



February 28, 2022

**VIA E-FILE**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, Filing Room  
Harrisburg, PA 17120

**Re: Pa. PUC v. Aqua Pa., Inc., and Aqua Pa. Wastewater, Inc.,  
R-2021-3027385, R-2021-3027386**

***Exception of CAUSE-PA***

Dear Secretary Chiavetta:

Enclosed, please find the **Exception of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above-noted proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

Ria M. Pereira, Esq.  
Counsel for CAUSE-PA

CC: *Certificate of Service*  
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*Encl.*

**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 have this day served copies of the **Exception of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

**VIA EMAIL ONLY**

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**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. :

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**EXCEPTION OF  
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY  
EFFICIENCY IN PENNSYLVANIA**

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**Date: February 28, 2022**

## I. INTRODUCTION

By Secretarial Letter dated February 18, 2022, the Office of Administrative Law Judge (OALJ) issued a Recommended Decision (RD) of Administrative Law Judge (ALJ) Mary D. Long in the consolidated Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (Aqua) base rate proceeding. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby files a single Exception to the Recommended Decision.

CAUSE-PA was an active participant in this proceeding, and filed Direct, Rebuttal, and Surrebuttal Testimony of Harry S. Geller, Esq. in support of its positions and recommendations.<sup>1</sup> CAUSE-PA also filed lengthy Main and Reply Briefs.<sup>2</sup> While we reference arguments raised in testimony and briefing in the context of these Exceptions, we will not reiterate the lengthy arguments contained therein. We nevertheless stand by those arguments and recommendations.

In filing this narrow Exception, CAUSE-PA asserts that ALJ Long erred as a matter of law when she concluded that Aqua's rate proceeding was not the proper venue to address issues and recommendations related to the design of Aqua's proposed Customer Assistance Program (CAP) and Helping Hand arrearage forgiveness program.<sup>3</sup> As discussed more fully below, the Commission's investigation in this rate proceeding must examine the justness, reasonableness, and lawfulness of rates, rules, and regulations for Aqua's customers.<sup>4</sup> Instead of engaging in review of the structure of Aqua's universal service programs – which establishes rates for tens of thousands<sup>5</sup>

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<sup>1</sup> See CAUSE-PA St. 1, CAUSE-PA St. 1-R, CAUSE-PA St. 1SR.

<sup>2</sup> See CAUSE-PA MB & CAUSE-PA RB.

<sup>3</sup> RD at 113-114.

<sup>4</sup> CAUSE-PA MB at 7-8; CAUSE-PA RB at 2-3; see also Suspension & Investigation Order (issued Oct. 7, 2021).

<sup>5</sup> CAUSE-PA MB at 9. There are a substantial number of low income consumers in Aqua's service territory. As of October 2021, Aqua reports having 21,495 *identified* low income customers – representing

of low income customers and for the ratepayers who support the programs through rates – the RD improperly concluded that universal service program design issues should be relegated to an informal stakeholder process or otherwise considered at an unspecified “later time.”<sup>6</sup>

CAUSE-PA similarly objects to the RD’s conclusion that universal service program improvements should not be considered in the context of this rate proceeding because the Commission has not established statewide standards for water/wastewater affordability.<sup>7</sup> The RD fails to consider the robust record on this issue, which indisputably shows that low income customers face steep challenges to affordability at existing rates, and that this unaffordability will increase with any approved increase in Aqua’s base rates.<sup>8</sup> Regardless of whether the Commission has adopted an explicit formal policy statement on the matter, rate affordability must nevertheless be considered as part of the Commission’s determination of whether Aqua’s proposed rates and associated terms and conditions of service are just, reasonable, and consistent with applicable laws, regulations, and Commission policy.

To be clear, CAUSE-PA does not except at this time to the ALJ’s ultimate findings with regard to Aqua’s proposed universal service programming – though we stand firmly by our conclusions and recommendations related thereto. Rather, CAUSE-PA narrowly excepts to the erroneous rationale and conclusions of the RD which suggest that the design of universal service programming and the affordability of rates produced by those programs are not properly reviewed in the context of this base rate proceeding. Such conclusions are contrary to the law and Commission precedent. CAUSE-PA therefore urges the Commission to clarify in its final order

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approximately 5% of Aqua’s total residential customers. There are tens of thousands more low income customers estimated to reside in Aqua’s service territory.

<sup>6</sup> RD at 113-114.

<sup>7</sup> Id. at 113.

<sup>8</sup> CAUSE-PA MB at 8-12, 20, 29.

that issues related to universal service program design and rate affordability for low income customers are properly examined in the context of a rate proceeding, and that such issues are part and parcel to determining whether a utility's rates are just and reasonable.

## II. EXCEPTIONS

### 1. **CAUSE-PA EXCEPTION 1: The ALJ erred as a matter of law and sound public policy by concluding that issues surrounding the design of Aqua's rate discount and arrearage forgiveness programs, and the resulting rate affordability achieved for low income customers, are not properly considered in the context of this rate proceeding.**

*A. An evaluation of the justness and reasonableness of any proposed rate increase must necessarily analyze the effect of the rate increase on the ability of residential consumers to reasonably afford service and, consequentially, the adequacy and design of rate assistance programming.*

In this rate proceeding, and every rate proceeding, the Commission has a "duty to set 'just and reasonable' rates, reflecting a 'balance of consumer and investor interests.'"<sup>9</sup> While the Commission has the discretion to determine the proper balance between ratepayer and utility interests,<sup>10</sup> "the PUC is obligated to consider broad public interests in the rate-making process."<sup>11</sup>

[T]he term "just and reasonable" was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital.<sup>12</sup>

The term "rate" is broadly defined by the Public Utility Code:

**Every** individual, or joint fare, toll, **charge**, rental, or other compensation **whatsoever** of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, **and**

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<sup>9</sup> CAUSE-PA MB at 5; Popowsky v. PUC, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301.

<sup>10</sup> CAUSE-PA MB at 5; Pa. PUC v. Philadelphia Electric Co., 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989); Pa. PUC v. Pa. Gas & Water Co., 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), cert. denied, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981).

<sup>11</sup> CAUSE-PA MB at 7; Popowsky v. Pa. PUC, 542 Pa. 99, 107-108 (1995), citing Pa. Elec. Co. v. Pa. PUC, 509 Pa. 324, 331, 502 A.2d 130, 134 (1985).

<sup>12</sup> Id.



**any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.**<sup>13</sup>

The rules, regulations, and practices for Aqua’s universal service programs affect the charges to both program participants and non-participants, and thus they fit squarely within the definition of rates that must be just and reasonable - and must be evaluated in this rate proceeding. In a recent PGW base rate proceeding, PGW filed a Motion *in Limine* arguing that portions of testimony regarding recommended changes to PGW’s Customer Responsibility Program (CRP) and its Universal Service and Conservation Plan (USECP) should be excluded from consideration within the context of a base rate proceeding.<sup>14</sup> In their Order, the Honorable Darlene Heep and the Honorable Marta Guhl found that the Company’s CRP and USECP were subject to review pursuant to the Commission’s Suspension Order and that the “effect of a rate on universal services is one of many issues to be considered in a rate case.”<sup>15</sup> ALJ Heep and ALJ Guhl further concluded that, while the *weight* of evidence concerning PGW’s CRP and USECP would be determined after hearing:

Universal service and customer assistance programs, including outreach to low income customers and providing rate protection from the proposed rate increase, are relevant to determining whether the rates increase sought by PGW for infrastructure work and declining usage is just and reasonable.<sup>16</sup>

In order to be just and reasonable, it is critical that rates are also affordable for those served. As CAUSE-PA expert witness Mr. Harry Geller explained, it is not appropriate “to raise rates for water and wastewater service without first ensuring that low and moderate income customers are able to receive affordable service under just and reasonable terms.”<sup>17</sup> Indeed, universal

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<sup>13</sup> 66 Pa. C.S. §102 (emphasis added); *see also* McCloskey v. Pa. PUC, 219 A.3d 1216, 1223.

<sup>14</sup> Pa. PUC . PGW, Order on PGW’s Motion *in Limine* Regarding Testimony on Behalf of OCA and TURN, Docket No. R-2020-3017206, at 3 (Order dated July 8, 2020) (hereafter, Order on PGW’s Motion *in Limine*).

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> CAUSE-PA MB at 7. CAUSE-PA St. 1 at 10: 6-8.

accessibility is a polestar principle of ratemaking for essential, life-sustaining services like water and wastewater.<sup>18</sup>

The Commission's Suspension and Investigation Order in this matter makes it clear that the current investigation in this rate proceeding is to investigate the lawfulness, justness and reasonableness of *both* proposed and existing rates, rules, and regulations.<sup>19</sup> Low income customers represent a significant portion of Aqua's residential customers. Aqua estimates that nearly one in four households in its service territory have income below 200% of the Federal Poverty Level and has affirmatively identified approximately 5% of its total residential customers as low income.<sup>20</sup> In order to meaningfully conduct an investigation of proposed and existing rates, it is necessary to examine the lawfulness, justness, and reasonableness of rates for all consumers – including low income consumers. This investigation necessarily includes an examination of the design and delivery of Aqua's universal service programs, which provide rate assistance to low income households. It is neither just nor reasonable to defer consideration of whether low income customers can reasonably afford to access and maintain service to their home, and in turn whether amendment to low income programming is necessary, to some other proceeding at a later date.<sup>21</sup>

As discussed in CAUSE-PA's Main and Reply Briefs, the record in this proceeding is replete with unrebutted testimony and evidence that Aqua's low income consumers struggle profoundly to afford to maintain water and wastewater services.<sup>22</sup> For low income consumers who

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<sup>18</sup> CAUSE-PA MB at 7-8.

<sup>19</sup> Pa. PUC v. Aqua Pa., Inc., and Aqua Pa. Wastewater, Inc., R-2021-3027385, R-2021-3027386, Order, at 2 (Order entered October 7, 2021).

<sup>20</sup> CAUSE-PA MB at 9.

<sup>21</sup> Id. at 7-8.

<sup>22</sup> CAUSE-PA MB 8-12, 20. CAUSE-PA RB at 2-4.

struggle daily to make ends meet, Aqua's rates – even prior to any approved increase – far exceed reasonable and accepted levels of affordability.<sup>23</sup>

In order to address unaffordability at existing and proposed rates, CAUSE-PA extensively argued that any increase to Aqua's rates of basic and life-sustaining water and wastewater services must be mitigated by robust universal service programs to ensure that Aqua's low income customers can reasonably connect to and maintain critical water/wastewater services in their homes.<sup>24</sup> While CAUSE-PA strongly supports implementation of a CAP,<sup>25</sup> CAUSE-PA and its expert witness raised concerns that the design of Aqua's proposed CAP would not provide an equitable and appropriately targeted levels of assistance to ensure that low income customers would be able to reasonably maintain service to their home – especially for those with larger families and correspondingly higher usage levels.<sup>26</sup> In light of CAUSE-PA's concerns related to rate affordability for low income customers, and the inadequacy of Aqua's proposed CAP to ensure reasonable rate affordability for low income CAP participants, CAUSE-PA recommended that Aqua be required to (1) implement the improved discount levels and adjusted income tiers recommended by the Office of Consumer Advocate (OCA) expert witness Mr. Roger Colton and supported by Mr. Geller; (2) closely monitor and analyze water/wastewater burdens of CAP participants; and (3) transition to a Percentage of Income Program (PIP) structure if participants are not reaching acceptable levels of affordability.<sup>27</sup>

CAUSE-PA and its expert witness also presented extensive testimony and evidence that Aqua's Helping Hand arrearage forgiveness program is inadequate to address high levels of arrears

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<sup>23</sup> CAUSE-PA MB at 10.

<sup>24</sup> Id. at 1-3, 5-6.

<sup>25</sup> Id. at 18.

<sup>26</sup> Id. at 19-21.

<sup>27</sup> Id. at 21-22.

accrued by low income customers and further exacerbates rate unaffordability faced by these consumers.<sup>28</sup> For example, the average arrearage of Helping Hand customers was \$1,211.36 as of August 2021.<sup>29</sup> As Mr. Geller notes, at \$25 per month, it takes the average Helping Hand customer more than 4 years to retire this level of arrears.<sup>30</sup> CAUSE-PA argued that Aqua should be required to revise the structure of Helping Hand so that (1) when entering the program, pre-program arrears are frozen and no longer accrue late fees or charges; and (2) for each in-full payment that a customer makes while enrolled in Helping Hand, 1/36th of the customer's frozen arrears or \$25, whichever is greater, should be forgiven.<sup>31</sup> In light of the current limitations of Aqua's systems and its implementation of an SAP in 2023, CAUSE-PA recommended that Aqua be required to implement these changes within 90 days of conversion of its SAP.<sup>32</sup>

Despite substantial record evidence showing the critical need to provide low income customers with meaningful assistance programs to address unaffordability at existing and proposed rates, the RD concluded that the design of Aqua's CAP and arrearage forgiveness benefits were not appropriate issues for consideration in this proceeding.<sup>33</sup> While explicitly recognizing that the Public Utility Code allows for broad consideration of issues in base rate proceedings, the RD nevertheless found that this rate proceeding was not the best forum to consider "complex social and economic issues related to affordability as it impacts CAP design."<sup>34</sup> Instead, the RD

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<sup>28</sup> Id. at 29.

<sup>29</sup> CAUSE-PA RB at 12.

<sup>30</sup> Id. at 12.

<sup>31</sup> CAUSE-PA MB at 31-32.

<sup>32</sup> Id. at 31-32.

<sup>33</sup> RD at 113.

<sup>34</sup> Id.

erroneously concluded that issues with the design of Aqua's CAP and arrearage forgiveness programs were better reviewed in the context of informal stakeholder processes.<sup>35</sup>

CAUSE-PA excepts to the RD's erroneous conclusion that consideration of improvements and modifications to the design of Aqua's universal service programs are not appropriately considered in this rate proceeding and should be relegated to informal stakeholder processes. The Public Utility Code requires the Commission to ensure that *all* rates and charges and every rule, regulation, and procedure affecting those charges (whether current or proposed) are just, reasonable, and in accordance with regulation and Commission orders.<sup>36</sup> Affordability of rates for low income consumers, and in turn the structure and delivery of universal service programming, are key components of determining whether rates are just and reasonable. By precluding meaningful consideration of universal service issues in the context of this rate proceeding, the RD ignores the statutory mandate to ensure that all rate charges are just and reasonable, and directly contradicts the past precedent requiring consideration of universal service issues.

Barring evaluation of critical improvements to universal service programs as a means to redress rate unaffordability also ignores that low income customers are struggling *now* to afford their monthly water/wastewater bills.<sup>37</sup> As discussed above, and detailed extensively in CAUSE-PA's Main Brief and Reply Brief, Aqua's low income customers – even assuming assistance through Helping Hand and the proposed CAP – struggle profoundly at existing rates to afford basic water/wastewater services.<sup>38</sup> Even at existing rates, these customers are far more likely to experience involuntary termination compared to residential customers as a whole – representing

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<sup>35</sup> *Id.* at 113-114.

<sup>36</sup> 66 Pa. C.S. §§ 1301, 1309.

<sup>37</sup> CAUSE-PA RB at 8; CAUSE-PA MB at 9-11.

<sup>38</sup> CAUSE-PA MB at 19-24; 29-32. CAUSE-PA RB at 5-9; 11-13.

23% of terminations for non-payment amongst residential customers in 2021, despite only constituting 5% of residential accounts.<sup>39</sup> As discussed extensively in CAUSE-PA’s Main Brief, there are far-ranging consequences that result from termination of water and wastewater services:<sup>40</sup>

**Water service termination is akin to eviction from a home, as the home may be deemed uninhabitable or even condemned, forcing families to vacate with little to no notice.** Termination of service to the home can jeopardize a parent’s custody of their children and is often cited as a cause of evictions from private and public housing -- leading to increased rates of homelessness. Water shutoffs also pose a threat to public health and human dignity because without access to running water, families are unable to cook, bathe, clean, or flush their toilets.

**Access to water service is tied directly to the health and well-being of the household, and the habitability of the home.** Consistent and affordable access to water and wastewater services has shown to have numerous benefits to communities as a whole. Having affordable access to such services has been linked to healthier child development, decreasing homelessness, and improving affordability of public and private housing.<sup>41</sup>

Once again, the Commission’s investigation into the justness and reasonableness of Aqua’s proposed rates included an examination of Aqua’s rates – as well as its rules and policies which impact the ability of consumers to access service. It is unjust and unreasonable to bar consideration of improvements to universal service programs in the context of this proceeding that would help low income consumers stay connected to these crucial services – especially in light of the rate increase recommend by the RD. Instead, CAUSE-PA urges the Commission to clarify that examination of the structure and affordability of universal service programs is properly addressed in the context of this rate case.

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<sup>39</sup> CAUSE-PA MB at 13-14.

<sup>40</sup> Id. at 10.

<sup>41</sup> Id. at 10-11, citing CAUSE-PA St. 1 at 20: 5-15 (internal citations omitted, emphasis added).

*B. Aqua's informal universal service stakeholder process is not a substitute for consideration of the impact a rate increase will have on low income customers in the context of this rate proceeding, and the need to make corresponding adjustments to the rates charged through universal service programming.*

As discussed above, the RD concludes that issues related to the design and structure of Aqua's proposed CAP and arrearage forgiveness programs should not be considered in the context of this base rate case and that the proper venue for examining these complex issues is Aqua's universal service stakeholder process – presumably in reference to its informal Helping Hand Collaborative group.<sup>42</sup>

CAUSE-PA objects to the extent that the RD suggests that informal stakeholder meetings and processes can substitute for investigation and review of low income programs in the context of a litigated rate proceeding. As a preliminary matter, CAUSE-PA supports the use of universal service stakeholder meetings to provide a forum for parties and stakeholders to discuss issues surrounding the design and delivery of universal service programming, and to reach consensus where possible. This can help to reduce the number of issues raised through formal litigation, and is beneficial to all parties. In fact, CAUSE-PA helped form Aqua's Helping Hand Collaborative, is an active participant in the group, and recommended in its Main Brief that Aqua solicit input from its Helping Hand Collaborative related to a number of low income issues, including the development of a comprehensive consumer education and outreach plan.<sup>43</sup>

Notwithstanding CAUSE-PA's support of collaborative processes to help resolve issues that affect low income consumers outside of litigation, informal stakeholder meetings are simply no substitute for a formal examination of rates produced by universal service programming in the context of a rate proceeding. Informal stakeholder processes lack a myriad of tools necessary to

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<sup>42</sup> RD at 113.

<sup>43</sup> CAUSE-PA MB at 26.

meaningfully investigate the adequacy of universal services, including the use of discovery and evidentiary hearings. If parties are relegated to informal processes to advocate for improvements to these programs, there is also no mechanism to require Aqua to implement, or even consider, parties' proposals. If Aqua fails to implement recommended improvements, parties would have no clear path to take exception or appeal Aqua's decisions. In short, relegating consideration of improvements to universal service programs to informal stakeholder processes severs parties from their right to investigate the justness and reasonableness of rates for the tens of thousands of low income customers within Aqua's service territory in the context of a formal rate proceeding.

*C. The continued need to address water and wastewater affordability on a statewide level does not preclude review of the adequacy of Aqua's low income programs in the context of this rate proceeding.*

CAUSE-PA contests the RD's conclusion that examination of low income rates is not appropriate in the context of this rate proceeding because the Commission has not established statewide affordability standards for water and wastewater.<sup>44</sup> As explained above, all rates must be just and reasonable and the absence of a statewide affordability standard does not eliminate this requirement.<sup>45</sup> Just as the existence of a formal policy statement cannot form the sole basis of the Commission's decision in a litigated proceeding, the *absence* of formal Commission policy is not a legitimate basis to deny consideration and resolution of an issue impacting the reasonableness and justness of rates.

CAUSE-PA strongly supports the initiation of a statewide proceeding to establish formal Commission policy on water and wastewater affordability and applicable standards and guidelines to help ensure that all Pennsylvanians – regardless of income level – can connect to and afford

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<sup>44</sup> RD at 113.

<sup>45</sup> 66 Pa. C.S. § 1301.



water and wastewater services. However, the absence of formal statewide policy does not bar consideration of program improvements critical to ensuring low income customers can reasonably afford to connect to and maintain water and wastewater services in the context of this or other rate proceedings. As discussed more fully in CAUSE-PA's Main Brief, Aqua acknowledges and does not dispute the widely accepted standards of water/wastewater affordability set forth in detail in this proceeding.<sup>46</sup>

There is ample record in this case to show that Aqua's proposed CAP will not achieve reasonable levels of affordability for many low income consumers.<sup>47</sup> The RD does not address the merits of this detailed record, but instead summarily rejects consideration of certain universal service program improvements in the context of the rate proceeding. This is unjust, unreasonable, and an error of law that ignores the pervasive needs of low income consumers who continue to struggle to afford life-sustaining water and wastewater services to their homes.

Notably, the RD does reach a conclusion on several aspects of Aqua's universal service programming, such as the approved verification process and various other program rules – while declining to reach conclusions about the overall design and benefits provided through the program. It is unjust and unreasonable to consider some aspects of universal service program issues without addressing fundamental issues with universal service program design.

Thus, and for the reasons detailed in CAUSE-PA's Main Brief and this Reply Brief, CAUSE-PA urges the Commission to amend the RD to clarify that issues related to the design of

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<sup>46</sup> CAUSE-PA MB at 17-18.

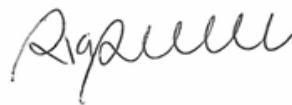
<sup>47</sup> Id. at 19-23.

Aqua's proposed CAP and other low income programs are properly considered within the context of this rate proceeding.

### III. CONCLUSION

For the reasons set forth above, and as more fully explained in CAUSE-PA's Main Brief and Reply Brief, CAUSE-PA urges the Commission to amend and/or clarify ALJ Long's RD consistent with its above Exception. Aqua's low income consumers are struggling profoundly to afford critical water and wastewater services. It is unjust, unreasonable, and contrary to the requirements set forth by regulation and Commission order to preclude consideration of universal service program design improvements that would help these customers to afford their monthly bills and stay connected to services. Instead, the Commission should make clear that in order to properly examine the justness and reasonableness of rates within the context of this proceeding it is necessary to examine the structure and delivery of universal service programs that determine rates for low income customers.

Respectfully submitted,  
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