

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 10, 2022

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 (Water)
C-2021-3028466 (Water)
R-2021-3027386 (Wastewater)
C-2021-3028467 (Wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to Petitions for Reconsideration and/or Clarification in these proceedings. A verification is attached, pursuant to the requirements of 52 Pa. Code § 1.36.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon
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Enclosures:

cc: The Honorable Mary D. Long (email only)
Nick Miskanic (email only: nmiskanic@pa.gov)
Office of Special Assistants (email only: ra-OSA@pa.gov)
Certificate of Service

*330401

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
 : Docket Nos. R-2021-3027385 (Water)
 v. : C-2021-3028466 (Water)
 : R-2021-3027386 (WW)
 Aqua Pennsylvania, Inc. and Aqua : C-2021-3028467 (WW)
 Pennsylvania Wastewater, Inc. :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Petitions for Reconsideration and/or Clarification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of June 2022.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2021-3027385 (Water)
v.	:	C-2021-3028466 (Water)
	:	R-2021-3027386 (WW)
Aqua Pennsylvania, Inc. and Aqua	:	C-2021-3028467 (WW)
Pennsylvania Wastewater, Inc.	:	

THE OFFICE OF CONSUMER ADVOCATE'S ANSWER TO
PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

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Dated: June 10, 2022

I. INTRODUCTION

In accordance with 52 Pa. Code Sections 1.31, 1.34 and 5.572(e), the Office of Consumer Advocate (OCA) files an Answer to three Petitions filed on May 31, 2022 in this proceeding:

- Petition for Reconsideration and Clarification on Behalf of the Office of Small Business Advocate (OSBA);
- Aqua Pennsylvania Wastewater, Inc.'s (Aqua or Company) Petition for Reconsideration/Clarification of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. of the Opinion and Order Entered May 16, 2022; and
- Petition for Reconsideration and/or Clarification of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

The OCA addresses its response to each Petition below.

II. ANSWERS

A. OCA Answer to OSBA Petition

Through its Petition, OSBA asks the Commission to reverse its decisions regarding (A) Aqua's water and wastewater revenue allocations and (B) allocation of the approved Act 11 wastewater subsidies.¹ OSBA Petition ¶¶ 6-11. OSBA argues that its recommended revenue allocation for water should be adopted and that, by not isolating the Act 11 allocation and removing it from consideration, the Commission has violated the principles of *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. Ct. 2006), *appeal denied*, 591 Pa. 676 (2007) (*Lloyd*). OSBA Petition at ¶¶ 24-35. As the ALJ explained, however, from the perspective of customers, the effect of the increase includes both the water increase and the wastewater allocation. R.D. at 92.

¹ OSBA also seeks clarification that Aqua's universal service program costs are recovered only through residential base rates. OSBA Petition ¶ 43.

Moreover, the results of the OSBA's class revenue allocations with the Act 11 subsidy removed are still not reasonable. OCA St. 4R at 7, 9-10. Even though the residential and industrial classes are currently earning close to parity, OSBA's proposal would increase their revenue responsibility by 113% and 114% of the system average percentage increase, respectively. At the same time, the commercial class is also earning close to parity but OSBA recommends this class only receive 74% of the system average percentage increase. OCA St. 4R at 7, 9-10. After the shift of wastewater revenue requirement to water operations, OSBA's results are even more skewed and unreasonably favor the Commercial class, by giving 18-19% increases to residential and industrial customers and only a 12% increase to commercial customers – again, when each of those classes is earning close to parity. OCA R.B. at 57. Such a result is inequitable. The ALJ properly found that OSBA's recommended total class water increases are unreasonable. *Id.* at 55-58; Aqua M.B. at 228-29. She stated:

As can be seen in the chart, it appears that OSBA's recommendation to isolate and remove the Act 11 allocation from its analysis is motivated by a desire to decrease the revenue allocated to non-residential customer classifications, while increasing the revenue allocated to residential customer classes.

R.D. at 92. The Commission also was not persuaded by the argument that OSBA's proposed water revenue allocation correctly isolates the Act 11 allocation. The Commission disagreed, stating that Aqua's methodology "moves each customer classification toward its appropriate cost of service [and] is more persuasive and in the best interest of the public." Order at 229. As a result, the Commission and the ALJ properly concluded that Aqua's methodology to allocate class revenues is more appropriate.² Consistent with the Commission's determination in the May 16, 2022

² But for the difference between the Aqua and OCA recommended Act 11 subsidy, the OCA accepted Aqua's revenue allocation approach for the metered water classes. OCA St. 4R at 3.

Opinion and Order, the Commission should reject OSBA's renewed request for adoption of its proposed water class revenue allocations.

The Commission should also reject OSBA's request that the Commission reconsider its allocation of the approved Act 11 wastewater subsidies and instead scale back the Act 11 subsidy separately from the allowed water revenue increase and on a revenue neutral basis. OSBA Petition at ¶¶ 36-41. Given that Aqua has 415,059 non-fire protection water customers and only 63,869 wastewater customers, however, most water customers do not rely upon Aqua's wastewater operations and there is no reasonable basis for a particular class of water customers to exactly subsidize the same class of wastewater customers. OCA St. 4R at 10-11. Residential water customers who do not receive wastewater service from Aqua have no more or less inherent responsibility for wastewater costs than non-residential water customers who similarly do not receive wastewater service from Aqua. The General Assembly made a policy determination that, if it is in the public interest to allow a portion of wastewater costs to be paid for by water customers that those costs would be paid by *all* water customers of the same utility. 66 Pa. C.S. § 1311(c) (the water "customer base").

Further, the result of OSBA's proposal is to assign the Residential class a larger relative percentage of Act 11 subsidy revenues than the system average, while the Commercial class is assigned significantly less than the system average and the Industrial class is assigned no Act 11 subsidy responsibility. *Id.* at 9-10. As the Residential, Commercial, and Industrial class indexed RORs are all reasonably close to unity, when the OSBA's initial class revenue allocations (before the Act 11 revenue shift) are combined with the Act 11 revenue increases, the OSBA's ultimate

recommendation unreasonably favors the Commercial class.³ *Id.* at 10 (Table 10). In this regard, the OSBA's recommended total class water increases are unreasonable and the Commission should reject OSBA's request for the Commission to reverse its decision on the Act 11 revenue allocation.

OSBA also asks the Commission to clarify that Aqua's universal service program costs will be recovered exclusively through residential base rates. OSBA Petition at ¶¶ 42-43. No clarification is necessary. In its Compliance Filings submitted on May 23, 2022, Aqua proposed to recover all water and wastewater universal service program (USP) costs exclusively from residential customers. Compliance Filing (Water), Exh. 5-A at 7 (\$6,688,038 Discount to Residential); Compliance Filing (Wastewater), Exh. 5-B at 13 (\$708,277 Comparison of Residential Revenue – USP); *see also* Aqua Petition ¶ 24. No party objected to the proposed recovery from the residential class by filing an Exception to Aqua's Compliance Filings. In the context of this case, where the matter was not litigated, the OCA has chosen not to object to this allocation. As such, OSBA's request for clarification is unnecessary.

For the reasons above and in the May 16, 2022 Opinion and Order, the Recommended Decision, and the OCA's and Aqua's Reply Briefs and Reply Exceptions, the OCA requests that the Commission reject OSBA's Petition for Reconsideration and Clarification.

B. OCA Answer to Aqua Petition

Through its Petition, Aqua requests that the Commission revise its May 16, 2022 Opinion and Order to provide that the Company is permitted to include \$7,396,315 of costs associated with

³ The calculations in the OCA's testimony are based on Aqua's requested revenue requirement but the relative impact on the class increases would be similar at the allowed revenue increase.

the new, approved USP in the design of base rates. Aqua Petition ¶ 13-24. As stated by Aqua, the costs reflected in the Compliance Filings are based upon the Company's cost and participation level projections for Year 2 of the approved USP. *Id.* at 2, n.1. The OCA does not object to Aqua's request. Consistent with Aqua's representation, OCA did not propose any adjustments to the Company's claimed cost of service and revenue requirement associated with the USP and the OCA agrees that reflecting the costs is a matter of rate design and does not impact the allowed revenue requirement. Aqua Petition at ¶¶ 5, 24; OCA St. 1 at 38-39.

C. OCA Answer to CAUSE-PA Petition

1. Low-Income Customer Program Issues Are Appropriately Addressed in a Base Rate Proceeding.

The OCA supports the Petition for Reconsideration and/or Clarification filed by CAUSE-PA. In its Petition, CAUSE-PA requested that the Commission clarify its determination that the universal service programs, including the design of universal service programs and the affordability of rates produced by the universal service programs, are not properly reviewed in the context of a base rate proceeding. CAUSE-PA Petition ¶ 2(a). CAUSE-PA requested that the Commission:

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.

CAUSE-PA Petition ¶ 2(a). CAUSE-PA also argues that the Order is factually incorrect in concluding that Aqua's proposed customer assistance program (CAP) is similar to the structure in place at the Peoples Company. *Id.* ¶ 2(b). CAUSE-PA requests that the Commission require Aqua

to take steps to bring the program into alignment with Peoples' universal services program design, consistent with the recommendations of CAUSE-PA and the OCA. *Id.*

The OCA agrees with CAUSE-PA that low-income customer program issues and issues impacting the affordability of rates for low-income customers are appropriately raised in the context of a base rate proceeding. In its Petition, CAUSE-PA argues that:

[t]he 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.

CAUSE-PA Petition ¶ 17. CAUSE-PA argues that the Commission commits an error of law by stating that it is inappropriate to consider the merits of proposals of alternative CAP designs within the context of a base rate proceeding and should instead be considered through Universal Service and Energy Conservation Plan proceedings, a statewide proceeding, or Aqua's Helping Hand Collaborative. CAUSE-PA Petition ¶ 27. CAUSE-PA correctly recognizes that universal service programs set rates for low-income customers and other residential ratepayers and "must 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." *Id.* ¶ 28.

For example, Aqua's Helping Hand program has been incorporated as a part of Aqua's tariff and impacts the rates paid by Aqua's low-income customers. As CAUSE-PA's Petition identifies, in a recent PGW proceeding, PGW filed a Motion in Limine seeking to strike portions of testimony regarding recommended changes to PGW's universal service program in the context of a base rate proceeding. CAUSE-PA Petition ¶¶ 33-35, citing *Pa. PUC v. PGW*, R-2020-3017206 (Order July 8, 2020) (*Order on PGW's Motion*); see also CAUSE-PA Petition ¶¶ 36-37. Therein,

the Commission clearly established that issues related to the provision of reasonable service, including universal services issues, may be raised and considered as a part of a base rate proceeding.

As the ALJs noted in the *Order on PGW's Motion*, the Commission's *Suspension Order* specifically provides that all aspects of the Company's existing and proposed rates and tariff may be reviewed in order to determine the justness and reasonableness of rates. *See* CAUSE-PA Petition ¶ 34, *Order on PGW's Motion* at 5. As CAUSE-PA quoted in its Petition, the ALJs' Order noted that the "effect of a rate on universal services is one of many issues to be considered in a rate case." *Id.* In a similar fashion, the Suspension Order in this case specifically states: "that the investigation instituted in Ordering Paragraph No. 1 of this Order shall include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules, and regulations of Aqua Pennsylvania, Inc." Suspension Order ¶ 4 (Oct. 7, 2021); *see* CAUSE-PA Petition ¶ 38. The OCA agrees with CAUSE-PA's assertion that "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." CAUSE-PA Petition ¶ 40

The Commission has previously recognized the broad scope of review of issues that may be addressed through a base rate proceeding. For example, in the Recommended Decision for PPL's 2012 base rate proceeding, ALJ Colwell stated that "[i]n a base rate case, any part of the Company's tariff may be brought into question." *Pa. PUC v. PPL*, R-2012-2290597 (R.D. Oct. 9, 2012) (*PPL R.D.*). The OCA submits that as a part of any proposed rate request, the Commission is required to approve all of the language that is to go into effect, including both proposed rates and existing language. All issues related to the Company's proposed and existing tariff and collection of revenues may be examined in a base rate proceeding. *See PPL R.D.*

Moreover, the universal service programs also impact the quality of service provided by Aqua to its customers, and quality of service is always an issue that may be raised in a base rate proceeding. Interactions that Aqua has with its customers and its low-income customer programs directly involve the quality of service being provided to customers. Section 1501 provides a broad sweep for the Commission's consideration, and Section 526(a) seeks to ensure that quality of service is considered in a base rate case. 66 Pa. C.S. §§ 1501 and 526. Section 526 provides:

(a) General rule. - The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.

Section 526 has been referenced in numerous rate cases when considering whether a utility has provided adequate quality of service. *See, e.g., Pa. PUC v. Pa. Gas and Water Co.*, 1993 Pa. PUC LEXIS 115, *214 (June 23, 1993) (the Commission rejected the entire proposed rate increase based upon inadequate service.)

In 2007, in another of PGW's base rate proceedings, the ALJs and the Commission also specifically considered aspects of PGW's process for enrolling eligible customers in its universal service program and the potential impact of allegations inadequate service under Section 526 on a proposed rate increase. *Pa. PUC v. PGW*, 2007 Pa. PUC LEXIS 45 at 187 (Sept. 28, 2007) (*2007 PGW Order*). The Commission Order provided:

The ALJs noted that they were troubled by the allegation that PGW violated 52 Pa. Code § 69.265(6)(i). The ALJs determined that there was nothing in the record that demonstrates that PGW gives automatic referrals to income eligible customers for CRP when customers call for payment arrangements. The ALJs noted that they agreed with AA that evidence of inadequacy in service quality is rationale to reject or modify the Company's request for an increase in rates. 66 Pa. C.S. § 526 [*193]. Accordingly, the ALJs considered this regulatory violation regarding automatic referrals to income eligible customers for CRP with the totality of the evidence regarding the rate increase requested by the Company and recommended that PGW's rate increase request be modified to provide less than the amount requested. R.D. at 109.

Id. at 192-93. The PUC concluded:

PGW's failure to fully comply with the directives of Section 69.265(6)(i) is not, in and of itself, a sufficient basis for finding that the utility provided inadequate service under the Code. We wish to clarify that the ALJs did not make such a finding, instead, the ALJs considered PGW's failure to automatically refer income eligible customers for CRP with the totality of the evidence regarding the rate increase requested by the Company and recommended that PGW's rate increase request be modified to provide less than the amount requested. R.D. at 109. Once this Commission makes a conclusion of inadequate service, a request by the utility, even a rate increase, is in jeopardy of unfavorable treatment.

Id. at 194-95.

Thus, the OCA agrees with the arguments advanced by CAUSE-PA and asserts that the Commission should clarify that low-income customer service issues, including universal service issues, impact quality of service, rates, and tariff language of utilities and thus are properly considered as a part of a base rate proceeding.

2. The Commission's Order Overlooks that the CAUSE-PA and the OCA Recommendations Regarding the Helping Hand Program are in Direct Response to Aqua's Proposal to Change its Helping Hand Program as a Part of This Proceeding.

As CAUSE-PA identifies in its Petition, despite the fact that the Commission's Order suggests that consideration of universal service issues are not appropriately addressed in a base rate proceeding, the Commission reached conclusions about Aqua's universal service programs in its order. CAUSE-PA Petition at ¶¶ 41-52. CAUSE-PA correctly argues that:

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

CAUSE-PA Petition ¶ 42.

CAUSE-PA's Petition raises an important point. Although quality of service is always an issue that may be raised in a base rate proceeding, Aqua, itself, has raised the issue of changes to its Helping Hand program. The Commission's Order overlooks this important fact. The proposal to expand Aqua's Helping Hand program was initiated *by Aqua* and that the issues and alternative design recommendations regarding Aqua's Helping Hand program were in direct response to Aqua's proposal in this case. The OCA agrees with CAUSE-PA that it is unjust and unreasonable to approve a utility's proposed CAP design, but to deny alternative proposals as "not appropriately" considered as a part of a base rate proceeding. CAUSE-PA Petition ¶ 43. The Commission's Order denies the parties a meaningful opportunity to be heard and the right to respond to Aqua's filing. Part of that right to respond to Aqua's filing is to make alternative recommendations about the re-design of the program.

3. No Appropriate Alternative Forum Exists to Address the Issues Raised by Aqua.

As CAUSE-PA notes in its Petition, the Commission's dismissal of consideration of the issues related to the universal service programs is particularly problematic in this case because no other forum exists to raise the issues. CAUSE-PA Petition at ¶¶ 53-58. CAUSE-PA also contests and seeks clarification regarding the Order's conclusion that examination of low-income rates should not occur within rate proceedings, but instead in the context of a statewide stakeholder proceeding. CAUSE-PA Petition at ¶¶ 59-66. The OCA agrees that the informal collaborative and a future statewide stakeholder process should not preclude the OCA or CAUSE-PA from raising issues related to Aqua's Helping Hand proposal in this case. The alternative forums cited by the Commission are not the appropriate forum to address recommendations related to the program that Aqua will implement as a result of this case.

Unlike energy utilities, Aqua is not required to file a Universal Service and Energy Conservation Plan for Commission review or approval. CAUSE-PA Petition ¶ 53. Aqua's proposed Helping Hand is being approved as a part of the instant proceeding, and there is no other forum to address the issue. In particular, the Order suggests that Aqua's informal collaborative may be a more appropriate forum. *See* Order at 333; CAUSE-PA Petition ¶¶ 54-58. Like CAUSE-PA, the OCA supports the use of the informal stakeholder process to address issues surrounding the design and delivery of program. The OCA agrees with CAUSE-PA that the informal process does not provide the parties with an adequate forum to require Aqua to implement program design changes. *See* CAUSE-PA Petition at ¶¶ 57-58.

CAUSE-PA also raises a request for clarification regarding the Commission's conclusion that examination of Aqua's low-income rates is more appropriately raised in the context of an as yet not created stakeholder process. CAUSE-PA Petition ¶ 59. While the OCA and CAUSE-PA both support the initiation of a statewide process to create a formal statewide policy, the proposed low-income rates will go into effect with this case. As CAUSE-PA appropriately notes, "low income household cannot afford to wait for rate mitigation." *Id.* ¶ 63.

For the reasons set forth above, the OCA supports CAUSE-PA's request for clarification and determination that no other appropriate forum exists to address the issues raised regarding Aqua's approval of changes to its Helping Hand program.

4. The Structure of the Aqua CAP Approved by the Commission Is Not Similar to the Peoples' CAP, Which Is a Percentage of Income Program.

As support for its conclusions to adopt Aqua's proposed program design, the Commission concludes that the structure of Aqua's proposed program is "similar to the structure in place at Peoples Companies." Order at 331. As CAUSE-PA argues in its Petition, the Commission's Order

is factually incorrect in concluding that Aqua's proposed CAP is similar to the structure in place at the Peoples Company. CAUSE-PA Petition ¶¶ 2(b), 67-78. The design of Peoples' CAP is a Percentage of Income Program (PIP) and the design of Aqua's program is a tiered discount rate program. CAUSE-PA Petition ¶ 70. Both the OCA and CAUSE-PA made recommendations in this case to move Aqua's proposed CAP into greater alignment with the Peoples program and a PIP design. *See e.g.*, CAUSE-PA Petition ¶¶ 72-77; *see* OCA M.B. at 145, OCA St. 5 at 31. The OCA supports CAUSE-PA's request that the Commission require Aqua to take steps to bring the program into alignment with Peoples' universal service program design, including adoption of modifications to the discount and income tiers, as well as ongoing monitoring, analysis, and reporting of program outcomes.

III. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate respectfully requests that the Commission deny the Office of Small Business Advocate's Petition for Reconsideration and Clarification. The OCA does not object to the Petition by Aqua Pennsylvania Inc. and Aqua Pennsylvania Wastewater, Inc. The OCA respectfully requests that the Commission grant the Petition by CAUSE-PA.

Respectfully submitted,

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Patrick M. Cicero
Consumer Advocate

Dated: June 10, 2022
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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	:	R-2021-3027386 (WW)
Aqua Pennsylvania, Inc. and Aqua	:	C-2021-3028467 (WW)
Pennsylvania Wastewater, Inc.	:	

VERIFICATION

I, Patrick M. Cicero, Consumer Advocate, hereby state that the facts above set forth 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).

DATED: June 10, 2022
*324643

Signature:



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