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February 28, 2022

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.;**  
**Docket No. R-2021-3027385**

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Exceptions of the Aqua Large Users Group ("Aqua LUG") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare  
MCNEES WALLACE & NURICK LLC

Counsel to the Aqua Large Users Group

Attachment

c: Administrative Law Judge Mary D. Long (via E-Mail)  
Certificate of Service

## **CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Adeolu A. Bakare

Counsel to the Aqua Large Users Group

Dated this 28<sup>th</sup> day of February, 2022, at Harrisburg, Pennsylvania.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION :  
 : Docket No. R-2021-3027385  
v. :  
 :  
AQUA PENNSYLVANIA, INC. :

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**EXCEPTIONS OF THE AQUA LARGE USERS GROUP**

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Building Owners & Managers Association (BOMA) of Philadelphia  
Swarthmore College  
Thomas Jefferson University

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Dated: February 28, 2022

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## I. INTRODUCTION

On August 20, 2021, Aqua Pennsylvania, Inc. ("Aqua" or "Company"), filed Tariff Water-Pa. P.U.C. No. 3 ("Tariff Water No. 3") and Tariff Sewer-Pa. P.U.C. No. 3 ("Tariff Sewer No. 3") with the Pennsylvania Public Utility Commission ("PUC" or "Commission"), proposing to implement an approximately \$97.7 million base rate increase for water and sewer customers. On October 14, 2021, the Aqua Large Users Group ("Aqua LUG") filed a Complaint in this proceeding. Aqua LUG filed a Main Brief ("M.B.") on January 11, 2022. Because Aqua LUG addressed all of its arguments in its M.B., Aqua LUG did not file a Reply Brief in this proceeding.

Throughout this proceeding, Aqua LUG has argued, among other things, that the revenue allocation proposed by Aqua fails to achieve sufficient progress towards cost-of-service based rates for all customer cases and has recommended that the Commission either adopt the revenue allocation proposed by Office of Small Business Advocate ("OSBA") witness Brian Kalcic and supported by Aqua LUG witness Mr. Baudino, or alternatively, adopt the revenue allocation proposed by Mr. Baudino. See generally Aqua LUG M.B., pp. 6-11.

On February 18, 2022, presiding Administrative Law Judge ("ALJ") Mary D. Long issued a Recommended Decision ("R.D.") in this proceeding. Aqua LUG commends the ALJ for a well-reasoned R.D. that appropriately addresses the vast majority of issues raised in this proceeding. Unfortunately, Aqua LUG must except to one of the ALJs' recommendations that, if implemented, could detrimentally impact large commercial and industrial ("C&I") customers on Aqua's system. Specifically, while the ALJ reasonably recommends that Aqua's rates be scaled back in the event that the Commission permits a lower revenue recovery than the \$97.7 million requested, the R.D. also recommends approval of the Company's proposed revenue allocation. See R.D. at 91-94. Pursuant to Section 5.533 of the Commission's Regulations, Aqua LUG hereby files these limited

exceptions urging the Commission to reject the ALJ's approval of the Company's proposed revenue allocation and instead implement the revenue allocation proposed by Aqua LUG Witness Richard Baudino or, alternatively, the revenue allocation proposed by OSBA Witness Brian Kalcic. 52 Pa. Code § 5.533.

## II. EXCEPTIONS

### 1. **Exception No. 1: The R.D. Erred in Recommending Approval of the Company's Proposed Revenue Allocation.**

The R.D. concludes that, "but for the Act 11 subsidy allocated to water customers, the Company's allocation of revenues between all water customer classifications and all wastewater customer classifications is reasonable and should otherwise be approved." R.D. at 93. In approving Aqua's proposed revenue allocation, the R.D. appears to rely on testimony provided by Aqua and the Office of Consumer Advocate ("OCA") alleging that Aqua LUG's proposed revenue allocation results in unacceptable Relative Rates of Return ("RROR") or fails to consider additional complexities set forth in this rate case. R.D. at 93. As discussed below, these observations are unfounded. The R.D. offers no basis to support approval of a revenue allocation that results in a Relative Rate of Return for Commercial customers of 1.05 while making little to no progress towards cost-of-service based rates for the other classes. The Commission must therefore reject this recommendation and, instead, adopt the allocation set forth by Aqua LUG, or alternative by the OSBA, as both of these recommendations move all classes closer to their cost to serve.

As detailed in Aqua LUG's Main Brief, the Commonwealth Court and the Commission have repeatedly held that a utility's cost of providing service must be the guiding principle – or "polestar" – in utility ratemaking. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa.

Commw. Ct. 2006; see also, e.g., Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-2008-2073938, 2009 WL 884424 \*5 (Order entered Mar. 26, 2009) (upholding natural gas utility rates as consistent with Lloyd by reason of the rates being properly derived from a cost of service analysis and subject to cost of service review in future base rate case). Consistent with Lloyd, Aqua LUG reviewed the Company's proposed revenue allocation to assess the reasonableness of the movement towards cost-of-service.

As set forth more fully in Aqua LUG's M.B., the Company's original revenue allocation anticipated and incorporated a movement of the Commercial rate class somewhat closer to the Company's cost to serve by moving this class from a current 1.07 RROR to a 1.05 RROR. Aqua LUG M.B. at 9. This proposed movement toward the cost to serve was based on a valid Cost of Service Study ("COSS") prepared and presented by the Company. See id. at 6-7. However, the Company's revenue allocation does not achieve sufficient movement for the Residential customer class as the RROR for the Residential customers stands at 0.96 under current rates and remains at 0.96 under the proposed rates. Id. at 9. In other words, as described by Mr. Baudino:

The proposed RROR for the Residential class made no movement towards the system average increase in Ms. Heppenstall's proposed revenue allocation. The Commercial class RROR declined only slightly.

Id.; *see also* Aqua LUG St. 1, at 4.

In order to achieve more reasonable movement towards cost of service across the various classes consistent with Lloyd, Mr. Baudino proposed that Aqua modify its revenue allocation as follows:

- Move the Residential class from a RROR of 0.96 to 0.98.
- Move the Commercial class from a RROR of 1.07 to 1.02.
- Move the Industrial class from a RROR of 0.93 to 0.99.
- Move the Public class from a RROR of 1.18 to 1.15.

Aqua LUG M.B., at 9-10. As evidenced above, these proposed adjustments achieve greater movement towards cost of service for several customer classes, which is more appropriate than achieving only modest movement towards costs of service for the Commercial class and no movement towards cost of service for the Residential class.<sup>1</sup>

In rejecting Aqua LUG's proposed revenue allocation, the R.D. adopts erroneous arguments proffered by Aqua. The R.D. relies on Aqua's argument that "Aqua LUG's recommendation is based on moving a portion of the industrial class increase to the residential class, due to a larger increase in blocks 5 and 6 of the consumption rate for the industrial class. R.D. at 93. In other words, Aqua claims that Aqua LUG's rate allocation proposal is nothing more an attempt to lower the last two blocks of the industrial rate class increase by shifting these costs to the residential class. Contrary to Aqua's claims, the basis for Aqua LUG's recommendation was the unreasonableness of setting rates that preserve substantial interclass subsidies for the Commercial class (i.e., the Commercial class RROR decreasing by just 0.02 from present to proposed rates) while making no progress whatsoever towards cost of service for the Residential class (i.e., the Residential RROR remaining at 0.96 at present and proposed rates). With regards to the Industrial customer blocks, Mr. Baudino stated only that "[i]f necessary, [Aqua] could move some of the Industrial revenue increase to the Residential class to moderate the increases in these blocks". Aqua LUG St. 1 at 6. However, the basis for Aqua LUG's recommendation remains

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<sup>1</sup> Aqua LUG notes that OSBA witness Brian Kalcic proposed an alternative revenue allocation also intended to correct the failure of Aqua's proposed revenue allocation to reasonably advance various customer classes towards their cost of service. See Aqua LUG St. No. 1S at 2. While Aqua LUG's Exceptions will focus on the revenue allocation initially proposed in Aqua LUG's Direct Testimony, Aqua LUG remains unopposed to OSBA's alternative revenue allocation as proposed by OSBA Witness Kalcic and supported by Aqua LUG Witness Baudino. *Id.*

achieving more movement towards cost of service, particularly with regards to the Commercial rate class.

Aqua further appears to unreasonably take issue with Aqua LUG's proposal to move the Residential customer class to a RROR of 0.98. R.D. at 93. As referenced in the R.D., Aqua claims "[t]his movement of revenue from the industrial class to the residential class would result in relative rates of return between 0.98 and 0.96 and, therefore, should be rejected. R.D. at 93. Aqua continues to ignore the fact that the Residential class has a RROR of 0.96 under present rates. It is not clear how movement from a 0.96 RROR to a 0.98 RROR warrants rejection of Aqua LUG's proposed revenue allocation. To the contrary, the movement for the Residential customer class recommended by Aqua LUG achieves reasonable movement towards costs of service, but also incorporates principles of gradualism by not immediately moving the Residential class to cost of service. Aqua LUG M.B., at 9-10.

The R.D. adopts similarly unfounded arguments set forth by the OCA. The R.D. observes that "OCA further noted that Aqua LUG does not consider the many other complexities of this case, including: gradual movement of various divisions to a state-wide rate, the Public Fire revenue subsidy required by statute and subsidization of wastewater operations by water operations." R.D. at 93 *citing* OCA St. 4R at 12. To the contrary, and as discussed above, the movement towards cost of service under Aqua LUG's recommendation incorporates gradualism principles by declining to immediately move the Residential class to cost of service. Aqua LUG M.B., at 9-10. Moreover, OCA's observation that Aqua LUG's recommendation fails to incorporate the subsidization of wastewater operations by water operations lacks the appropriate context in light of the R.D. The R.D. adopts the Bureau of Investigation and Enforcement's ("I&E") scale back recommendation to first eliminate the subsidy to wastewater customers before

proportionately scaling back the additional rates. R.D. at 91. To the extent I&E's recommendation is adopted by the Commission, any further accounting consideration of the Act 11 subsidy would be a double count. Accordingly, if the Commission accepts I&E's scale back propose to first eliminate the subsidy to water customers, it should scale back the additional water rates consistent with Aqua LUG's proposed revenue allocation.

Further, even absent the I&E scale back recommendation that moots OCA's Act 11 concerns, the legislative authority to allocate a portion of the wastewater cost of service to water customers should not supersede the Commission's evaluation of the water-only revenue allocation. See OSBA St. 1-S at 6-7. As observed by OSBA Witness Kalcic, Act 11 revenue requirements are assigned on a revenue-neutral basis and do not reflect class cost of service. *Id.* Accordingly, the appropriate Act 11 subsidy should be determined after establishing the appropriate water system revenue allocation on a cost of service basis pursuant to Lloyd.

As stated above, Aqua LUG is generally supportive of the R.D. and its well-reasoned findings with regards to the rate filing. However, the revenue allocation adopted by the Commission must ensure Aqua continues to achieve reasonable progression towards cost-of-service based rates. Accordingly, the Commission must reject the R.D.'s recommended approval of Aqua's revenue allocation and direct Aqua to implement the revenue allocation modifications proposed by Mr. Baudino on behalf of Aqua LUG, or, in the alternative, the revenue allocation modifications proposed by OSBA.

**III. CONCLUSION**

**WHEREFORE**, the Aqua Large Users Group respectfully requests that the Pennsylvania Public Utility Commission adopt the revenue allocation recommendations set forth herein.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By  \_\_\_\_\_

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