



COMMONWEALTH OF PENNSYLVANIA

May 31, 2022

**E-FILED**

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

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

Dear Secretary Chiavetta:

Enclosed for filing today please find the Petition for Reconsideration and Clarification, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings. As evidenced by the enclosed Certificate of Service, copies will be served on all known parties in these proceedings.

If you have any questions, please contact me.

Sincerely,

/s/ Steven C. Gray

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

*Enclosures*

cc:

Parties of Record  
Brian Kalcic

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PETITION FOR RECONSIDERATION AND  
CLARIFICATION ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: May 31, 2022**

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<b>Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.</b>		

**PETITION FOR RECONSIDERATION AND CLARIFICATION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 52 Pa. Code §5.572, the Office of Small Business Advocate (“OSBA”) files this Petition for Reconsideration and Clarification (“Petition”) of the May 16, 2022, Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned proceeding (“Order”) and avers the following in support of the Petition:

**I. Introduction**

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

2) On September 8, 2021, the OSBA filed a formal Complaint in opposition to the Tariffs.

3) The OSBA submitted the direct, rebuttal, and surrebuttal testimony of its witness, Brian Kalcic.

4) After the December 20, 2021, hearing held before Administrative Law Judge (“ALJ”) Mary D. Long, the OSBA submitted its Main Brief on January 11, 2022, and its Reply Brief on January 21, 2022.

5) On February 18, 2022, ALJ Long issued her Recommended Decision (“RD”).

6) On February 28, 2022, the OSBA filed Exceptions to the RD.

7) On March 7, 2022, the OSBA filed Reply Exceptions.

8) On May 16, 2022, the Commission entered its Order in this proceeding.

9) By this Petition, the OSBA seeks reconsideration of the Commission’s May 16, 2022, Order. The OSBA requests that the Commission: (1) reverse its decision to violate the plain language of *Lloyd* and perform separate evaluations of the Company’s water and wastewater revenue allocations based upon their respective cost-of-service studies; (2) reverse its decision to violate the plain language of Act 11 and *Lloyd* and allocate the approved Act 11 wastewater subsidies separately from its “as a whole” water revenue allocation, on a revenue neutral basis by customer class; and (3) clarify that Aqua PA’s customer assistance program (“CAP”) costs be recovered solely from the Company’s residential customer class.

## II. Legal Standards

10) In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 559 (1982), the Commission set forth the standards for granting reconsideration:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), 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. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that ‘[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . .’ 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.

11) In *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

*Jackson Sewer*, 2001 Pa. PUC LEXIS 44, at \*6.

12) This Petition satisfies *Duick* and *Jackson Sewer*, in that the Petition raises issues “which appear to have been overlooked or not addressed by the Commission” and “alleges errors of law.”

### III. Statement of the Case

13) Aqua PA provided a water service cost-of-service study (“WCOSS”) in this proceeding. No party, including the OSBA, disputed the methodology used by the Company in its WCOSS. Order, at 182.

14) Aqua PA provided a separate wastewater cost-of-service study (“WWCOSS”) in this proceeding for its Base, Limerick, East Bradford, Cheltenham, East Norriton and New Garden operating divisions. No party, including the OSBA, disputed the methodology used by the Company in its WWCOSS’s. Order, at 182.

15) In its Order, the Commission acknowledged the existence of the Commonwealth Court’s decision in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676 (2007). *See, e.g.*, Order, at 229.

16) The Commonwealth Court in *Lloyd* decided, as follows:

In this case, ***there is no dispute that there is a substantial difference in costs required to deliver services between classes.*** For such a rate differential to survive a discriminatory rate challenge brought under Section 1304 of the Code, 66 Pa. C.S. § 1304, it must be shown that the differential can be justified. In this case, the Commission offers essentially one justification - gradualism and rate shock.

\* \* \*

However, while permitted, gradualism is but one of many factors to be considered and weighed by the Commission in determining rate designs, and ***principles of gradualism cannot be allowed to trump all other valid ratemaking concerns*** and do not justify

allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time.

\* \* \*

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

\* \* \*

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

*Lloyd*, at 1020-1021 (emphasis added).

- 17) In addition, the Commonwealth Court in *Lloyd* stated, as follows:

Not having had a rate increase in many years because rates were frozen by the ‘caps,’ PPL filed its request in 2004 to increase its distribution and transmission rates so that they would take effect on January 1, 2005, after the test year was completed and the rate cap expired. The request had an announced goal of limiting the rate increase for all classes of customers to below 10% of the **total bill**. Because the generation component was still under the rate caps imposed by the Competition Act and would not be going up at all, **using the total bill as a measure masked the true overall percentage increase sought** in distribution and transmission revenues which was 32.8%.

*Lloyd*, at 1014-1015 (emphasis added).

- 18) In its Order, the Commission decided, as follows:

The OSBA’s contention is that Aqua’s proposed revenue allocation, which views cost of service as a whole and does not exclude the Act 11 allocation, conflicts with the requirement in *Lloyd* that the basis for individual utility service rates is specific to each service’s cost of service. We find this argument unpersuasive.

Order, at 228-229.

19) In its Order, the Commission decided, as follows:

As noted by Aqua in its Replies, the OSBA's reliance upon *Lloyd* appears to be misplaced as wastewater costs are not stand-alone, separate rates charged to water customers. Therefore, we do not believe that the principles of *Lloyd* have been violated.

Order, at 229.

20) In its Order, the Commission decided, as follows:

The OSBA also argues that its proposed water revenue allocation correctly isolates the Act 11 allocation. We disagree. Rather, we find the ALJ's conclusion, that the Company's methodology better reflects the cost of service because Aqua's proposed allocation views cost of service "as a whole" and moves each customer classification toward its appropriate cost of service, is more persuasive and in the best interest of the public.

Order, at 229.

21) The Commission observed that this proceeding involved Section 1311(c) of the Public Utility Code, 66 Pa. C.S. § 1311(c), commonly known as "Act 11." Order, at 191.

Section 1311(c) states, as follows:

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

22) The Commission, in *Pennsylvania Public Utility Commission v. City of Bethlehem*

-- *Water Department*, Docket No. R-2020-3020256 (Order entered April 15, 2021), decided as follows:

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

*City of Bethlehem*, at 36.

23) In its Order, the Commission acknowledged the *City of Bethlehem* case, but provided no analysis or explanation as to why it chose not to apply the “proper yardstick” for measuring the degree of movement toward cost of service in this proceeding to decide the issue of revenue allocation. *See, e.g.*, Order, at 195, 212, 214.

#### IV. Matters for Reconsideration

**(A) Request that the Commission reverse its decision to violate the plain language of *Lloyd* and perform separate evaluations of the Company’s water and wastewater revenue allocations based upon their respective cost-of-service studies.**

24) In her Recommended Decision, ALJ Long concluded that the “Company’s methodology better reflects cost of service” based upon the following observation:

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

RD, at 92 (emphasis added) (citation omitted).

25) The ALJ concluded that it is appropriate to evaluate a proposed *water* revenue allocation using a combination of water and wastewater revenues, or in the words of the Commonwealth Court in *Lloyd*, using a “total bill,” evaluation.

26) The Commission agreed with the ALJ’s conclusion:

[W]e find the ALJ’s conclusion, that the Company’s methodology better reflects the cost of service because Aqua’s proposed allocation views cost of service ‘as a whole’ and moves each customer classification toward its appropriate cost of service, is more persuasive and in the best interest of the public.

Order, at 229.

27) In this Petition for Reconsideration, the OSBA is raising matters of law. The OSBA has consistently argued, at every stage of this proceeding, that the requirements of *Lloyd* demand that the water service revenue allocation be based upon the Company's WCOSS, and that the Company's wastewater service revenue allocation, and any associated Act 11 subsidies, be based upon the Company's various WWCOSs.

28) The OSBA respectfully submits that the Commission's conclusion that the OSBA's legal arguments are "unpersuasive" is not a sufficient response. This is particularly true when the OSBA has asserted throughout this proceeding that evaluating a revenue allocation on the basis of cost of service 'as a whole' is a direct violation of the Commonwealth Court's decision in *Lloyd*.

29) Specifically, as set forth above, the Commonwealth Court's decision in *Lloyd* directly applies to the operation of Aqua PA, which provides separate water and wastewater services. As such, evaluating a revenue allocation proposal on a total bill (*i.e.*, "as a whole") basis, when a public utility provides separate services, is forbidden.

30) Furthermore, the Commonwealth Court made it clear that combining different utility services into one bill, and then analyzing that bill on an "as a whole" basis *masks* whether the rates for any of those individual services are moving towards their cost of service. The Commission's decision in this proceeding constitutes a prime example of masking, as it conceals whether Aqua PA's rates for water service or wastewater service are moving towards their respective cost of service.

31) The Commission argues, as set forth above, that its "as a whole" evaluation does not violate *Lloyd*, and that the OSBA's arguments are "misplaced," because "wastewater costs

are not stand-alone, separate rates charged to water customers.”<sup>1</sup> However, the Commonwealth Court decision in *Lloyd* addresses a public utility that provides *separate utility services*. That is precisely what Aqua PA provides – separate water and wastewater services. Aqua PA’s Act 11 costs are incurred as a result of providing *wastewater* service, and Act 11 costs remain wastewater costs, whether such costs are recovered in water or wastewater rates. Consequently, the fact that Aqua PA does not unbundle the Act 11 costs that are recovered from its water customers in its water tariff is irrelevant to the legal analysis of *Lloyd*; *Lloyd* controls the issue of revenue allocation in this proceeding. The OSBA respectfully submits that its legal arguments are not “misplaced” as the Commission’s legal conclusion is simply wrong.

32) As the OSBA states in its Exceptions, the OSBA’s revenue allocation is the only just and reasonable revenue allocation that complies with the requirements of *Lloyd* and *City of Bethlehem* that is before the Commission in this proceeding. Instead of implementing a revenue allocation on an “as a whole” basis, the Commission must determine separate revenue allocations for Aqua PA’s water and wastewater services.

33) In this proceeding, the Commission did not address the *City of Bethlehem* standard in any way. The OSBA respectfully submits that this is an error of law by the Commission. The Commission explicitly stated its metric (*i.e.*, the “proper yardstick”) in *City of Bethlehem*, and, following the Commission’s guidance, the OSBA employed that metric throughout this proceeding. Yet the Commission not only failed to utilize the metric, it also neglected to provide any reasoning for why it ignored its own precedent.

34) Instead, the Commission approved the following metric to measure the movement of customer classes towards cost of service:

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<sup>1</sup> This argument appeared for the first time in Aqua PA’s Reply Exceptions without citation. See Aqua PA Reply Exceptions, page 10, footnote 7.

Aqua provided that its proposed revenue allocation for both water and wastewater involves a determination of: (1) the allocated cost responsibilities and the percentage of revenue under existing rates; and (2) the percentage of cost responsibilities and percentage of pro forma revenues under proposed rates for each customer classification.

Order, at 191. The Commission concluded, as follows:

[A]fter our review of the Exceptions and Replies, we agree with the ALJ that Aqua’s allocations of revenue between all water customer classifications and all wastewater customer classifications are reasonable and should be approved.

Order, at 226.

35) As the OSBA previously explained, the Company’s fabricated “percentage of cost of service” metric is invalid when combining water and wastewater revenues, and should not be employed in this or any other proceeding before the Commission. Moreover, the OSBA demonstrated that Aqua PA’s cost metric shows the opposite of what *Lloyd* requires, *i.e.*, that the Company’s revenue allocation moves the Residential class further from its water cost of service when Act 11 revenues are properly excluded from the metric. OSBA Reply Brief, at 9-12.

**(B) Request that the Commission reverse its decision to violate the plain language of Act 11 and *Lloyd* and allocate the approved Act 11 wastewater subsidies separately from its “as a whole” water revenue allocation, on a revenue neutral basis by customer class.**

36) The plain language of Section 1311(c) provides the statutory authority to temporarily recover a portion of the costs associated with Aqua PA’s wastewater system from its water customers if in the public interest. However, nothing in Section 1311(c) allows for cross-subsidization between wastewater and water customer *classes*. Furthermore, nothing in Section 1311(c) supersedes the requirements of *Lloyd*. Therefore, Aqua PA’s water rates (exclusive of Act 11) must be based primarily upon the results of the Company’s WCOSS. Also, Aqua PA’s

wastewater rates (exclusive of Act 11) must be based primarily upon the results of the Company's WWCOSS.

37) The plain language of Act 11 support these legal conclusions. The Legislature chose not to address the *Lloyd* decision when crafting Section 1311(c). Therefore, the Commission has no legal basis to allocate Act 11 subsidies to water classes as part of its "as a whole" water revenue allocation. Furthermore, the Legislature chose the word "allocate" when recovering the costs of wastewater systems from water customers. Meriam-Webster defines "allocate" as "to apportion for a specific purpose or to particular persons or things." Therefore, Act 11 permits the Commission to assign a specific amount of wastewater costs to Aqua PA's water customers, but it must do so without violating *Lloyd*. The Commission is forbidden by *Lloyd* to allocate Act 11 costs in any manner that would cause Aqua PA's customers to be moved farther away from their respective water and wastewater cost of service revenue levels.

38) The OSBA respectfully submits that, consistent with *Lloyd*, and consistent with the plain language of Act 11, Aqua PA's proposal to recover Act 11 wastewater subsidies from water customers on a revenue neutral basis by customer class is the only just and reasonable method of allocating Act 11 subsidies.

39) Specifically, Aqua PA's filing included a proposed Act 11 revenue requirement of \$20.8 million, which was allocated to the Company's Residential, Commercial and Public water classes on a revenue neutral basis, by customer class. (Aqua PA Exh. No. 5-A, Part I, Sch. A). The Commission approved an Act 11 revenue requirement of \$11.1 million. Order, at Table Act 11. In order to allocate the approved Act 11 requirement to water customers on a revenue neutral basis by customer class, the Company's Residential, Commercial and Public water classes should first share in an aggregate 46.6% (1 minus  $\$11.1/\$20.8$ ) reduction to their original Act 11

revenue allocations, before any subsequent scaleback of the Company's proposed stand-alone water service cost increases to customer classes.

40) However, in adopting the Company's water revenue allocation, the Commission also adopted Aqua PA's proposal to apply a single scale back to its combined water and Act 11 class increases at the conclusion of this proceeding. As a result, the \$9.7 million reduction in the Company's Act 11 revenue requirement is combined with the Commission's awarded water revenue increase of \$39.3 million to arrive at a total water increase of \$50.5 million. Order, at Table Act 11. The subsequent use of the \$50.5 million final water revenue award to scale back Aqua PA's original combined water and Act 11 increases "as a whole" effectively and improperly credits *all* water classes with a reduction in Act 11 subsidies, even though the Company's Industrial, Resale, Private Fire Protection and Public Fire Protection classes were never assigned any Act 11 revenue responsibility.

41) In order to recover the Company's approved Act 11 revenue requirement on a revenue neutral basis by customer class, the OSBA respectfully requests that the Commission reverse its decision and order the Company to apply a *separate scaleback* to its proposed Act 11 revenue allocation, before any subsequent scale back is applied to class water cost increases. OSBA Main Brief, at 27-30, OSBA Reply Brief, at 9-19.

## **V. Matter for Clarification**

42) In addressing the Company's proposed Universal Service Rider ("USR"), the Commission decided, as follows:

Accordingly, consistent with the discussion above, we shall reverse the ALJ's recommendation and adopt the OCA's Exception No. 16, in part, by rejecting the Company's proposed reconcilable USR and requiring that the Company continue to recover its low-income program costs through base rates.

Order, at 319.

43) The OSBA respectfully requests that the Commission clarify that the Company's universal service program costs shall be recovered exclusively through residential base rates.

## VI. Conclusion

Wherefore, the OSBA respectfully asks the Commission to:

- Reverse its decision and perform separate evaluations of the Company’s water and wastewater revenue allocations based upon their respective cost-of-service studies;
- Reverse its decision and allocate the approved Act 11 wastewater subsidies separately from its “as a whole” water revenue allocation, on a revenue neutral basis by customer class; and
- Clarify that the Company’s universal service program costs shall be recovered exclusively through residential base rates.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: May 31, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

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**R-2021-3027386**

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

**VERIFICATION**

I, Steven C. Gray, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief 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).

Date: May 31, 2022

*Steven C. Gray*

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(Signature)

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

**R-2021-3027386**

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

**CERTIFICATE OF SERVICE**

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

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/s/ Steven C. Gray

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