue allocation is simply not credible.

OSBA Statement No. 1-S, at 8 (footnote omitted).

Simply put, the class revenue allocation for water service proposed by Aqua PA is constructed out of whole cloth, totally without a legal foundation, and must be rejected by the Commission.

Exception No. 2: The ALJ erred in rejecting the OSBA's proposed water revenue allocation. (RD, at 92)

1. The OSBA correctly isolated Act 11 revenues in its proposed revenue allocation

In her RD, the ALJ compares the revenue allocation proposals sponsored by Aqua PA and the OSBA, at the Company's requested revenue requirement level, under the Company's proposal to allocated \$20.839 million of Act 11 revenues to water customers. RD, at 92. That comparison shows that the Residential class would receive an additional increase of \$7.3 million or 2.2% under the OSBA's revenue allocation proposal. The ALJ concluded, as follows:

[I]t appears that OSBA's recommendation to isolate and remove the Act 11 allocation from its analysis is motivated by a desire to decrease the revenue allocated to non-residential customer classifications, while increasing the revenue allocated to residential customer classes.

RD, at 92. The ALJ's conclusion is directly copied from the Aqua PA Main Brief, at 229.

Respectfully, the ALJ's conclusion about the OSBA's motivations is unfounded. The revenue allocation advocated by the OSBA is the *only* revenue allocation sponsored by any party to this proceeding that follows both the requirements of *Lloyd* and the Commission's decision in *City of Bethlehem*. Indeed, the OSBA's only motivation for isolating Act 11 revenues is based

upon this Office's desire, and duty, to follow the Public Utility Code, Commission regulations and precedent, and Commonwealth Court decisions. Simply put, the OSBA's approach of isolating Aqua PA's claimed water cost of service from Act 11 subsidies is necessary to develop a cost-based *water* revenue allocation, since the Company's claimed wastewater cost of service and associated Act 11 subsidies are completely separate from, and unrelated to, its claimed *water* revenue requirement.

Furthermore, Act 11 addresses the recovery of proposed wastewater subsidies. Unlike the ALJ's contention that the OSBA was arguing for its sole benefit, the fact that the OSBA's revenue allocation assigns greater revenue responsibility to the residential class is simply because the Company's proposed revenue allocation moves the Residential class in the *wrong direction* – away from cost of service. OSBA Main Brief, at 9-14.

Ultimately, any revenue allocation that corrects Aqua PA's failure to move all classes toward cost of service will necessarily, and appropriately, assign greater revenue responsibility to the Residential class than under the Company's unlawful proposal.

2. The OSBA's Water Revenue Allocation should be adopted by the Commission

Mr. Kalcic sponsored an alternative proposal that would move all classes toward their respective cost-based revenue levels without imposing an excessive increase on any class of water customers.

Specifically, Mr. Kalcic sponsored a just and reasonable revenue allocation (at the Company's requested water revenue increase), exclusive of any allocation of Act 11 subsidies, which he summarized, as follows:

Schedule BK-4W shows the OSBA's recommended allocation of Aqua's (pre-Act 11) requested increase in water revenues of \$65.3 million, which may be compared to the Company's proposal shown in Schedule BK-2W. Under the OSBA's proposal, class

increases range from 0.0% (Other Water Utilities) to 20.6% (Public Fire).

OSBA Statement No. 1, at 9. Mr. Kalcic continued, explaining how he developed his proposed revenue allocation:

My recommended revenue allocation was derived via three steps. First, I assigned each customer class its cost based increase, as determined by the Company's filed WCOSS.

Second, I adjusted the increases from Step 1 such that no class would receive either (i) an increase greater than 1.50 times the system average, or (ii) a rate decrease. These conditions necessitate assigning an increase to the small Other Water Utilities class of 0.0%, in lieu of an otherwise applicable cost-based decrease of approximately \$12,000. In addition, Step 2 sets the overall Private Fire increase at \$0.329 million or 2.0%, in lieu of an otherwise applicable cost based decrease of \$0.085 million. On net, Step 2 produces a revenue surplus of approximately \$0.424 million that must be credited to Aqua's remaining classes.

Third, I assigned the \$0.424 million surplus identified in Step 2 to the Residential and Industrial classes (i.e., those classes targeted with above system average increases, excluding Public Fire) in proportion to their respective total cost of service at proposed rates.

OSBA Statement No. 1, at 9-10 (footnote omitted). Schedule BK-4W is set forth below.

AQUA PENNSYLVANIA, INC.

OSBA Recommended Allocation of Aqua's
Requested Increase in Water Revenues,
Exclusive of any Act 11 Wastewater Allocation
(Future Test Period Ending March 31, 2023)

<u>Line</u>	<u>Classification</u>	Present	<u>Recommended Increase</u>	
		<u>Revenue*</u>	Amount	Percent
		1	2	3
1	Residential	\$333,854,297	\$48,699,128	14.6%
2	Commercial	\$119,491,326	\$11,308,636	9.5%
3	Industrial	\$16,630,075	\$3,081,805	18.5%
4	Public	\$8,516,664	\$294,206	3.5%
5	Other Water Utilities	\$12,812	\$0	0.0%
6	Private Fire Prot.	\$16,153,537	\$328,799	2.0%
7	Public Fire Prot.	<u>\$6,438,592</u>	<u>\$1,329,034</u>	20.6%
8	Total Sales	\$501,097,303	\$65,041,608	13.0%
9	Contract Sales	\$7,262,995	\$303,705	4.2%
10	Other Revenues	<u>\$1,318,393</u>	<u>\$0</u>	0.0%
11	TOTAL	<u>\$509,678,691</u>	<u>\$65,345,313</u>	12.8%

Source: Exh. No. 5-A, Testimony of
 Part I, Sch. A Mr. Kalcic

Notes:

* Includes DSIC of 7.5%.

To demonstrate the degree of movement toward cost of service under the OSBA's proposal, Mr. Kalcic calculated the class revenue subsidies which would result from the OSBA's proposed revenue allocation in Schedule BK-5W:

proposed Act 11 revenue requirement. OSBA Statement No. 1, at 15 and 17. However, to illustrate the OSBA's proposed revenue allocation for water service (inclusive of Aqua's proposed Act 11 revenue requirement of \$20.839 million) Mr. Kalcic prepared Schedule BK-6W, which may be directly compared to Aqua PA's proposal shown in Schedule BK-1W. OSBA Statement No. 1, at 11.

Schedule BK-6W is set forth below.

AQUA PENNSYLVANIA, INC.

OSBA Recommended Allocation of Aqua's
Requested Increase in Water Revenues,
Inclusive of Aqua's Proposed Act 11 Revenues
(Future Test Period Ending March 31, 2023)

<u>Line</u>	<u>Classification</u>	<u>Present Revenue*</u>	<u>OSBA Recomm. Increase</u>	<u>Aqua Proposed Act 11</u>	<u>Total Increase</u>	<u>% Inc.</u>
		1	2	3	4=2+3	5=4/1
1	Residential	\$333,854,297	48,699,128	16,806,100	\$65,505,228	19.6%
2	Commercial	\$119,491,326	11,308,636	\$3,939,400	\$15,248,036	12.8%
3	Industrial	\$16,630,075	3,081,805	\$528	\$3,082,333	18.5%
4	Public	\$8,516,664	\$294,206	\$93,398	\$387,604	4.6%
5	Oth. Water Util.	\$12,812	\$0	\$0	\$0	0.0%
6	Priv. Fire Prot.	\$16,153,537	\$328,799	\$0	\$328,799	2.0%
7	Pub. Fire Prot.	<u>\$6,438,592</u>	<u>1,329,034</u>	<u>\$0</u>	<u>\$1,329,034</u>	20.6%
8	Total Sales	\$501,097,303	65,041,608	20,839,426	\$85,881,034	17.1%
9	Contract Sales	\$7,262,995	\$303,705	\$0	\$303,705	4.2%
10	Oth. Revenues	<u>\$1,318,393</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	0.0%
11	TOTAL	<u>\$509,678,691</u>	<u>65,345,313</u>	<u>20,839,426</u>	<u>\$86,184,739</u>	16.9%

Source: Exh. No. 5-A, Schedule Exh. No. 5-A,
Part I, Sch. A BK-4W Part I, Sch. A

Notes:

* Includes DSIC of 7.5%.

To summarize, Schedule BK-4W sets forth Mr. Kalcic's revenue allocation proposal (at Aqua PA's requested increase in water revenues of \$65.3 million), exclusive of Act 11 considerations. Schedule BK-5W demonstrates that the OSBA's proposed water service revenue allocation moves *all* the Company's customer classes toward their respective cost of service. Schedule BK-6 illustrates the OSBA's proposed revenue allocation for water service, inclusive of Aqua's proposed Act 11 revenue requirement of \$20.839 million.

Therefore, the OSBA respectfully requests the Commission to adopt the OSBA's proposed water revenue allocation, which is the only just and reasonable proposal before it.

Exception No. 3: The ALJ erred by not recommending [BK3] how Act 11 subsidies should be allocated to the Company's water customer classes. (RD, at 91)

In her RD, the ALJ did not analyze how the Company's approved Act 11 wastewater subsidies should be allocated to the Company's water customers. Instead, the ALJ simply adopted the overall wastewater rate design and rate increases advocated by the Bureau of Investigation and Enforcement ("I&E"):

I recommend that the Commission accept the methodology of I&E for allocating revenue and designing wastewater rates. I&E's approach takes into consideration the number of water and wastewater customers in each system 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. I&E's approach acknowledges the benefits received by the communities serviced by the Acquired Systems from the sale of their systems to Aqua, but is less complicated than the method advocated by OCA.

RD, at 91.

In reviewing the Company's Act 11 proposal, including its proposed method of allocating its Act 11 revenue requirement to water customers, Mr. Kalcic first summarized Aqua PA's proposed wastewater service revenue allocation, as follows:

Schedule BK-1WW shows the Company's proposed increases to wastewater revenues, by customer class. In aggregate, Aqua is proposing to increase existing wastewater revenues by \$11.6 million, or 31.2%.

OSBA Statement No. 1, at 13. Schedule BK-1WW is set forth below:

AQUA PENNSYLVANIA WASTEWATER, INC.

Company Proposed Allocation of its
Requested Increase in Wastewater Revenues,
by Customer Class
(Future Test Period Ending March 31, 2023)

<u>Line</u>	<u>Classification</u>	Present	<u>Proposed Increase</u>	
		<u>Revenue*</u>	<u>Amount</u>	<u>Percent</u>
		1	2	3
1	Residential	\$25,848,678	\$8,612,297	33.3%
2	Commercial	\$9,333,222	\$2,790,157	29.9%
3	Industrial	\$3,530	\$1,129	32.0%
4	Public Authority	<u>\$204,412</u>	<u>\$51,355</u>	25.1%
5	Total Sales	\$35,389,842	\$11,454,938	32.4%
6	Contract / Third P.	\$1,592,785	\$108,659	6.8%
7	Other Revenues	<u>\$76,434</u>	<u>\$0</u>	0.0%
8	TOTAL	<u>\$37,059,061</u>	<u>\$11,563,597</u>	31.2%

Source: Exh. No. 5-B,
Part II

Notes:

* Includes DSIC Revenues.

Mr. Kalcic then discussed the fact that Aqua PA's proposed wastewater increase of \$11.563 million would not recover all of the Company's claimed wastewater revenue requirement, as follows:

As shown in Aqua Exhibit No. 5-B, Part I, Schedule A, column 3, the Company proposes to recover \$20.839 million of its claimed wastewater revenue requirement from water service customers. The \$20.839 million represents the difference between the Company's: 1) total claimed wastewater revenue requirement of \$69.465 million; and b) total proposed wastewater revenues of \$48.626 million.

OSBA Statement No. 1, at 13.

In addition, Mr. Kalcic testified, as follows:

Counsel advises that Act 11 permits the recovery of a portion of the Company's wastewater revenue requirement from water customers in a given rate proceeding, in order to mitigate the rate increases that wastewater service customers might otherwise experience.

At the same time, Counsel further advises that Act 11 does not authorize a *permanent* shift in revenue responsibility from wastewater to water customers. In other words, Act 11 does not supersede the cost-of-service principles established by the Commonwealth Court's decision in *Lloyd*.

OSBA Statement No. 1, at 14 (emphasis in original) (footnote omitted).

Mr. Kalcic is correct on both counts. While Act 11 provides the statutory authority to temporarily recover the costs associated with the Company's wastewater system from its water customers, nothing in Act 11 allows for any cross-subsidization of customer classes between wastewater and water customers. Furthermore, Act 11 does not supersede the requirements of *Lloyd*, in that Aqua PA's water rates (exclusive of Act 11) must be based primarily upon the results of the Company's water COSS.

With respect to Aqua PA's Act 11 proposal, Mr. Kalcic approved of the Company's proposed method of allocating its Act 11 wastewater subsidies to its water service classes. He explained Aqua PA's proposal, as follows:

Since the purpose of Act 11 is to mitigate class increases to wastewater customers, the temporary subsidies afforded to specific wastewater classes should be recovered from the utility's corresponding water service classes. In other words, the subsidy provided to residential wastewater customers should be recovered from residential water customers, and the subsidy provided to non-residential wastewater customers should be recovered from non-residential water customers.

As confirmed in Aqua's response to OSBA-II-4, the Company's allocation of its proposed Act 11 wastewater revenue requirement to individual water service classes reflects the difference between (i) a given wastewater class's total cost of service, as measured by the Company's applicable wastewater cost-of-service study, and (ii) the proposed level of wastewater revenues recovered from that class, summed across all of Aqua's wastewater operations. As such, Aqua's Act 11 allocation methodology properly recovers wastewater subsidies from water customers on a revenue neutral basis, by customer class.

OSBA Statement No. 1, at 17-18.

Consistent with the requirements of *Lloyd*, and following the statutory language set forth in Act 11, the OSBA finds Aqua PA's proposal to recover Act 11 wastewater subsidies from water customers on a revenue neutral basis by customer class is just and reasonable. The OSBA respectfully requests that the Commission adopt the revenue neutral allocation proposal advocated by Aqua PA and the OSBA as the only just and reasonable resolution of this issue.

Exception No. 4: The ALJ erred by not determining appropriate scale back mechanisms.

In her RD, the ALJ did not discuss how proposed class water increases, inclusive of Act 11 allocations, should be scaled back if Aqua PA was awarded less than its overall requested

revenue requirement. Instead, the ALJ limited her discussion of scale back mechanisms to wastewater rates, as follows:

Both I&E and Aqua agree that no scale back of the Company's proposed wastewater rates should occur until the total wastewater allocation is eliminated. Thus, any scale back of water rates will first reduce the Act 11 allocation.

RD, at 91.⁴

While the ALJ acknowledges that excluding *wastewater* rates from any scale back in this proceeding will reduce the Company's Act 11 revenue requirement, the RD fails to discuss how Aqua PA's allocation of its proposed Act 11 revenue requirement of \$20.839 million to water classes should be scale back to her recommended level of \$10.2 million.⁵

With respect to a scale back of the Company's proposed revenue allocation for water service, Aqua PA argued, as follows:

However, to the extent the Commission approves a rate increase less than proposed by the Company, the scale back should be applied proportionately based on the Company's proposed revenue allocation.

Aqua PA Main Brief, at 265.

The OSBA respectfully submits that Aqua PA's proposal to scale back the Company's proposed revenue allocation must be rejected. First, Aqua PA's proposed revenue allocation, as set forth above, is not cost based. Therefore, it is not valid to use the Company's proposed revenue allocation as starting point for any scale back. Second, as explained by Mr. Kalcic, it is necessary to employ a separate scale back for reductions in Aqua PA's allowed water service revenue requirement, as well as changes in the Company's Act 11 revenue requirement.

⁴ The ALJ recommended an unadjusted Act 11 revenue requirement of \$10,214,169. RD at Table Act 11.

⁵ The Company's proposed Act 11 revenue allocation is shown in column 3 of Schedule BK-6W.

Mr. Kalcic addressed the first issue, as follows:

First, as I have previously discussed, the Company's revenue allocation proposal for water service is not cost based. Therefore, Aqua's proposal should not be adopted for the purpose of developing final class revenue levels.

Second, as I have also previously discussed, it is not appropriate to simply scale back total proposed water class increases to arrive at final class revenue targets, as doing so would preclude the recovery of Aqua's approved Act 11 revenue requirement on a revenue neutral basis, by customer class.

OSBA Statement No. 1-R, at 10-11. Mr. Kalcic further addressed the second issue, as follows:

Leaving aside the fundamental question regarding which of the parties' alternative revenue allocation proposals is reasonable and proper, it would not be appropriate to scale back total proposed water class increases [inclusive of Act 11 revenues] to arrive at a final water revenue requirement, as suggested by [OCA witness] Mr. Watkins. Doing so would preclude the recovery of Aqua's Act 11 revenue requirement on a revenue neutral basis, by customer class.

Rather, as I explained in my direct testimony, there should be a separate scale back applied to: 1) class water increases associated with changes in Aqua's claimed water revenue requirement; and 2) class water increases associated with changes in Aqua's Act 11 revenue requirement.

OSBA Statement No. 1-R, at 8-9 (footnote omitted).

As explained in the OSBA's Main Brief at 19-20, if the Commission awards Aqua PA a water service revenue increase less than the Company's requested amount of \$65.3 million (exclusive of Act 11 considerations), the OSBA's recommended class increases for water service shown in column 2 of Schedule BK-4W, excluding Public Fire Protection and Contract sales, should be scaled back proportionately.

For convenience, Schedule BK-4W is set forth below:

AQUA PENNSYLVANIA, INC.

OSBA Recommended Allocation of Aqua's
Requested Increase in Water Revenues,
Exclusive of any Act 11 Wastewater Allocation
(Future Test Period Ending March 31, 2023)

<u>Line</u>	<u>Classification</u>	<u>Present Revenue*</u>	<u>Recommended Increase</u>	
			<u>Amount</u>	<u>Percent</u>
		1	2	3
1	Residential	\$333,854,297	\$48,699,128	14.6%
2	Commercial	\$119,491,326	\$11,308,636	9.5%
3	Industrial	\$16,630,075	\$3,081,805	18.5%
4	Public	\$8,516,664	\$294,206	3.5%
5	Other Water Utilities	\$12,812	\$0	0.0%
6	Private Fire Prot.	\$16,153,537	\$328,799	2.0%
7	Public Fire Prot.	<u>\$6,438,592</u>	<u>\$1,329,034</u>	20.6%
8	Total Sales	\$501,097,303	\$65,041,608	13.0%
9	Contract Sales	\$7,262,995	\$303,705	4.2%
10	Other Revenues	<u>\$1,318,393</u>	<u>\$0</u>	0.0%
11	TOTAL	<u>\$509,678,691</u>	<u>\$65,345,313</u>	12.8%

Source: Exh. No. 5-A, Part I, Sch. A Testimony of Mr. Kalcic

Notes:

* Includes DSIC of 7.5%.

In addition, Mr. Kalcic testified that the Act 11 revenues assigned to water classes should also be subject to a separate scale back at the conclusion of this proceeding, as determined by (i) the level of the Company's awarded wastewater revenue requirement and (ii) the overall level of final wastewater rates. OSBA Statement No. 1, at 12.

Specifically, if the Commission awards Aqua PA a wastewater service revenue requirement less than the Company's requested revenue requirement of \$69.5 million, Mr. Kalcic recommended, as follows:

In that event, I would recommend that the Commission direct the Company (i) to leave the OSBA’s proposed wastewater class increases unchanged, and (ii) to reduce the Act 11 revenue allocation shown in column 3 of Schedule BK-7W by scaling back the class revenue requirements shown in column 1 of Table 1 proportionately.

OSBA Statement No. 1, at 19. Table 1 is set forth below:

Table 1

Summary of OSBA’s Proposal to Allocate \$18.580 million of Aqua’s Claimed Wastewater Revenue Requirement to Water Customers (\$000)

<i>Class</i>	<i>Total WW Cost of Service</i>	<i>OSBA Recommended WW Revenues</i>	<i>OSBA Act 11 Allocation</i>
	(1)	(2)	(3)=(1)-(2)
Residential	\$51,267.1	\$36,116.2	\$15,150.9
Commercial	16,062.8	12,707.1	3,355.7
Industrial	5.2	4.8	0.4
Public Authority	<u>349.2</u>	<u>276.0</u>	<u>73.2</u>
Total Sales	\$67,684.3	\$49,104.1	\$18,580.2

Source: Aqua Exhibit No. 5-B, Part I, and Schedule BK-6WW.

To summarize, Table 1 sets forth Mr. Kalcic’s proposed Act 11 revenue allocation proposal at Aqua PA’s requested wastewater revenue requirement level for *sales* customers of \$67.7 million, and the OSBA’s proposed wastewater revenue level of \$49.1 million, and thus reflects the OSBA’s proposed Act 11 subsidy of \$18.580 million.

The OSBA’s proposed methodology for scaling back Aqua PA’s proposed Act 11 revenue allocation is separate from any scale back that may be required of Aqua PA’s proposed water service increases. A separate scale back process is necessary to ensure that Aqua PA’s

Commission-approved Act 11 revenue requirement is recovered from water customers on a revenue neutral basis, by customer class.

In order to ensure that Aqua PA's Commission-approved Act 11 revenue requirement is recovered from water customers on a revenue neutral basis, by customer class, the OSBA recommends that the Commission: 1) scale back the wastewater class revenue requirements shown in column 1 of Table 1 proportionately, so as to reflect Aqua PA's total approved wastewater revenue requirement level; and 2) subtract Aqua PA's approved level of wastewater revenues, by class, from the adjusted wastewater class revenue requirement levels in column 1.

The OSBA respectfully submits that its recommended water service and Act 11 scale back proposals are consistent with the requirements of *Lloyd* and Act 11 and would ensure that the Company's approved Act 11 revenue requirement would be recovered from water customers on a revenue neutral basis, by customer class. The OSBA respectfully requests that the Commission adopt its scale back proposals as the only just and reasonable resolution of these issues.

III. Conclusion

Wherefore, the OSBA respectfully requests that the Commission adopt OSBA Exception No. 1, 2, 3, and 4 as set forth above, and revise the Recommended Decision accordingly.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: February 28, 2022

APPENDIX A

BRIAN KALCIC TABLES 1-S AND 2-S

Table 1-S
Summary of Percentages of Revenues
and Claimed Cost of Service, Inclusive of Act 11, by Customer Class

<i>Class</i>	<i>Present Revenue %</i>	<i>Proposed Revenue %</i>	<i>Target Cost of Serv. %</i>
	(1)	(2)	(3)
Residential	66.62%	66.79%	68.11%
Commercial	23.85%	23.61%	22.95%
Industrial	3.32%	3.36%	3.36%
Public	1.70%	1.68%	1.52%
Resale	0.00%	0.00%	0.00%
Private Fire	3.22%	3.23%	2.74%
Public Fire	<u>1.28%</u>	<u>1.32%</u>	<u>1.32%</u>
Total Sales	100.00%	100.0%	100.00%

Source: Schedule A of Exhibit No. 5-A, Part I, columns 7, 9 & 5, respectively

Table 2-S
Summary of Percentages of Revenues
and Claimed Cost of Service, Exclusive of Act 11, by Customer Class

<i>Class</i>	<i>Present Revenue %</i>	<i>Proposed Revenue %</i>	<i>Target Cost of Serv. %</i>
	(1)	(2)	(3)
Residential	66.62%	66.28%	67.64%
Commercial	23.85%	23.78%	23.10%
Industrial	3.32%	3.48%	3.49%
Public	1.70%	1.73%	1.56%
Resale	0.00%	0.00%	0.00%
Private Fire	3.22%	3.35%	2.84%
Public Fire	<u>1.28%</u>	<u>1.37%</u>	<u>1.37%</u>
Total Sales	100.00%	100.00%	100.00%

Source: Schedule A of Exhibit No. 5-A, Part I, exclusive of Act 11 revenues.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : **Docket Nos. R-2021-3027385**

v.

R-2021-3027386

**Aqua Pennsylvania, Inc. and Aqua
Pennsylvania Wastewater, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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