

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission	R-2021-3027385
Bureau of Investigation and Enforcement	
Office of Consumer Advocate	C-2021-3028466
Office of Small Business Advocate	C-2021-3028509
Martha Bronson	C-2021-3028132
Neil Kugelman	C-2021-3028139
Geoffrey Rhine	C-2021-3028170
Theodore Voltolina	C-2021-3028194
Aaron Brown	C-2021-3028279
Darren Distasio	C-2021-3028285
Deena Denesowicz	C-2021-3028288
Vivian George	C-2021-3028310
Nick Panaccio	C-2021-3028331
Richard Regnier	C-2021-3028332
Gerald DiNunzio Jr.	C-2021-3028362
Nancy Reedman	C-2021-3028405
Michael McCall	C-2021-3028413
Raymond Cavalieri	C-2021-3028448
Byron Goldstein	C-2021-3028463
John Grassie	C-2021-3028663
Kyle Brophy	C-2021-3028712
Daniel Savino	C-2021-3028758
Michael Roberts	C-2021-3028869
Treasure Lake Property Owners Association Inc.	C-2021-3029004
Gerardo Giannattasio	C-2021-3029066
Aqua Large Users Group	C-2021-3029089

Erik McElwain	C-2021-3029135
Judy Burton	C-2021-3029152
Brian Edwards	C-2021-3029159
Richard Gage	C-2021-3029393
Joanne Smyth	C-2021-3029411
Jane O'Donovan	C-2021-3029532

v.

Aqua Pennsylvania, Inc.

Pennsylvania Public Utility Commission	R-2021-3027386
Bureau of Investigation and Enforcement	
Office of Consumer Advocate	C-2021-3028467
Office of Small Business Advocate	C-2021-3028511
Camp Stead Property Owners Association	C-2021-3028928
Dale Markowitz	C-2021-3028280
Keith Anthony	C-2021-3028444
Stephanie Boris	C-2021-3028443
Jennifer Buckley	C-2021-3028160
Carl Martinson	C-2021-3028312
Elizabeth O'Neill	C-2021-3028333
Erik and Ilisha Smith	C-2021-3028334
Curtis and Michele Tabor	C-2021-3028335
Gregory Valerio	C-2021-3028336
Jerome Perch	C-2021-3028356
Michael Brull	C-2021-3028361
James Blessing	C-2021-3028402
Elizabeth Yost	C-2021-3028407
Timothy Nicholl	C-2021-3028471
Alyssa Reinhart	C-2021-3028493
James Kolb	C-2021-3028497
Ronald Schneck	C-2021-3028547
Matthew Cicalese	C-2021-3028566
Ronald and Lora	C-2021-3028568
Kelly Frich	C-2021-3028665
Adam Anders	C-2021-3028670
Charleen Falsone	C-2021-3028760
Stephen Grugeon	C-2021-3028892

Lynne Germscheid	C-2021-3028860
Deborah and James Popson	C-2021-3028868
Masthope Mountain Community Association	C-2021-3028996
Treasure Lake Property Owners Association Inc.	C-2021-3029006
East Norriton Township	C-2021-3029019
Kevin Amerman	C-2021-3029063
James Wharton Jr.	C-2021-3029065
Peter and Kim Ginopolas	C-2021-3029096
Yefim Shnayder	C-2021-3029134
Andrea and Matthew Rivera	C-2021-3029154
Judy Burton	C-2021-3029139
Brian Edwards	C-2021-3029161
Edward Coccia	C-2021-3028870
John Day	C-2021-3028734
Robert Dolan	C-2021-3028798
Anthony Giovannone	C-2021-3028794
	C-2021-3028803
	C-2021-3028802
Sheila Gutzait	C-2021-3028634
Rudolph Hofbauer	C-2021-3028666
Ronald and Alexis Koenig	C-2021-3028483
Joan Lipski	C-2021-3028475
William and Ana Loftus	C-2021-3028617
Stephen and Teresa Mason	C-2021-3028576
David Monroe	C-2021-3028567
Lisa Rampone	C-2021-3028804
Lorraine Rocci	C-2021-3028499
David Ross	C-2021-3028479
Carolyn Sica	C-2021-3028446
Dean Swink	C-2021-3028604
Francine Weiner	C-2021-3028639
Tom Woodward	C-2021-3028927
Joseph Torello	C-2021-3029180
Donald Osinski	C-2021-3029413
Lake Associates LLC	C-2021-3029425
	C-2021-3029422
	C-2021-3029419
29 Estates LLC	C-2021-3029417
David Bowers	C-2021-3029466

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Joint Petition for Reconsideration/Clarification (Petition), by Aqua Pennsylvania, Inc and Aqua Pennsylvania Wastewater, Inc. (collectively, Aqua or the Company); the Petition for Reconsideration and Clarification filed by the Office of Small Business Advocate (OSBA) (OSBA Petition); and the Petition for Reconsideration and/or Clarification filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (CAUSE-PA Petition) on May 31, 2022, seeking reconsideration/clarification of the Commission's Opinion and Order entered on May 16, 2022 (*May 2022 Order*). Aqua filed Answers to both the OSBA and CAUSE-PA Petitions, respectively, on June 10, 2022. Also on that date, the Office of Consumer Advocate (OCA) filed an Answer to the Petitions of Aqua, the OSBA and CAUSE-PA.¹

On June 8, 2022, the Commission issued an Opinion and Order short form, granting reconsideration and preserving Commission jurisdiction of the petitions for reconsideration/clarification.

¹ The OCA filed a Petition for Clarification on May 31, 2022, and subsequently filed an unopposed Petition for Leave to Withdraw Petition (Petition to Withdraw) on June 2, 2022.

For the reasons stated, *infra*, upon consideration of the Petitions for Reconsideration/Clarification and Answers thereto, finding no persuasive reason for reconsideration/clarification, we shall deny reconsideration/clarification of our *May 2022 Order*.

I. Background

The Parties seek reconsideration and/or clarification of the Commission's *May 2022 Order*, which approved the rate increase sought by Aqua. By that Order the Commission approved an annual revenue increase of \$50,510,192 to the Company's *pro forma* revenue at present rates of \$510,006,687, or approximately 9.88%, for its water service and an annual revenue increase of \$18,740,978 to the Company's *pro forma* revenue at present rates of \$37,076,494, or approximately 50.55%, for its wastewater service. At issue on reconsideration and/or clarification is the Commission's *May 2022 Order*'s determinations involving the approval of Aqua's water revenue

Withdrawal of pleadings in a contested proceeding is governed by Section 5.94 of our Regulations, 52 Pa. Code § 5.94. Section 5.94(a) provides the following:

- (a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94

Upon review of the Petition to Withdraw, noting that no objections have been filed, we conclude that granting the Petition to Withdraw is in the public interest, and shall, therefore, grant the OCA leave to withdraw the Petition.

allocation and Act 11 wastewater revenue allocation among customer classes and Aqua's newly adopted Universal Service Plan (USP).

II. History of the Proceeding²

On August 20, 2021, Aqua filed proposed Tariff Water-Pa P.U.C. No. 3 (Tariff Water No. 3) to become effective October 19, 2021. Under Tariff Water No. 3, the Company proposed to increase Aqua's total annual operating revenues for its water service by approximately \$86,118,612 or 16.9%. Also on August 20, 2021, Aqua filed proposed Tariff Sewer-Pa P.U.C. No. 3 (Tariff Sewer No. 3) to become effective October 19, 2021. Under Tariff Sewer No. 3, the Company proposed to increase Aqua's total annual operating revenues for its wastewater service by approximately \$11,566,212 or 31.2%.

By order entered on October 7, 2021, the Commission suspended the rate filings, pursuant to 66 Pa. C.S. § 1308(d), until May 19, 2022, and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the rate filings.

An initial Prehearing Conference was scheduled and held on October 15, 2021, before Administrative Law Judge (ALJ) Mary D. Long. Parties participating in the Prehearing Conference filed Prehearing Memoranda identifying potential issues and their expected witnesses. At the Prehearing Conference, the ALJ established a procedural schedule that was agreed upon and proposed by the Parties.

On November 10, 2021, Parties other than Aqua served their Direct Testimony and associated exhibits, other than some testimony relating to accounting,

² For the full procedural history see pages 4-7 of the *May 2022 Order*.

regulatory policy, rate base, revenues, expenses, and taxes. On November 12, 2021, some Parties other than Aqua, served their Direct Testimony on the subjects of accounting and regulatory policy, rate base, revenues, expenses, and taxes. On November 19, 2021, Supplemental Direct Testimony addressing public input hearing testimony was served.

On December 2, 2021, Aqua, and certain other Parties filed Rebuttal Testimony and associated Exhibits. Surrebuttal Testimony and exhibits were served on December 14, 2021. On December 17, 2021, Aqua served Rejoinder Testimony.

Evidentiary hearings were held before the ALJ on December 20, 2021. All Parties mutually agreed to waive all cross-examination of witnesses. Additionally, the Parties' respective testimony and exhibits were admitted into the evidentiary record.

On February 18, 2022, the ALJ issued a Recommended Decision (R.D.) in this proceeding.

Exceptions were filed on February 28, 2022; and Replies to Exceptions were filed on March 7, 2022.

On May 16, 2022, we entered the *May 2022 Order* granting, in part, and denying, in part, the Exceptions filed by Aqua, I&E, and the OCA, and denying the remaining Exceptions. Additionally, we approved an annual revenue increase of \$50,510,192 to the Company's *pro forma* revenue at present rates of \$510,006,687, or approximately 9.88%, for its water service and an annual revenue increase of \$18,740,978 to the Company's *pro forma* revenue at present rates of \$37,076,494, or approximately 50.55%, for its wastewater service.

On June 8, 2022, the Commission entered an Order granting the Petitions for Reconsideration and Clarification of the *May 2022 Order*, that were filed by Aqua, the OSBA and CAUSE-PA, pending further review of, and consideration on, the merits of those petitions.³

III. Legal Standards

We remind the Parties that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *See Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also, see generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of a final decision of the Commission. Pursuant to Subsections 703(f) and (g), of the Code, 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearing, as well as the rescission and amendment of orders, such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

As explained by the Pennsylvania Supreme Court, petitions to reconsider, clarify, amend, or rescind a final agency action may only be “granted judiciously” and “under appropriate circumstances” because such action results in the disturbance of final

³ On August 9, 2022, New Wilmington Municipal Authority (NWMA) simultaneously filed its Petitions to Intervene and Petition for Modification seeking modification of the *May 2022 Order*. Aqua filed its Answers to the Intervention Petition and Modification Petition on August 19, 2022. The substance of the NWMA petitions shall be addressed by separate Opinion and Order.

agency orders. See *City of Pittsburgh v. Pa. Dept. of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980) (*City of Pittsburgh*); *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996) (*West Penn*).

The standard that is consistently applied by the Commission for reviewing a petition for reconsideration, rehearing, and clarification following a final order⁴ is set forth in the Commission’s Order entered in the case of *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 PUR4th 284, 288-289 (1983) (*Duick*). In *Duick*, the Commission has held, *inter alia*, that petitions seeking reconsideration and/or clarification under Subsection 703(g) of the Code, 66 Pa. C.S. § 703(g), may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. However, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us. See *Duick*, at 559; *also, AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

Application of the considerations of *Duick* essentially require a two-step analysis. See, e.g., *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 19, 2019) (*SBG Order*)⁵ (discussing *Application of La Mexicana Express Service, LLC, to transport*

⁴ The *May 2022 Order* is an adjudication and, as such, final and appealable. *Pa. Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995), n. 9, *affirmed* 543 Pa. 307, 670 A.2d 1152 (1996), citing *Professional Paramedical Services, Inc. v. Pa. PUC*, 525 A.2d 1274 (Pa. Cmwlth. 1987), *petition for allowance of appeal denied*, 517 Pa. 627, 538 A.2d 879 (1988).

⁵ *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

persons in paratransit service, between points within Berks County, Docket No. A-2012-2329717; A-6415209 (Order entered September 11, 2014)).

The first step is that we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. *See SBG Order.*

IV. Discussion

A. The May 2022 Order

Relevant to our present consideration of the Petitions for Reconsideration/Clarification, the Commission's *May 2022 Order*, adopting Aqua's rate increase, ordered that "Aqua's allocations of revenue between all water customer classifications and all wastewater customer classifications are reasonable and should be approved." *May 2022 Order* at 226. In adopting the ALJ's recommendation, the Commission further found that "I&E's methodology for allocating the Act 11 wastewater revenue subsidy should be approved." The Commission expressly "agree[d] with the ALJ that any scale back of water rates will first reduce the Act 11 allocation." *Id.*

The ALJ's recommendation was made after consideration of the competing proposed alternative revenue allocations and alternative Act 11 allocation, including those proposed by the OSBA. In adopting the approach endorsed by I&E, the ALJ considered that as a part of its filing, Aqua had 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 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.

The ALJ's analysis, which was adopted by the *May 2022 Order*, was consistent with Aqua's proposed allocation of revenue among water and wastewater classifications based upon its cost allocation studies. The ALJ considered that Aqua's proposed allocation of revenue among the customer classifications is primarily driven by the cost to serve each class, while also considering the principle of gradualism and Aqua's attempt to avoid significant rate increases to certain classifications under its proposed revenue allocation. In addition, Aqua's proposal allocated 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). *See*, AP St. 5 at 10; *see also* 66 Pa. C.S. § 1311(c).

As part of the adoption of Aqua's rate increase, the Commission's *May 2022 Order* also approved the Company's proposal for a new, comprehensive 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 "continue to recover its low-income program costs through base rates." *May 2022 Order* at 319.

B. The Petitions for Reconsideration/Clarification and Answers

1. Aqua's Petition and Answers

By its Petition, Aqua seeks clarification of the Commission's *May 2022 Order* to reflect that the Company is permitted to include \$7,396,315 of costs associated

with the new, approved USP in the design of base rates. Aqua Petition at 6. Aqua emphasizes that the requested clarification will not impact the water and wastewater increase of \$69,251,170 authorized under the *May 2022 Order*. Aqua asserts that 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.

In its Answer to Aqua's Petition, the OCA notes no objection to Aqua's request for reconsideration and clarification. The OCA asserts that, consistent with Aqua's position, the OCA did not argue for any adjustments to the Company's claimed cost of service and revenue requirement associated with the USP. Further, the OCA agrees with Aqua's position that costs are appropriately reflected as a matter of rate design which does not impact the allowed revenue requirement. OCA Answer at 6, citing, Aqua Petition at para. 5, 24; OCA St. 1 at 38-39.

2. OSBA's Petition and Answers

By its Petition, the OSBA seeks reversal of the *May 2022 Order* findings regarding both Aqua's water and wastewater revenue allocations and allocation of the approved Act 11 wastewater subsidies. OSBA Petition at 6-11. The OSBA asserts 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 both Section 1311(c) of the Code, 66 Pa. C. S. § 1311(c), and the principles of *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), appeal denied, 591 Pa. 676 (2007) (*Lloyd*). OSBA Petition at 6-9. In summary, the OSBA asks that the Commission reject and reverse the ALJ's finding that, from the perspective of customers, the effect of the increase includes both the water increase and the wastewater allocation. *Id.*, *See* R.D. at 92. The OSBA argues that the Commission should 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 on a revenue neutral basis. OSBA Petition at 9-11.

The OSBA further seeks clarification by the Commission that Aqua's USP costs will be recovered exclusively through residential base rates. OSBA Petition at 11-12.

In its Answer Aqua asserts that the Commission should deny both the OSBA's request for reconsideration of the water and Act 11 wastewater revenue allocation and request for clarification that Aqua's USP costs should be recovered through residential base rates. Aqua asserts that the OSBA fails to assert any basis upon which to grant reconsideration/clarification under the standard enunciated in *Duick*. Aqua Answer 5-8.

Specifically, with respect to the OSBA's assertion that the *May 2022 Order* fails to adequately consider and/or violate the holding in *Lloyd*, Aqua argues that the *May 2022 Order* in fact expressly addressed and rejected the OSBA's arguments regarding the application of *Lloyd* in the present case to Aqua's water revenue allocation. With respect to the Act 11 wastewater revenue allocation, Aqua notes that those allocations were proposed by I&E. In addition, Aqua asserts that the *May 2022 Order's* treatment of Act 11 wastewater revenues violates neither the plain language of Section 1311 of the Code nor the holding in *Lloyd*. Aqua Petition at 5-7.

In its Answer the OCA asserts, as did Aqua, that the OSBA fails to assert any basis upon which to grant either reconsideration or clarification under *Duick*. Specifically, the OCA argues that the OSBA's proposed revenue and Act 11 wastewater revenue allocations were properly rejected based upon the ALJ's analysis of the unreasonable impact to non-residential class of customers. The OCA argues that the ALJ

properly concluded the OSBA's recommended total class water increases are unreasonable, in stating:

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.

OCA Answer at 3, citing R.D. at 92. The OCA further asserts that the OSBA fails to satisfy the *Duick* standard for reconsideration since it is evident from the *May 2022 Order*, that rather than failing to consider the OSBA's position on the issue of the application of *Lloyd* and Section 1311 of the Code, the Commission simply rejected the OSBA's position. *Id.*

The OCA asserts that the unreasonable practical effect of the OSBA's proposed revenue allocations are evident, stating:

[T]he 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.

OCA Answer at 4-5.

Finally, with respect to the OSBA's request for clarification that all USP costs would be recovered through residential base rates, the OCA asserts no clarification

is needed. The OCA asserts that since Aqua's Compliance Filing following the *May 2022 Order* provided that the USP costs are to be recovered exclusively from residential base rates, and no Party objected to the recovery from the residential class by objection to Aqua's Compliance Filings, no clarification is needed. OCA Answer at 5.

3. CAUSE-PA's Petition and Answers

In its Petition, CAUSE-PA requests that the Commission clarify the determination in the *May 2022 Order* 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 at 2. Specifically, CAUSE-PA requests that the Commission clarify in its final order to reflect that those issues related to universal service program design and rate affordability for low-income customers (and the customer service and collections issues related thereto) are properly considered in the context of a rate proceeding, and that such issues are relevant to the Commission's determination whether a utility's rates and conditions of service are just and reasonable. CAUSE-PA Petition at 2. In addition, CAUSE-PA asserts that the *May 2022 Order* is in error, as a factual matter, by concluding that Aqua's proposed USP is similar to the structure in place at Aqua's affiliates, the Peoples Natural Gas Company LLC and Peoples Gas Company LLC (the Peoples Companies). *Id.* at 2, para. 2(b). CAUSE-PA requests that the Commission require Aqua to take steps to bring the program into alignment with the Peoples Companies' USP design, consistent with the recommendations of CAUSE-PA and the OCA. *Id.*

Further, CAUSE-PA asserts that, as a factual matter, the Commission's *May 2022 Order* overlooks the significant fact that the CAUSE-PA and the OCA recommendations regarding Aqua's Helping Hand Program were submitted in direct response to Aqua's proposal to change its Helping Hand Program as a part of its rate

proceeding. CAUSE-PA argues that the *May 2022 Order* is inherently inconsistent where, despite concluding that consideration of universal service issues are not appropriately addressed in a base rate proceeding, the Commission nevertheless addressed Aqua's universal service programs in its order. CAUSE-PA Petition at 13-16. CAUSE-PA 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 [Customer Assistance Program] 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 at 13-14.

CAUSE-PA further asserts that the Commission's dismissal of consideration of the issues related to the universal service programs is egregious error in this case because no other forum exists to raise the issues. CAUSE-PA Petition at 16-18. Finally, CAUSE-PA asserts that the *May 2022 Order* is factually incorrect in concluding that Aqua's proposed CAP is like the structure in place at the Peoples Companies. CAUSE-PA Petition at 2 para. 2(b), 20-24. Rather, CAUSE-PA argues that the design of Peoples Companies' CAP is a Percentage of Income Program (PIP) and the design of Aqua's program is a tiered discount rate program. CAUSE-PA Petition at 21. CAUSE-PA notes that both the OCA and CAUSE-PA made recommendations in this case which would have moved Aqua's proposed USP into closer alignment with a PIP design like the Peoples Companies program. CAUSE-PA Petition at 21-23.

In its Answer, Aqua asserts CAUSE-PA's request for reconsideration and/or clarification fails to raise any new arguments not previously heard by the Commission and mischaracterizes the Commission's analysis and conclusions. Therefore, Aqua asserts that CAUSE-PA's Petition fails to meet the standards under *Duick* for reconsideration and clarification and should be denied. Aqua Answer at 1.

Aqua asserts that the two bases for reconsideration/clarification proffered by CAUSE-PA are unfounded. Aqua summarizes CAUSE-PA's arguments to be that: (1) the Commission's *May 2022 Order* forecloses CAUSE-PA's ability to raise issues related to Aqua's USP and the affordability of its rates to low-income customers in the present or future rate cases; and, (2) that the Commission erred in concluding the proposed USP is "similar to" the programs in place at Aqua's natural gas affiliates, the Peoples Companies. Aqua Answer at 4-10.

Aqua counters CAUSE-PA's alleged basis for reconsideration/clarification. First, Aqua asserts that under either asserted grounds, CAUSE-PA sets forth no error of law, and instead re-raises the same arguments that were previously considered and rejected by the Commission. Second, Aqua asserts that both of CAUSE-PA's assertions mischaracterize *the May 2022 Order* and repeats CAUSE-PA's prior arguments. Aqua Answer at 4.

Specifically, with respect to CAUSE-PA's assertion that the Commission's *May 2022 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 in the present or future rate cases, Aqua counters that neither the ALJ's recommendation nor the *May 2022 Order* failed to consider universal service program issues or foreclosed such consideration in this or future rate cases. Aqua notes that both the ALJ's Recommended Decision and the Commission's *May 2022 Order* expressly considered issues raised by the Parties, including CAUSE-PA, related to Aqua's proposed USP. Aqua asserts that,

contrary to CAUSE-PA's assertions, nothing in the *May 2022 Order* forecloses the ability of CAUSE-PA to raise issues related to Aqua's USP in the context of a base rate proceeding. Rather, the Commission concluded that, based on the record evidence in the present rate case, the alternative USP changes proposed by CAUSE-PA were not demonstrated to be reasonable at this time, under the circumstances of this case. Aqua Answer at 6, citing R.D. at 320-325.

With respect to CAUSE-PA's assertion that the Commission erred in concluding the proposed USP is "similar to" the programs in place at Aqua's natural gas affiliates, the Peoples Companies, Aqua argues that CAUSE-PA takes the language "similar to the structure in place at [the] Peoples Companies" out of context. Aqua argues that the ALJ's and Commission's full discussion of whether to approve Aqua's proposed USP, reflects that when taken in context, it is clear the Commission was noting relevant similarities, and not basing approval of Aqua's proposed USP on the conclusion it was identical to that of the Peoples Companies. To the contrary, Aqua asserts that the ALJ clearly considered and rejected CAUSE-PA's position that the USP structure be required to be like the PIP structure of the Peoples Companies' plan. Therefore, Aqua argues that CAUSE-PA's request for clarification is unwarranted and should be denied. Aqua Answer at 9-10.

In its Answer, the OCA concurs with CAUSE-PA and reiterates CAUSE-PA's arguments in support of the request for reconsideration and clarification. OCA Answer at 6-12.

C. Disposition

Based on our review of the record, the Petitions of Aqua, the OSBA and CAUSE-PA, and the Answers thereto, as discussed more fully, *infra*, we will deny the requests for reconsideration/clarification of the Commission's *May 2022 Order*.

As previously noted, petitions for reconsideration are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us. *See Duick*, at 559; *also, AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

In the present case, Aqua seeks clarification of the *May 2022 Order*, in an abundance of caution, to expressly state both that the Company is permitted to recover the projected costs of the new Commission-approved USP through the design of base rates, without any impact to the Company’s approved revenue requirement and that the Company is permitted to recover \$7,396,315 in projected costs associated with the new USP. However, upon review of Aqua’s Petition and the OCA’s Answer thereto, we conclude it is not necessary to revise the *May 2022 Order* in the circumstances. As Aqua noted in its Petition:

As reflected in the Compliance Filings dated May 23, 2022, the costs associated with the approved USP for water customers is \$6,668,038 (see Exhibit 5-A Compliance), page 7, Water Discount to Residential), and the costs associated with the approved USP for wastewater customers is \$708,227 (see Exhibit 5-B (Compliance), page 13). 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.

Aqua Petition at 2, fn. 1.

As noted by Aqua and the OCA in its Answer asserting no opposition, Aqua’s inclusion in base rate of the costs associated with the approved USP for water and wastewater customers is a matter of base rate design. Further, Aqua’s inclusion in base rate of the costs associated with the approved USP for water and wastewater customers has been reviewed for consistency with the *May 2022 Order* as part of the necessary Compliance Filings by Aqua. Specifically, by Secretarial Letter dated June 3, 2022,

(Secretarial Letter) the Commission approved the Compliance Tariff filings and supporting proof of revenues, including Exhibit 5-A and Exhibit 5-B referenced in Aqua's Petition, as follows:

On May 23, 2022, the Company filed Original Tariff Water-PA P.U.C. No. 3 and Original Tariff Sewer-PA P.U.C. No. 3, effective May 19, 2022 (Compliance Tariffs). *The Company also filed a detailed proof of revenues, demonstrating that the filed tariff adjustments comply with the provisions of the final Opinion and Order.* Commission Staff reviewed the tariff revisions and proof of revenues and found that suspension or further investigation does not appear warranted at this time. Therefore, in accordance with 52 Pa. Code Chapter 53, the Commission will allow the Compliance Tariffs to become effective by operation of law according to the effective date contained on each page of the tariffs.

Secretarial Letter at 1 (emphasis added).

As such, Commission's staff has evaluated the Company's compliance consistent with the Company's cost and participation level projections for Year 2 of the approved USP. In the circumstances, and consistent with the approval noted in the Secretarial Letter, we deem further clarification at this time to be unnecessary. Because we conclude that no clarification or modification of the Commission's *May 2022 Order* is necessary, we shall deny Aqua's request for clarification.

With respect to the OSBA's Petition, we conclude that OSBA's request for reconsideration of the water and Act 11 wastewater revenue allocation and request for clarification that Aqua's USP costs should be recovered through residential base rates fails to assert any basis upon which to grant reconsideration/clarification under the standard enunciated in *Duick*.

Specifically, regarding the OSBA's claim that the *May 2022 Order* failed to apply the holding in *Lloyd*, we agree that, as argued by Aqua, the Commission's *May 2022 Order* expressly considered and rejected the OSBA's arguments regarding the application of *Lloyd* in the present case to Aqua's water revenue allocation. Further, the *May 2022 Order*'s treatment of Act 11 wastewater revenues violates neither the plain language of Section 1311 of the Code nor the holding in *Lloyd*.

It is evident upon review of the Commission's *May 2022 Order* and the ALJ's Recommended Decision which it adopted, both the Commission and the ALJ expressly considered and applied *Lloyd* in their adoption of a proposed revenue allocation. It is also clear that both the Commission and the ALJ declined to adopt the OSBA's interpretation of *Lloyd*.

In its consideration and rejection of the OSBA's interpretation of *Lloyd*, the Commission stated:

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.

May 2022 Order at 228-229, quoting R.D. at 92.

Therefore, because the claims raised by the OSBA pertaining to water revenue and Act 11 wastewater revenue allocation fails to state any new matter not previously considered, we conclude that the OSBA fails to assert any basis for reconsideration of the Commission's application of *Lloyd* in the *May 2022 Order*.

With respect to the OSBA's claim that clarification is necessary to state that the costs of Aqua's newly approved USP are to be recovered solely from *residential customers* we conclude no clarification is necessary. In the present case, Aqua's proposal was that costs of the USP be recovered from the residential class. No Party advanced an alternative theory that costs be recovered from non-residential customers. Further, as the OCA noted, Aqua's recent Compliance Filing included that the costs of the USP be recovered solely from the residential customer base, and no Party took objection to Aqua's Compliance Filing. Accordingly, we conclude no clarification is necessary in the circumstances.

Because we conclude that the OSBA fails to state any basis upon which to grant reconsideration/clarification, we shall deny the OSBA's Petition.

With respect to CAUSE-PA's Petition, we conclude that CAUSE-PA's request for reconsideration/clarification of the Commission's *May 2022 Order* on the grounds that, as stated, the language of the 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 in this or future rate proceedings to be without merit. We further find that CAUSE-PA's assertion that the *May 2022 Order* erred as a factual matter in concluding

that Aqua’s proposed USP is “similar to” the programs in place at Aqua’s natural gas affiliates, the Peoples Companies, is also without merit, and fails to assert any basis upon which to grant reconsideration/clarification under the standard enunciated in *Duick*.

Specially, we agree, as argued by Aqua, that both of CAUSE-PA’s asserted basis for reconsideration/clarification are premised upon a mischaracterization of the Commission’s *May 2022 Order*. First, the *May 2022 Order* expressly considered and rejected the opposing proposals by CAUSE-PA and the OCA and rejected those proposals in the circumstances of this case. CAUSE-PA selectively reads the ALJ’s suggestion that, in the present circumstances, the proposals by CAUSE-PA and the OCA to move Aqua’s USP more in line with the PIP structure would be more appropriate in another proceeding, to conclude the ALJ was barring any consideration of the Parties’ arguments regarding Aqua’s USP. A plain reading of the *May 2022 Order* reflects that this is not the case.

Contrary to CAUSE-PA’s assertions, the *May 2022 Order* summarized the Parties’ positions regarding affordability and USP design, analyzed the Parties’ positions and the Parties’ exceptions and replies. *May 2022 Order* at 320-325. The ALJ likewise engaged in a full analysis of the Parties’ competing position on the issue of Aqua’s USP. R.D. at 113. The Commission simply rejected CAUSE-PA’s position that Aqua’s USP should be structured as PIP in the circumstances of the present case.

Similarly, CAUSE-PA’s argument that a reference to Aqua’s USP as “similar to the structure in place at [the] Peoples Companies” is factual error is based upon CAUSE-PA’s selective reading of the *May 2022 Order* and is rejected. A plain reading of the *May 2022 Order* reflects that the reference to the similarities between Aqua’s USP and the plans in place at the Peoples Companies was referencing the similar arrearage forgiveness and tiered bill discount benefits based upon customers’ income. *See May 2022 Order* at 320-325

Where, as here, an issue has been completely reviewed and rejected by the Commission, the same issue, raised upon the same grounds previously rejected by the Commission, is insufficient basis to support a grant of reconsideration/clarification under *Duick*. Because CAUSE-PA raises no new argument or grounds for reconsideration/clarification we shall deny CAUSE-PA's Petition.

Accordingly, finding that the petitioners have presented no persuasive evidence which warrants the exercise of our discretion under *Duick*, in granting reconsideration or clarification, we shall deny the Petitions of Aqua, OSBA and CAUSE-PA, respectively.

V. Conclusion

Based on our review of the Petitions, the record, and the applicable law, and foregoing discussion, we shall deny the Petitions for Reconsideration and/or Clarification, consistent with this Opinion and Order; **THEREFORE**,

IT IS ORDERED:

1. That the Petition for Reconsideration/Clarification filed by Aqua Pennsylvania, Inc and Aqua Pennsylvania Wastewater, Inc., on May 31, 2022, is denied.
2. That the Petition for Reconsideration/Clarification filed by the Office of Small Business Advocate on May 31, 2022, is denied.
3. That the Petition for Reconsideration/Clarification filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania on May 31, 2022, is denied.

4. That the unopposed Petition for Leave to Withdraw Petition filed by the Office of Consumer Advocate on June 2, 2022, seeking withdrawal of the Petition for Clarification filed by the Office of Consumer Advocate on May 31, 2022, is granted.

5. That the proceeding at this docket be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022