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June 10, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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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/or Clarification of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania 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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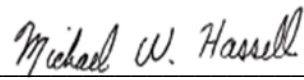
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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/OR
CLARIFICATION OF THE COALITION FOR AFFORDABLE UTILITY SERVICE
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

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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/or Clarification filed by the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) on May 31, 2022. In its Petition, CAUSE-PA requests reconsideration and/or 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*”). Materially, the *Aqua 2021 Rate Case Order* approved the implementation of a new, comprehensive Universal Service Program (“USP”), denied the Company’s proposal to recover the costs of the proposed USP through a proposed reconcilable Universal Service Rider (“USR”), and ordered the Company to recover its low-income program costs through base rates, as a part of its resolution of the general base rate increase initiated by Aqua PA on August 20, 2021.

As explained herein, CAUSE-PA’s request for reconsideration and/or clarification fails to raise any new arguments not previously heard by the Commission, and also mischaracterizes the Commission’s analysis and conclusions. For these reasons, and as explained further herein, CAUSE-PA’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 proposed the implementation of a new, comprehensive USP, which included the implementation of a robust Customer Assistance Program (“CAP”) that added tiered bill discount benefits, Arrearage Forgiveness, and an Emergency Repair Program to the benefits already afforded under its existing Helping Hand program. The proposed USP will replace the existing Helping Hand program.

3. Other parties, including CAUSE-PA, submitted extensive testimony regarding the proposed comprehensive USP. CAUSE-PA proposed a number of substantive changes to the proposed USP, including changes to the Company’s proposed enrollment and outreach efforts, the proposed arrearage forgiveness benefits, and the implementation of a percentage of income (“PIP”) structure, among other things. Aqua PA incorporates by reference Section VIII.A. of its Main Brief and Section VIII.A. of its Reply Brief, which more fully explain Aqua PA’s justification of the proposed USP and its demonstration that the recommendations proposed by CAUSE-PA were not reasonable or appropriate at this time.

4. On February 18, 2022, Administrative Law Judge Mary D. Long (the “ALJ”) issued a Recommended Decision (the “RD”) in this proceeding. Therein, the ALJ approved the Company’s proposed new, comprehensive USP. RD at 113.

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

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

7. The Commission entered the *Aqua 2021 Rate Case Order* on May 16, 2022.

8. On May 31, 2021, CAUSE-PA filed its Petition for Reconsideration and/or Clarification.

9. For the reasons explained below, the CAUSE-PA's Petition should be denied.

III. LEGAL STANDARDS

10. 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.

11. 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).

12. As explained below, CAUSE-PA's Petition should be denied.

IV. **ARGUMENT**

A. CAUSE-PA'S REQUEST FOR RECONSIDERATION AND/OR CLARIFICATION SHOULD BE DENIED

13. CAUSE-PA raises two arguments in support of its Petition. First, CAUSE-PA argues that the *Aqua 2021 Rate Case Order* forecloses CAUSE-PA's ability to raise issues related to Aqua PA's USP and the affordability of its rates to low-income customers. Second, CAUSE-PA asserts that the Commission erred in concluding the proposed USP is "similar to" the programs in place at Aqua PA's natural gas affiliates, Peoples Natural Gas Company LLC and Peoples Gas Company LLC ("the Peoples Companies").

14. Both of these arguments mischaracterize the *Aqua 2021 Rate Case Order*. Moreover, neither of these arguments are "new" or "novel"; rather, each of these arguments merely re-raises the same arguments CAUSE-PA raised in testimony, briefs and exceptions, which were considered and rejected by the ALJ and the Commission.

15. As such, CAUSE-PA's Petition is fails to satisfy the *Duick* standard on both legal and factual grounds. Therefore, the Petition should be denied.

1. CAUSE-PA Sets Forth No Error Of Law, And Instead Re-Raises The Same Arguments That Were Previously Heard And Rejected By The ALJ And The Commission.

16. CAUSE-PA first asserts that “[i]t 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.” CAUSE-PA Petition at 14.

17. In support of this assertion, CAUSE-PA raises three arguments. CAUSE-PA argues that (1) the Commission did not meaningfully evaluate issues and recommendations related to Aqua PA’s universal service programs and the impact of Aqua PA’s rates on low-income customers,¹ (2) the Commission “relegated” consideration of Aqua PA’s USP to Aqua PA’s universal service stakeholder process,² and (3) the Commission does not meaningfully consider issues related to affordability of water/wastewater burdens and instead concludes those issues should occur in the context of a statewide proceeding.³ All three arguments misstate the Commission’s decision in this case and, in effect, simply ask the Commission to reconsider the proposals made by CAUSE-PA. None of these arguments satisfy the *Duick* standard.

18. CAUSE-PA’s first argument misreads the RD and the *Aqua 2021 Rate Case Order*. The error asserted by CAUSE-PA is that:

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

¹ See CAUSE-PA Petition at 14-16.

² See CAUSE-PA Petition at 16-18.

³ See CAUSE-PA Petition at 18-20.

service programming as proposed by Aqua in comparison to the modifications proposed by CAUSE-PA and OCA.

CAUSE-PA Petition at 16 (emphasis added). However, neither the RD nor the *Aqua 2021 Rate Case Order* refused to consider universal service program issues, and both the RD and the *Aqua 2021 Rate Case Order* specifically considered issues related to Aqua PA's proposed USP that were raised by other parties.

19. Contrary to CAUSE-PA's assertions, nothing in the RD or the *Aqua 2021 Rate Case Order* forecloses the ability of CAUSE-PA to raise issues related to Aqua PA's USP in the context of a base rate proceeding. Rather, based on the record evidence presented the RD and the *Aqua 2021 Rate Case Order* concluded that the programmatic changes recommended by CAUSE-PA were not shown to be reasonable at this time.

20. The *Aqua 2021 Rate Case Order* summarized the parties' recommendations regarding affordability and program design (*id.* at 320-323), the RD's analysis of the parties' positions (*id.* at 324-325), and the parties' exceptions and replies (*id.* at 325-330). In particular, the Commission cited the RD's findings that many of CAUSE-PA's and OCA's proposals should be more fully considered at a later time, based upon the timing of Aqua PA's plan to convert its current customer information system ("CIS") to SAP in 2023, unknown costs and relative benefits of implementing the proposed modifications to the USP, and the need to consider the additional costs that would be incurred by non-low-income customers to implement the modifications. *Id.* at 324-325. Moreover, the Commission highlighted the RD's explanation of the need to establish statewide affordability metrics for water and wastewater service, prior to the implementation of certain modifications. *Id.* at 324.

21. After reviewing the evidence and arguments advanced by the parties, the Commission explained that "the cost, benefits, and overall effectiveness" of implementing a PIP

for a water/wastewater utility was unclear. *Id.* at 330-331. Moreover, the Commission again highlighted OCA’s own acknowledgment that a series of policy decisions by the Commission were required before Aqua PA could move to a PIP proposal. *Id.* at 331. The Commission also explained “that the structural changes the OCA and CAUSE-PA proposed to the CAP design ... should be more fully considered at a later time, particularly because Aqua explained that many of these recommendations cannot be efficiently implemented until the Company converts its current CIS to SAP in 2023.” *Id.* at 331.⁴ Finally, the Commission reasoned that “any such proposed enhancements can be considered during the process of evaluating the effectiveness of the design of Aqua’s universal service program in the future.” *Id.* at 332.

22. The RD engaged in a similarly fulsome and meaningful analysis of these issues. In considering and rejecting CAUSE-PA’s recommendations regarding the USP, the RD explained that “[w]hile...the Public Utility Code permits consideration of a broad array of issues in base rate proceedings...this is [not] the best format to consider the complex social and economic issues related to affordability as it impacts CAP design.” RD at 113. The RD further explained that “this base rate proceeding is not an adequate venue for consideration of whether implementing a PIP is reasonable” and that “many of the structural refinements to the CAP design regarding bill discount and arrearage forgiveness benefits should be more fully considered at a later time.” RD at 113 (emphasis added).

23. In each instance, RD also made clear that recommended enhancements to the program advanced by CAUSE-PA in this proceeding could be further addressed at a later time. Indeed, “these enhancements can be considered in the iterative process of evaluating the

⁴ Because the Commission concluded that the costs of the CAP would be recovered in base rates, and not through a separately reconciled rider, it would be particularly inappropriate and unfair to change the design of the CAP between rate cases.

effectiveness of the design of Aqua’s universal service program in the future.” RD at 114 (emphasis added).

24. Relatedly, this first argument does not raise new or novel issues or arguments for the Commission’s consideration. Both the RD and the *Aqua 2021 Rate Case Order* considered Aqua PA’s proposed USP, its impacts on affordability, and the costs and benefits of the recommended modifications to the USP proposed by CAUSE-PA. CAUSE-PA’s Petition merely restates the arguments it previously raised, which were duly considered and rejected by the Commission.

25. CAUSE-PA’s second argument is similarly incorrect, and fails to satisfy *Duick*. The Commission explained that enhancements to the USP “can be considered during the process of evaluating the effectiveness of the design of Aqua’s universal service program in the future.” *Aqua 2021 Rate Case Order* at 332. The RD further made clear that the analysis of a utility’s USP is an “iterative process.” RD at 114. Nothing in the *Aqua 2021 Rate Case Order* or RD forecloses CAUSE-PA’s ability to raise issues related to Aqua PA’s USP in future base rate proceedings. The Commission simply encouraged parties to examine potential changes in the context of collaborative discussions, which are not impeded by the time constraints of a base rate proceeding.

26. Finally, CAUSE-PA’s third argument is similarly without merit. The RD made clear that affordability was, in fact, considered. The RD explained:

Aqua explained in its direct and rebuttal testimony that it performed an affordability analysis, and considered bill affordability as a part of the development of the proposed USP. The Company contends that the program as designed does take affordability into account and also balances the interests of ratepayers who are not low income, but who bear the costs of universal service programs.

RD at 112. Relatedly, the RD acknowledges (as did the OCA) that “the Commission has not established what water and wastewater burden should be deemed affordable.” RD at 112. This

determination (i.e., the water and wastewater burden deemed to be affordable) should be established on a statewide basis prior to analyzing modifications to the proposed USP that are inherently based upon water and wastewater affordability.

27. The Commission adopted this analysis and explained the modifications proposed by OCA and CAUSE-PA required “a series of policy decisions by the Commission would first be needed, including what water and wastewater burden should be deemed affordable, and such decisions are best addressed in a statewide proceeding.” *Aqua 2021 Rate Case Order* at 331. Contrary to CAUSE-PA’s claims, the Commission did, in fact, meaningfully consider issues related to affordability of water/wastewater burdens.

2. CAUSE-PA’s Alleged Factual Error Mischaracterizes The *Aqua 2021 Rate Case Order* And Repeats Its Prior Arguments.

28. CAUSE-PA further asserts that the Commission should reconsider and/or clarify the *Aqua 2021 Rate Case Order* because it erred in noting that Aqua PA’s proposed USP is “similar to the structure in place at [the] Peoples Companies.” CAUSE-PA Petition at 20. It argues that this statement is the basis for the Commission’s approval of Aqua PA’s tiered bill discount. CAUSE-PA Petition at 20.

29. CAUSE-PA mischaracterizes the *Aqua 2021 Rate Case Order* and, moreover, simply repeats its arguments made before the ALJ and the Commission regarding modifications to the structure of the USP. As an initial matter, CAUSE-PA divorces the statement it asserts is an “error” from all context. At no point did Aqua PA, or the Commission, conclude that the Company had proposed a CAP program identical in form to the Peoples Companies’ CAP. Rather, Aqua PA, and the Commission, only recognized certain similarities. Specifically, the Commission explained that “Aqua has presented evidence in this proceeding to demonstrate that its proposed CAP, which includes its Helping Hand arrearage forgiveness program and tiered bill discount

benefits similar to the structure in place at the Peoples Companies, is reasonable.” *Aqua 2021 Rate Case Order* at 331. Similar to the program in place at the Peoples Companies, Aqua PA’s proposed USP has an arrearage forgiveness program and tiered bill discount benefits based on customers’ income. CAUSE-PA’s attempt to mischaracterize this statement in order to argue the *Aqua 2021 Rate Case Order* “likens Aqua’s proposed CAP to the structure of Peoples PIP design,” is nothing more than an attempt to re-raise the same arguments in favor of a PIP structure that were considered, and rejected, by the ALJ and the Commission.

30. For these reasons, CAUSE-PA’s Petition for Reconsideration and/or Clarification fails to satisfy the *Duick* standard, 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/or Clarification filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania.

Respectfully submitted,

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