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June 10, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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**Re: PA Public Utility Commission v. Aqua Pennsylvania, Inc.
Docket No. R-2021-3027385
PA Public Utility Commission v. Aqua Pennsylvania Wastewater, Inc.
Docket No. R-2021-3027386**

Dear Secretary Chiavetta:

Attached is the Answer of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. to the Petition for Reconsideration and Clarification of the Office of Small Business Advocate in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Michael W. Hassell

MWH/cls
Attachment

cc: Honorable Mary D. Long (w/att.)
Office of Special Assistants (w/att.)
Certificate of Service

CERTIFICATE OF SERVICE
(R-2021-3027385 and R-2021-3027386)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), and the Prehearing Order dated October 19, 2021 (establishing the list of fully active parties in this proceeding).

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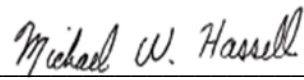
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Date: June 10, 2022



Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* :
:
v. : Docket Nos. R-2021-3027385, *et al.*
:
Aqua Pennsylvania, Inc. :

Pennsylvania Public Utility Commission, *et al.* :
:
v. : Docket Nos. R-2021-3027386, *et al.*
:
Aqua Pennsylvania Wastewater, Inc. :

**ANSWER OF AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA
WASTEWATER, INC. TO THE PETITION FOR RECONSIDERATION AND
CLARIFICATION OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

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I. INTRODUCTION

Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, “Aqua PA,” “AP” or the “Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submit this Answer to the Petition for Reconsideration and Clarification filed by the Office of Small Business Advocate (“OSBA”) on May 31, 2022. In its Petition, the OSBA requests reconsideration and clarification of the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order entered May 16, 2022, at the above-captioned dockets (the “*Aqua 2021 Rate Case Order*”). OSBA specifically requests that the Commission grant reconsideration to (a) reverse its decision and perform separate evaluations of Aqua PA’s water and wastewater revenue allocations, and (b) reverse its decision and allocate the approved Act 11 wastewater subsidies separately from the water revenue allocation. In addition, OSBA requests that the Commission clarify that the costs Aqua PA’s proposed universal service program (“USP”) may only be recovered through residential base rates.

As explained herein, OSBA’s requests for reconsideration and clarification fail to raise any new arguments not previously heard by the Commission. For these reasons, and as explained further herein, OSBA’s Petition fails to meet the Commission’s *Duick* standard for reconsideration and clarification, and should be denied.

II. BACKGROUND

1. This proceeding was initiated on August 20, 2021, when Aqua PA 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”) to become effective for service rendered on or after October 19, 2021. Therein, the Company proposed changes to Aqua PA’s base water rates designed to produce an increase in water revenues of approximately \$86.118 million and changes to Aqua PA’s base wastewater rates designed to produce an increase in wastewater revenues of approximately \$11.566 million, both

based upon data for a Fully Projected Future Test Year (“FPFTY”) ending March 31, 2023 (“2021 Base Rate Case”). The filing was made in compliance with the Commission’s regulations and contained all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

2. As a part of its filing, Aqua PA performed cost allocation studies to allocate the total water and wastewater cost of service to the several customer classifications. *See* AP St. 5 at 3, 19. Aqua PA prepared a cost allocation study (AP Exhibit 5-A, Part I) for its water operations, as well as separate cost allocation studies (AP Exhibit 5-B, Part I) for its wastewater operations.

3. Aqua PA also proposed an allocation of revenue among water and wastewater classifications based upon these cost allocation studies. While Aqua PA’s proposed allocation of revenue among the customer classifications is primarily driven by the cost to serve each class, the Company considered the principle of gradualism and attempted to avoid significant rate increases to certain classifications under its proposed revenue allocation. In addition, Aqua PA proposed to allocate a portion of the proposed wastewater revenue requirement to its water customers, pursuant to the Act of Feb. 14, 2012, P.L. 72, No. 11 (“Act 11”). AP St. 5 at 10; *see also* 66 Pa.C.S. § 1311(c).

4. Other parties, including the OSBA, proposed alternative revenue allocations and alternative Act 11 allocations.

5. On February 18, 2022, Administrative Law Judge Mary D. Long (the “ALJ”) issued a Recommended Decision (the “RD”) in this proceeding. The RD recommended that “the Commission accept the methodology of I&E for allocating revenue and designing wastewater rates,” including the allocation of Act 11 wastewater revenues to water customers. RD at 91. In

addition, the RD recommended that no scale back of wastewater rates should occur until the total wastewater allocation is first eliminated from water rates. RD at 91.

6. Exceptions to the RD were filed on February 28, 2022.

7. Replies to Exceptions were filed on March 7, 2022.

8. The Commission entered the *Aqua 2021 Rate Case Order* on May 16, 2022. The Commission ordered that “Aqua’s allocations of revenue between all water customer classifications and all wastewater customer classifications are reasonable and should be approved.” *Aqua 2021 Rate Case Order* at 226. The Commission also concluded that “I&E’s methodology for allocating the Act 11 wastewater revenue subsidy should be approved.” *Id.* Finally, the Commission “agree[d] with the ALJ that any scale back of water rates will first reduce the Act 11 allocation.” *Id.*

9. On May 23, 2022, Aqua PA submitted Compliance Filings associated with both Tariff Water No. 3 and Tariff Sewer No. 3, consistent with the *Aqua 2021 Rate Case Order*. The Compliance Filings respectively included Exhibits 5-A (Compliance) and 5-B (Compliance), which present a summary of rates by schedule and detailed proof of revenues associated with the water and wastewater base rates approved by the Commission. The Company reflected the costs of the approved USP for water customers on page 7 of Exhibit 5-A (Compliance) as a Water Discount to Residential customers of \$6,688,038. Similarly, the Company reflected the costs of the approved USP for wastewater customers on page 13 of Exhibit 5-B (Compliance), totaling \$708,227.

10. On May 31, 2021, OSBA filed its Petition for Reconsideration and/or Clarification.

11. For the reasons explained below, the OSBA’s Petition should be denied.

III. LEGAL STANDARDS

12. The Commission’s standard for reviewing petitions for rehearing, reopening of the record, and reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 et al., 1982 Pa. PUC LEXIS 4, at *11-13 (Opinion and Order Upon Reconsideration dated Dec. 17, 1982) (emphasis added):

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.

Consequently, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard—“by the Commission”—focuses on the deliberations of the Commission, not the arguments of the parties. See *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

13. A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the

Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

14. As explained below, OSBA's Petition should be denied.

IV. **ARGUMENT**

A. **OSBA'S REQUESTS FOR RECONSIDERATION SHOULD BE DENIED**

1. **The RD And The Aqua 2021 Rate Case Order Considered The Requirements Of *Lloyd* In The Analysis Of Aqua PA's Proposed Revenue Allocation.**

15. The OSBA first asserts that reconsideration is appropriate because the Commission's consideration and rejection of its legal arguments "is not a sufficient response." OSBA Petition at 7. OSBA argues that the Commission's evaluation of the revenue allocation adopted in this proceeding on a total bill basis is forbidden by *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676 (2007) ("*Lloyd*") OSBA Petition at 7. Contrary to OSBA's assertions, the Commission properly rejected OSBA's legal arguments, and the OSBA fails to identify any actual errors of law in its Petition.

16. First, and foremost, the Commission specifically explained its rejection of OSBA's arguments under *Lloyd* 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. 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. 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. R.D. at 92. Accordingly, we shall deny the OSBA's Exception Nos. 1 and 2.

Aqua 2021 Rate Case Order at 228-229 (emphasis added).

17. Importantly, a primary flaw in OSBA's reliance upon *Lloyd* is that it treats the allocation of wastewater costs as though they are a separate rate charged to water customers. This is inaccurate.

18. OSBA does not assert, and cannot assert, that the Commission was not aware of and did not apply *Lloyd*. It is obvious that both the RD and the *Aqua 2021 Rate Case Order* applied *Lloyd* in their adoption of a proposed revenue allocation; each simply disagreed with OSBA's interpretation of this case.

19. Moreover, the OSBA ignores that the Commission has a great deal of discretion in determining the allocation of costs in a base rate proceeding. As explained in Aqua PA's Main Brief:

It is well settled that the establishment of a rate structure is an administrative function peculiarly within the expertise of the Commission. *Pittsburgh v. Pa. PUC*, 78 A.2d 35 (Pa. Super. 1951). Further, the courts have continually recognized that the findings of the Commission, if supported by competent evidence, will not be disturbed. *United States Steel Corp. v. Pa. PUC*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Philadelphia Suburban Transportation Co. v. Pa. PUC*, 281 A.2d 179, 185 (Pa. Cmwlth. 1971). In *Peoples Natural Gas Co. v. Pa. PUC*, 409 A.2d 446 (Pa. Cmwlth. 1979), the Commonwealth Court held, "there is no set formula for determining proper ratios among the rates of different customer classes. What is reasonable under the circumstances, the proper difference among rate classes, is an administrative question for the Commission to decide." *Id.* at 456 (internal citation omitted).

AP MB at 212.

20. Here, the Commission simply applied that discretion to evaluate the various revenue allocation methodologies advanced by the parties regarding the allocation of water revenues and determined that “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.” *Aqua 2021 Rate Case Order* at 229.

2. The RD And The Aqua 2021 Rate Case Order Considered And Rejected OSBA’s Proposed Method For Allocating Act 11 Wastewater Revenues.

21. OSBA asserts that reconsideration of the allocation of Act 11 wastewater revenues is warranted because the allocation and scale back proposals adopted by the Commission are inconsistent with Section 1311(c) of the Public Utility Code, 66 Pa.C.S. § 1311(c), and the *Lloyd* decision. OSBA Petition at 9-11. OSBA asserts that the water revenue allocation methodology and scale back adopted by the Commission “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.” OSBA Petition at 11.

22. As an initial matter, Aqua PA notes that the Act 11 allocation and scale back proposals adopted in the *Aqua 2021 Rate Case Order* were advanced by I&E. *See* RD at 91; *Aqua 2021 Rate Case Order* at 226.

23. Furthermore, the *Aqua 2021 Rate Case Order* does not violate the plain language of Section 1311(c) or the *Lloyd* decision. As explained above, the Commission considered and applied *Lloyd*, and the OSBA simply disagrees with the Commission’s interpretation.

24. Finally, OSBA’s assertion that the scale back proposal adopted by the Commission “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” is inaccurate. OSBA Petition at 11. The filed increase for each class was intended to recover the cost of service and the Act 11 revenue allocation by class. As these increases are scaled back, it would be logical that the same portion of the increase that was due to Act 11 would also be scaled back. In summary, if the class was not allocated Act 11, there would be no scale back of the increase due to Act 11.

25. For these reasons, OSBA’s Petition fails to satisfy the *Duick* standard for reconsideration, and should be denied.

B. OSBA’S REQUEST FOR CLARIFICATION SHOULD BE DENIED.

26. OSBA further “requests that the Commission clarify that the Company’s universal service program costs shall be recovered exclusively through residential base rates.” OSBA Petition at 11-12.


27. No such clarification is necessary, or required. Aqua PA only sought to recover the costs of its USP from the residential class. No other party advanced an alternative proposal, as a part of this proceeding, that recommended the costs of the proposed USP be recovered from non-residential customers. While the Commission rejected the reconcilable rider mechanism proposed by Aqua PA, the Company’s Compliance Filings further reflected the fact that the costs of the approved USP were exclusively recovered from residential water and wastewater customers. *See* Exhibit 5-A (Compliance), page 7; Exhibit 5-B (Compliance), page 13.

28. For these reasons, OSBA’s Petition fails to satisfy the *Duick* standard for clarification, and should be denied.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. respectfully request that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration and Clarification filed by the Office of Small Business Advocate.

Respectfully submitted,



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