



May 31, 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**

Petition for Reconsideration and/or Clarification of CAUSE-PA

Dear Secretary Chiavetta:

Enclosed, please find the **Petition for Reconsideration and/or Clarification 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 **Petition for Reconsideration and/or Clarification 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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May 31, 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. :

**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA**

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§ 5.41 and 5.572, the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby petitions the Commission for reconsideration and/or clarification of its May 16, 2022 Opinion and Order (Order) regarding the proposed base rate increase of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (Aqua).

In support thereof, CAUSE-PA asserts the following:

1. CAUSE-PA was an active participant in this proceeding, and filed Direct, Rebuttal, and Surrebuttal Testimony of its expert witness, Harry S. Geller, Esq. in support of its positions and recommendations.¹ CAUSE-PA also filed Main and Reply Briefs, as well as Exceptions and Reply Exceptions to the Recommended Decision (RD).² While we reference arguments raised in testimony, briefing, and exceptions, we will not reiterate the lengthy arguments contained therein. We nevertheless stand by and incorporate those arguments and recommendations herein.
2. For the reasons explained more thoroughly below, CAUSE-PA urges the Commission to clarify and/or reconsider its Order based on the following grounds:
 - a. First, CAUSE-PA asserts that the Order errs as a matter of law in suggesting that issues and recommendations related to Aqua's universal service programs – including 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. This suggestion is contrary to law and precedent and is inconsistent

¹ See CAUSE-PA St. 1, CAUSE-PA St. 1-R, CAUSE-PA St. 1SR.

² See CAUSE-PA MB, CAUSE-PA RB, CAUSE-PA Exceptions; CAUSE-PA Reply Exceptions.

with the Commission’s decision approving Aqua’s proposed revisions to its universal service programs in this proceeding. To rectify this error of law, CAUSE-PA urges the Commission to clarify in its final order that issues related to universal service program design and rate affordability for low income customers – and the attendant customer service and collections issues - 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 and conditions of service are just and reasonable.

- b. Second, CAUSE-PA asserts that the Order commits a factual error in concluding that Aqua’s proposed CAP is “similar to the structure in place at the Peoples Company” as a basis for concluding that Aqua’s proposed CAP design should be approved without consideration of proposed modifications or alternative CAP design options. (Order at 331). To rectify this error, CAUSE-PA asserts that the Commission should require Aqua to take steps to bring its program into alignment with Peoples’ CAP design, consistent with the well supported recommendations of CAUSE-PA and the Office of Consumer Advocate (OCA) on the record in this proceeding.

II. BACKGROUND

3. CAUSE-PA incorporates by reference the Introduction section contained in its Main Brief, which was filed with the Commission on January 11, 2022. The Introduction section of CAUSE-PA’s Main Brief provides a detailed explanation of the procedural progression of this proceeding.

4. CAUSE-PA filed a single Exception to the Recommended Decision on February 28, 2022.

5. In its Exception, CAUSE-PA argued that the Recommended Decision in this matter erred when it concluded that Aqua’s rate proceeding was not the proper venue to address issues and

recommendations related to the design of Aqua’s universal service programs – including the design, structure, and delivery of its proposed CAP. (CAUSE-PA Exceptions at 2).

6. On March 7, 2022, CAUSE-PA filed Reply Exceptions in this proceeding.

7. On May 16, 2022, the Commission issued its Order. In relevant part, the Order approved Aqua’s proposal to implement a tiered discount CAP design - but agreed with the Administrative Law Judge (ALJ) that certain proposals of OCA and CAUSE-PA to improve or amend the design of Aqua’s proposed CAP and arrearage forgiveness benefits and/or to better track data and information about the program “are not appropriately considered in the context of this base rate proceeding.” (Order at 330).

8. After declaring that certain Customer Assistance Program (CAP) design issues are “not appropriately considered”, the Order then concludes without further discussion that the record does not contain sufficient information related to the costs, benefits, and overall effectiveness of the alternative CAP design proposals and other programmatic changes recommended by CAUSE-PA and OCA. (Order at 330-331). The Order notes that, before entertaining alternative program design models, certain statewide policy decisions would first need to be made that would require additional analysis. (Order at 331).

9. The Order then concludes that Aqua’s proposed tiered discount CAP proposal is reasonable because it is “similar to the structure in place at Peoples Companies.” (Order at 331). This conclusion constitutes a factual error because Peoples’ CAP is designed as a percentage of income program (PIP), not a tiered discount program. (CAUSE-PA St. 1 at 45: 5-6, fn. 86).³

10. The Order further points to the testimony of Aqua’s expert witness, Ms. Rita Black, who indicated in testimony that changes to Aqua’s proposed CAP structure would require

³ See also Peoples Natural Gas Company Universal Service and Energy Conservation Plan, 2015-2018, at 6, available at: <https://www.puc.pa.gov/pedocs/1578118.pdf>.

programmatic changes that would potentially interplay with Aqua's billing system conversion in 2023. (Order at 332).

11. While appearing to briefly address the merits of CAUSE-PA's and OCA's recommendations to improve Aqua's universal services (Order at 332), the Order asserts that the Commission's conclusion that CAP design issues are not appropriately considered in this proceeding are consistent with recent decisions where universal service program issues were deferred for consideration in the utility's Universal Service and Energy Conservation Plan (USECP) proceeding. (Order at 333). While acknowledging that Aqua is not required to file USECPs for review, the Commission concludes that modifications to Aqua's universal service programs can be discussed through Aqua's informal Helping Hand Collaborative or in the context of a potential (though yet unfiled) future statewide proceeding. (Order at 333).

12. Notably, Aqua's Helping Hand Collaborative was created through a settlement agreement, and acts in an advisory capacity. (See Aqua St. 10-R at 14). The Collaborative is not empowered with any authority over Aqua to compel data sharing – nor is Aqua required to make decisions based on recommendations or advice of Collaborative members. (See id.)

13. Despite its earlier finding that program design issues are improper for consideration in this proceeding, the Order concludes by suggesting that changes to Aqua's universal service programs could be addressed in Aqua's next base rate proceeding, or another proceeding involving modifications to the Company's Universal Service Plan (USP) (Order at 333) – though it does not identify a specific avenue for such a proceeding or impose any further requirements for Aqua to track data or assess program success. CAUSE-PA strongly agrees that changes to Aqua's universal service programs can and should be addressed in Aqua's base rate proceedings, given the deep impact of universal service programs on rates for participants and other ratepayers. We seek

clarification of contradictory language within the Commission’s Order to ensure that universal service program issues may continue to be properly raised and considered in all base rate cases – including the instant proceeding.

III. LEGAL STANDARD

A. Standard for Review

14. The Commission has articulated its standard for granting reconsideration or clarification of a Commission order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(f), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.⁴

15. The Commission has a “duty to set ‘just and reasonable’ rates, reflecting a ‘balance of consumer and investor interests.’”⁵ In determining just and reasonable rates, the Commission has discretion to determine the proper balance between interests of ratepayers and utilities. Pursuant to Section 315 of the Public Utility Code, the burden of providing that a rate proposal is just and reasonable rests on the public utility.

16. Where a party alleges an error of fact or law, a Petition for Reconsideration is properly raised and may properly be granted.⁶

17. CAUSE-PA’s requests for reconsideration outlined in this Petition satisfy *Duick*, in that the Petition raises issues which appear to have been overlooked by the Commission – leading to errors of both law and fact. First, despite engaging in a review of Aqua’s universal service

⁴ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982).

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

⁶ *Application of Cressona Trucking Company*, Petition for Reconsideration, 1989 Pa. PUC LEXIS 102 (Pa. PUC, 1989).

proposals in the context of this rate proceeding, and approving Aqua’s proposed CAP design, the Order contradictorily suggests that issues and recommendations raised by other parties related to Aqua’s proposed CAP design are not properly reviewed in the context of this rate proceeding. This suggestion overlooks the fact that Aqua’s universal service programs have a profound impact on the rates, terms, and conditions of service to low income customers and other ratepayers, and forecloses the parties from responding and offering alternatives to the utility’s proposals. In doing so, the Commission commits an error of law which violates the due process rights of utility ratepayers.

18. Second, the Order overlooks clear evidence on the record indicating that Aqua’s proposed tiered discount CAP design is not “similar to the structure in place at People Company” (Order at 331) – and in doing so commits a factual error which forms the basis of its decision to approve Aqua’s proposed tiered discount CAP design without consideration of modifications proposed by other parties.

B. Due Process Standards

19. The Commission, as an administrative body, is bound by the due process provisions of constitutional law and the principles of common fairness.⁷ Due process requires notice a meaningful opportunity to be heard on the issues.⁸

20. In determining if a violation of procedural due process has occurred, the Court must consider whether due process is required and, if so, what type of process is due.⁹

⁷ Bridgewater Borough v. Pennsylvania Public Utility Commission, 181 Pa. Superior Ct. 84, 101, 124 A. 2d 165; McCormick v. Pennsylvania Public Utility Commission, 151 Pa. Superior Ct. 196, 201, 30 A. 2d 327. Paradise v. Pennsylvania Public Utility Commission, 184 Pa. Superior Ct. 8, 132 A. 2d 754,

⁸ Popowsky v. Pa. PUC, 805 A.2d 637, 643(Pa. Commw. 2002); Smith v. PA. PUC, 192 Pa. Superior Ct. 424 (1960).

⁹ Popowsky v. Pa. PUC, 805 A.2d 637, 643(Pa. Commw. 2002); Smith v. PA. PUC, 192 Pa. Superior Ct. 424 (1960); Evans v. Pa. PUC, 2021 Pa. Commw. Unpub. LEXIS 519, *24, 264 A.3d 833 (Commw. Ct., 2021).

21. Procedural due process applies when an administrative agency takes administrative action that "is adjudicatory in nature and involves substantial property rights."¹⁰

22. The type of process due is determined by considering the private interest at stake, the value of additional procedural safeguards, and the government's interest in proceeding without providing such procedures.¹¹ "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."¹² "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a *meaningful manner*."¹³

IV. REQUESTS FOR RECONSIDERATION AND/OR CLARIFICATION

23. CAUSE-PA seeks reconsideration and/or clarification on two grounds.

24. First, CAUSE-PA asserts that the Order errs as a matter of law in suggesting that issues and recommendations related to Aqua's universal service programs, including recommendations related to the design and implementation of Aqua's proposed CAP, are not properly reviewed in the context of this rate proceeding. This aspect of the Order is contrary to law and precedent and is contradicted by the Commission's review and approval of Aqua's proposed revisions to its universal service programs within the same proceeding. CAUSE-PA urges the Commission to reconsider and/or clarify in its final Order that issues related to universal service program design and rate affordability for low income customers are properly examined in the context of this rate proceeding, and that such issues are necessarily relevant to whether utility's rates are just and reasonable.

¹⁰ Conestoga Nat'l Bank of Lancaster v. Patterson, 275 A.2d 6, 9 (Pa. 1971) (citation omitted).

¹¹ Pa. Coal Mining Ass'n v. Ins. Dep't, 471 Pa. 437, 370 A.2d 685, 691 (Pa. 1977) (citing Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

¹² Id. (internal quotation marks omitted) (alteration in original).

¹³ Mathews, 424 U.S. at 333 (emphasis added) (internal quotation marks omitted).

25. Second, CAUSE-PA seeks reconsideration of the factual error in the Order that concluded that Aqua's proposed CAP was "similar to the structure in place at the Peoples Company" as the basis for concluding that Aqua's proposed CAP design should be approved without consideration of other recommendations related to the design of the proposed CAP. (Order at 331). CAUSE-PA urges the Commission to reconsider this factual error and require Aqua to take steps to bring its program into alignment with Peoples' CAP consistent with the recommendations of CAUSE-PA and OCA in this proceeding.

A. To prevent an error of law, the Commission should clarify that Universal Service issues are properly raised and reviewable in rate proceedings.

26. An evaluation of the justness and reasonableness of any proposed rate increase must necessarily analyze the adequacy and design of rate assistance programming to ensure that water and wastewater services are reasonably affordable and universally accessible to households in Aqua's service territory.

27. As noted, while the Commission's Order approves Aqua's proposed tiered discount CAP design, the Order suggests that it is inappropriate to *even consider* the merits of proposals for alternative CAP designs within the context of a rate proceeding, and that these issues should instead be considered through USECP proceedings, an unspecified statewide proceeding, and/or Aqua's informal Helping Hand Collaborative. (Order at 333).

28. In suggesting that it is inappropriate to examine the merits of issues related to universal services in the context of rate proceedings, the Order fails to recognize that universal service programs set rates for low income consumers and other residential ratepayers, and must therefore be subject to review in the context of a base rate proceeding to ensure all rates charged are just, reasonable, and squarely within the public interest.

29. 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.’”¹⁴

30. While the Commission has the discretion to determine the proper balance between ratepayer and utility interests,¹⁵ “the PUC is obligated to consider broad public interests in the rate-making process.”¹⁶

[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.¹⁷

31. The term “rate” is broadly defined by the Public Utility Code to include all charges imposed by a public utility – and all attendant rules, practices, and procedures:

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 any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.¹⁸**

32. 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.

¹⁴ CAUSE-PA MB at 5; Popowsky v. PUC, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301.

¹⁵ 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).

¹⁶ 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).

¹⁷ Id.

¹⁸ 66 Pa. C.S. §102 (emphasis added); see also McCloskey v. Pa. PUC, 219 A.3d 1216, 1223.

33. 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.¹⁹

34. In their Order, the Honorable Administrative Law Judges (ALJs) Darlene Heep and 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.”²⁰ ALJs Heep and 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.²¹

35. In that same proceeding, ALJs Heep and Guhl affirmed PGW’s Motion in Limine to strike testimony regarding PGW’s language access policies. On interlocutory review, the Commission reversed the decision – finding that “[e]xclusion of relevant direct testimony regarding language access issues would render the ALJs without an adequate record upon which to conduct an informed review of the language access considerations, and therefore, the quality of service provided by PGW to all its customers.”²² In ordering inclusion of testimony regarding language access policies in the record for consideration by the Commission in the rate proceeding, the Commission noted:

The base rate proceeding is a case-by-case consideration by the Commission whether the utility is entitled to a just and reasonable rate increase. The utility’s provision of reasonable service to the effected ratepayers, including language

¹⁹ Pa. PUC v. 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).

²⁰ Id. at 5.

²¹ Id. at 5.

²² Pa. PUC v. PGW, Opinion and Order, Docket No. R-2020-3017206, at 3 (Order dated July 8, 2020)

access considerations, is an important factor in that proceeding. While a party may not ultimately prevail in a claim of unreasonable service based on language access considerations, that party is entitled to present relevant evidence in support of the claim.²³

While the Commission declined to make any determination as to the weight it would eventually ascribe to the evidence, once admitted, it was definitive in its ruling that *issues related to the provision of reasonable service are properly raised and considered in the context of a rate proceeding.*

36. Just as language access issues are part and parcel to determining the reasonableness of service to consumers with limited English proficiency, issues which pertain to the rates, policies, programs, and procedures a utility implements to serve low income customers are part and parcel to determining the reasonableness of service to low income households and other consumers whose rates are impacted by program costs and high uncollectible expenses. In concluding that the recommendations of CAUSE-PA and OCA regarding Aqua's CAP are not properly considered in the context of a rate proceeding, the Commission has effectively excluded from consideration ample record evidence which pertains to the issue.

37. To be just and reasonable, it is critical that rates are also affordable for those served. As CAUSE-PA expert witness Mr. 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." (CAUSE-PA MB at 7. CAUSE-PA St. 1 at 10: 6-8). Indeed, universal accessibility is a polestar principle of ratemaking for essential, life-sustaining services like water and wastewater. (CAUSE-PA MB at 7-8).

²³ Id. at 14.

38. 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.²⁴

39. 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 and confirmed approximately 5% of its total residential customers as low income. (CAUSE-PA MB at 9).

40. 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.

41. Notably, while the Order suggests that consideration of universal service issues are not appropriately examined in the context of this rate case, the Order also reaches conclusions about several aspects of Aqua’s universal service programming, including Aqua’s proposed tiered discount CAP design– while declining to reach conclusions about CAUSE-PA and OCA’s PIP CAP design and other associated programmatic recommendations.

42. Given the Order does engage in some level of cursory analysis of alternative program design recommendations proposed by OCA and CAUSE-PA, it appears the Commission overlooked the conflict inherent in approving Aqua’s proposed tiered discount CAP design while

²⁴ 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).

concluding alternative CAP design proposals are not appropriate for consideration. Indeed, by proposing to redesign its CAP in the context of the rate proceeding, Aqua necessarily made the issue squarely part and parcel to this case.²⁵

43. It is unjust and unreasonable to approve a utility’s proposed CAP design while concluding that alternative CAP design proposals raised by consumer advocates or other parties in response to a utility’s proposal are “not appropriately considered” in the same proceeding.

44. As noted, 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.²⁶ 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. Precluding consideration of universal service issues in the context of rate proceeding ignores the statutory mandate to ensure that all rate charges are just and reasonable and denies meaningful opportunity of the parties to review the same.

i. The Order fails to meaningfully evaluate issues and recommendations related to Aqua’s universal service programs, and the impacts of Aqua’s current and proposed rates on low income customers.

45. Barring evaluation of critical improvements to universal service programs as a means to more effectively redress identified rate unaffordability ignores the fact that low income customers are struggling *now* to afford their monthly water/wastewater bills – and will struggle even more profoundly under Aqua’s increased rates. (CAUSE-PA RB at 8; CAUSE-PA MB at 9-11).

²⁵ CAUSE-PA notes that even if Aqua did not advance an affirmative CAP proposal in this case, other parties have a right to raise any issue in a rate case that impacts rates, charges, and the policies, programs, and procedures which dictate the terms and rates for public utility service. Universal service programs have a substantial impact on the rates, terms, and conditions that CAP participants pay for service – and on the rates paid by other ratepayers to support the program.

²⁶ 66 Pa. C.S. §§ 1301, 1309.

46. As discussed above and detailed extensively in the record, Aqua's low income customers (including those who receive assistance through Aqua's existing low income programs) struggle profoundly at existing rates to afford basic water/wastewater services. (CAUSE-PA MB at 13-16).

47. Even at existing rates, low income customers are far more likely to experience involuntary termination compared to residential customers as a whole – representing 23% of terminations for non-payment amongst residential customers in 2021, despite only constituting 5% of residential accounts. (CAUSE-PA MB at 13-14).

48. There are far-ranging consequences that result from termination of water and wastewater services (Id. at 10):

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.

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

49. In his direct testimony, Mr. Geller set forth in substantial detail testimony and evidence showing that low income customers struggle will face steep affordability challenges at Aqua's proposed rates, even with the CAP discounts proposed by Aqua. (CAUSE-PA St. 1 at 41-43). Mr. Geller further detailed how implementation of a PIP CAP structure based on recognized affordability standards set forth by OCA witness Roger Colton would help to provide consistent

levels of affordability to CAP participants, and would in turn improve bill payment and bill coverage rates for low income households – thereby reducing uncollectible expenses borne by other ratepayers. (CAUSE-PA St. 1 at 22, 37, 44-45).

50. The Order errs when it concludes that universal service program issues are improper for consideration in a rate proceeding, and thereby fails to consider the record evidence and testimony related to affordability of existing and proposed rates for low income customers, as well as the structure and design of Aqua’s universal service programming as proposed by Aqua in comparison to the modifications proposed by CAUSE-PA and OCA.

51. Universal service programming has a direct impact on the rates charged for program participants and other ratepayers, the terms and conditions of service for low income customers, the credit and collections strategies deployed for those who are willing to pay but cannot afford service, and the level of uncollectible expense paid for by other ratepayers. These issues are critical to determining the justness and reasonableness of a public utility’s rates, and cannot be divorced from base rate proceedings.

52. CAUSE-PA urges the Commission to reconsider and/or clarify that examination of the structure and affordability of universal service programs is properly addressed in the context of this rate proceeding.

ii. 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.

53. Barring consideration of universal service issues in the context of this rate proceeding is particularly problematic because, as a water/wastewater utility, Aqua is not required to file

USECPs with the Commission for review and approval.²⁷ While the Order acknowledges this flaw in barring consideration of universal service program issues in the present rate proceeding, the Order erroneously points to Aqua's informal Helping Hand Collaborative as an appropriate alternative forum for addressing universal service program issues. (Order at 333).

54. CAUSE-PA urges the Commission to reconsider the language in the Order to clarify that informal stakeholder processes like the Helping Hand Collaborative, while serving an important role to improve communication and transparency, are not a substitute for investigation and review of low income programs in the context of a litigated rate proceeding.

55. 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.

56. 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.

57. Informal stakeholder processes lack a myriad of tools necessary to 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

²⁷ Importantly, even if Aqua were required to file a USECP, such a proceeding is not a *substitute* to consideration of universal service issues in the context of a utility rate proceeding – where the justness and reasonableness of a utility's proposal to change the rates and terms and conditions of service are examined. USECP proceedings only provide a limited ability for noncompany parties to evaluate the level and nature of the consumer protections, policies, and services to assist low income customers. Unlike a rate case, where parties can engage in a factual, data-driven inquiry into a utility's provisions of service to all consumers through discovery, and submit sworn expert testimony before an ALJ, a USECP offers only a brief comment and reply comment period with no opportunity for formal discovery or to be heard by an ALJ.

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.

58. 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, and denies the right to a meaningful opportunity to be heard on issues related to Aqua's universal service programs, include issues related to CAP rates. We urge the Commission to reconsider its Order on this point, and acknowledge that universal service program issues are relevant issues to be raised in this and any rate proceeding.

iii. 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.

59. CAUSE-PA further contests and seeks clarification related to the Order's conclusion that examination of low income rates should not occur within rate proceedings - but instead in the context of a future informal statewide stakeholder proceeding (Order at 333), and that the Commission must first establish statewide policy guidelines before it can evaluate evidence regarding the effectiveness of alternative CAP design proposals. (Order at 331).

60. CAUSE-PA and OCA each independently filed hundreds of pages of expert testimony analyzing the merits of Aqua's proposed program design against the merits of a PIP CAP design – including a multi-level analysis of the relative water and wastewater burdens produced by each program design. In particular, Mr. Geller presented extensive data analysis in his testimony explaining how Aqua's proposed CAP design would not reach consistent levels of affordability for participants – and would result in up to 8% combined water/wastewater burdens for certain

CAP participants at average usage rates. (CAUSE-PA St. 1 at 42; Exhibit 1). These burdens would be even higher for larger families, with necessarily higher usage rates. (Id.) Ultimately, the water and wastewater burdens projected to be produced under Aqua's tiered discount CAP design far exceed acceptable levels of affordability recommended by experts and detailed by Mr. Geller. (Id.) This record evidence is properly before the Commission now, in this proceeding - and should be considered by the Commission now, in this proceeding.

61. As explained above, all rates must be just and reasonable and the absence of a statewide affordability standard does not eliminate this requirement. 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.

62. 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 water and wastewater services.

63. That said, the absence of a formal statewide policy should not bar consideration of universal service programming in the context of determining the justness and reasonableness of a utility's rates and the attendant terms and conditions of service. Commission policy statements are intended to provide guidance on issues that come before the Commission. As the data and evidence clearly showed in this proceeding, Aqua's low income customers cannot afford to maintain water/wastewater services at current and proposed rates. Low income households cannot afford to wait for rate mitigation.

64. 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. (CAUSE-PA MB at 17-18.). There is also ample record in this case showing that Aqua’s proposed CAP will not achieve adequate levels of affordability for many low income consumers and could undermine the ability to achieve improved bill payment and reduced terminations and collections costs associated with a successful CAP. (CAUSE-PA MB at 19-23.).

65. The Order refuses to engage in a meaningful analysis of this detailed record and fails to meaningfully consider affordability of water/wastewater burdens to statewide proceedings which might occur at some undetermined point in the future. 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.

66. Thus, and for the reasons detailed in CAUSE-PA’s Main and Reply Brief, Exceptions, and herein, CAUSE-PA urges the Commission to reconsider and/or clarify that issues related to the design of Aqua’s proposed CAP and other low income programs are properly considered within the context of this rate proceeding and future rate proceedings where the justness and reasonableness of a utility’s existing and proposed rates are examined.

B. To prevent a factual error, the Commission should revise its Order and require Aqua to take steps to bring its program into alignment with Peoples’ CAP design – including adoption of modifications to the discount and income tiers, as well as ongoing monitoring, analysis, and reporting of program outcomes.

67. In concluding that Aqua’s proposed CAP should be approved without modification because its structure is “similar to the structure in place at Peoples Companies” (Order at 331), the Commission commits a factual error that forms the basis of its approval of Aqua’s tiered discount CAP proposal.

68. In his direct testimony, CAUSE-PA's expert witness Mr. Geller recommended that Aqua take steps towards implementing a PIP design, specifically because it would mirror the PIP design of Peoples' CAP. (CAUSE-PA St. 1 at 45; CAUSE-PA MB at 21-22).

69. The Order does not approve a CAP with a PIP design similar to that of Peoples, as the Commission erroneously concludes in its Order. Instead, the Order finds that Aqua's tiered discount CAP design, as initially proposed by Aqua, is reasonable – without any inquiry or analysis of alternative designs (discussed above). (Order at 331).

70. CAUSE-PA strongly supports modeling Aqua's CAP on the PIP structure utilized by Peoples' – and agrees with the Commission's conclusion that it is reasonable for Aqua to model its CAP on Peoples' program. But Aqua's proposed CAP design is dissimilar to Peoples' PIP CAP design. Rather than providing all low income customers with a bill targeted at a specific percentage of household income, based on an accepted level of affordability (known as a water/wastewater burden), the program provides a tiered bill discount based on household income tier: 0-100% FPL; 101-150% FPL; and 151-200% FPL. (CAUSE-PA MB at 16-17). This results in inconsistent levels of affordability for CAP participants.

71. To be considered affordable, it is generally accepted that a combined water/wastewater burden should not exceed 4.5% of household income. (CAUSE-PA MB at 10, 17). These general standards were not disputed on the record in this proceeding.

72. In his direct testimony, Mr. Geller analyzed the relative water and wastewater burdens produced under Aqua's tiered discount model as compared to a PIP model and expressed concerns that Aqua's proposed CAP structure would not reach consistent and equitable levels of affordability for CAP participants— especially for lower income households and those with larger

family sizes – specifically because Aqua’s proposal did not structure its CAP as a PIP. (CAUSE-PA MB at 20). Mr. Geller further concluded:

Implementing a CAP with a PIP structure would ensure that those at the lowest levels of the FPL and/or with larger families are not paying a disproportionate level of their incomes for critical water and wastewater services and would improve the ability of low income families to stay connected to water and wastewater services in their homes.

(CAUSE-PA St. 1 at 44: 15-19).

73. As illustrated in CAUSE-PA Exhibit 1, and discussed in Mr. Geller’s direct testimony, low income CAP customers with higher usage levels and lower household incomes will see combined water and wastewater burdens at proposed rates which greatly exceed accepted levels of affordability. (CAUSE-PA MB at 20). For example, a 2-person household with income at 50% FPL in Aqua’s Main Division who enrolls in CAP will still face an 8% water and wastewater burden at average usage rates, and a 3 or 4-person household at the same income and average usage level will have a 6% combined water/wastewater burden through Aqua’s proposed CAP. (CAUSE-PA MB at 20). This is a substantial percentage of gross household income and creates impossible challenges for low income households to retain access to life’s most basic necessities – forcing many to choose between running water and sanitation services, energy, food, rent, medicine, and other basic household needs. Those with larger families who exceed average usage levels will face even higher burdens – falling disproportionately hard on larger families, single parent families, and other vulnerable households that rely on a single wage-earner.

74. At these burden levels, Aqua’s low income customers face steep challenges to affording their bills and maintaining services, ultimately resulting in increased terminations and uncollectible expenses. (CAUSE-PA MB at 20-21). In order to stem to flow of these expenses, Aqua must be required to implement a CAP structure that allows low income customers to achieve affordability and stay connected to services. (Id.)

75. Utility assistance programs that are most successful at achieving programmatic goals – including reduced uncollectible expenses and termination-related costs – when they are designed to deliver consistent and targeted levels of affordability across income and usage levels, along with meaningful arrearage management and conservation tools. (Id. at 23-24).

76. To provide more meaningful and equitable discount levels under Aqua’s proposed CAP, and in recognition of Aqua’s concerns about various short term implementation challenges as it transitioned to a new billing system, CAUSE-PA recommended in its Main Brief that the Commission require Aqua to make adjustments to its discount and income tiers to produce more consistent and equitable levels of affordability through the program. (CAUSE-PA MB at 21).

77. CAUSE-PA also recommended in its Main Brief that the Commission require Aqua to closely monitor and analyze the water and wastewater burdens of CAP participants, to share relevant data and analysis with the Commission and stakeholders, and to transition its proposed bill tiered discount CAP design to a PIP CAP design in the future if the data shows Aqua’s CAP participants are not reaching acceptable levels of affordability. (CAUSE-PA MB at 21-22).

- a. More specifically, CAUSE-PA recommended that Aqua evaluate the relative water and wastewater burdens achieved in the first year of its program, and present its findings to the Helping Hand Collaborative within 18 months of implementation. If the program is not reaching acceptable levels of affordability - including a combined 4.5% for households between 150-200% FPL, 4% for households between 100-149% FPL, 3.5% for households between 50-99% FPL, and 3% for households between 0-49% FPL% - CAUSE-PA recommended that Aqua should be required to consider structural changes to its CAP – including implementation of a Percentage of Income (PIP) program design. (CAUSE-PA MB at 21-22).

78. Based on the record in this proceeding which clearly distinguishes Aqua’s proposed CAP design from that of a PIP, CAUSE-PA urges reconsideration of the error of fact contained in the Order that likens Aqua’s proposed CAP to the structure of Peoples PIP design. To rectify this factual error, we urge the Commission to reconsider its Order, and require Aqua to take steps to bring its program into alignment with Peoples’ CAP; namely, to (1) approve modifications to Aqua’s tiered discount model recommended by CAUSE-PA and OCA, and (2) require Aqua to monitor, report, and analyze Aqua’s tiered discount CAP design, as recommended by CAUSE-PA, to better inform future program modifications.

V. CONCLUSION

Water and wastewater services are essential to life, and critical to the ability of Pennsylvania families to be safe and healthy in their own home. To be just, reasonable, and in the public interest, rates for water and wastewater must be set in a manner that ensures all Aqua consumers – regardless of economic status – are able to reasonably afford to access service in their home.

WHEREFORE, and for the reasons enumerated above, CAUSE-PA respectfully requests that the Commission amend its May 16, 2022 Opinion and Order as follows:

1. Reconsider and/or clarify 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 and universal service programs that determine rates for low income customers.

2. Reconsider and/or clarify that Aqua’s proposed tiered discount CAP design is dissimilar to a PIP, and require Aqua to implement modifications to its discount tiers and to

monitor, analyze, and report on the program to better inform future modifications – consistent with the recommendations of CAUSE-PA and OCA.

Respectfully submitted,
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Date: May 31, 2022

VERIFICATION

I, Elizabeth R. Marx, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Elizabeth R. Marx, Esq.

On behalf of the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)

Date: May 31, 2022