



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Carl R. Shultz, Esq.
717.255.3742
cshultz@eckertseamans.com

March 15, 2023

Via Electronic Email

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.
Docket No. C-2022-3036893 and C-2022-3037118

Dear Secretary Chiavetta:

Enclosed for electronic filing please find SCH USA, LLC's Prehearing Conference Memorandum with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Carl R. Shultz

Carl R. Shultz

CRS/lww

Enclosure

cc: Hon. John M. Coogan w/enc. (via email)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the SCH USA, LLC's Prehearing Memorandum upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
mmorris@regerlaw.com

Carlos Padilla
SCH USA LLC
634 Route 940
Lake Harmony, PA 18624-0567
carlospadilla@icdsitra.com

Date: March 15, 2023

/s/ Carl R. Shultz

Carl R. Shultz, Esq.
Attorney for SCH USA, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC	:	
	:	Docket No. C-2022-3036893
v.	:	Docket No. C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

**PREHEARING MEMORANDUM OF
SCH USA, LLC**

Pursuant to 52 Pa. Code §§ 5.221-5.223 and the Prehearing Conference Order issued on March 10, 2023 by Administrative Law Judge John M. Coogan (“ALJ” or “Judge Coogan”), SCH USA LLC (“SCH USA” or the “Complainant”) submits this Prehearing Memorandum.

I. BACKGROUND AND PROCEDURAL HISTORY

In November 2020, SCH USA purchased the Split Rock Resort¹ (“Resort”), which is located in the “Lake Harmony” area of Kidder Township, Carbon County, Pennsylvania. The Resort has four commercial wastewater accounts with Aqua Pennsylvania Wastewater Inc. (“Aqua” or “Respondent”). The accounts are for [1] the Lodge,² a luxury resort hotel with 50 rooms, a restaurant and a meeting room; [2] Willowbrook,³ is a resort hotel with 256 rooms; [3] the Galleria,⁴ a resort hotel with 77 hotel rooms and 8 VIP rooms. The Galleria’s wastewater

¹ <https://splitrockhotel.com/>

² With the address of 1 Lake Drive and the wastewater account ending in 1138038.

³ With the address of 159 Willowbrook and the wastewater account ending in 1138095.

⁴ With the address of 100 Moseywood and the wastewater account ending in 1138096.

account includes other on-property features, such as food court/shops, restaurants, waterpark, indoor pool, and a large meeting space; and, [4] the Laundry⁵ for the Resort.

In or around May 2021, SCH USA started discussions with Aqua regarding SCH USA's concerns with wastewater bills for the Resort. During those discussions with Aqua (which lasted for approximately 18 months), SCH USA requested to be charged on a metered basis for wastewater service. Aqua threatened to terminate wastewater service to the Resort in November 2022.

On November 21, 2022, SCH USA filed a Formal Complaint regarding bills for wastewater service provided by Aqua for three (3) of SCH USA's accounts related to the Lodge, Willowbrook and the Galleria. This Formal Complaint was docketed at C-2022-3036893.

On November 29, 2022, SCH USA filed a second Formal Complaint regarding bills for wastewater service provided by Aqua for an additional SCH USA account related to the Laundry. This Formal Complaint was docketed at C-2022-3037118.

Aqua filed separate Answers with New Matter to both of the Formal Complaints. In response, SCH USA filed separate Replies to Aqua's New Matter.

On January 6, 2022, the Formal Complaints were consolidated by the ALJ.

The initial call-in hearing scheduled for March 17, 2022 was converted to a prehearing conference on March 10, 2023 in accordance with a joint request from the parties.

⁵ With the address of 634 Route 940 East and the wastewater account ending in 1100826.

II. REPRESENTATION

SCH USA's attorneys in this matter are:

Carl R. Shultz, Esquire (I.D. No. 70328)
Bryce Beard, Esquire (I.D. No. 325837)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)
cshultz@eckertseamans.com
bbeard@eckertseamans.com

Lauren M. Burge, Esquire (I.D. No. 311570)*
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-2146 (phone)
(412) 566-6099 (fax)
lburge@eckertseamans.com

*Attorney Burge is currently out of the office on parental leave.

III. PRESENTLY IDENTIFIED ISSUES

SCH USA represents that there are incorrect charge on its bills,⁶ since the Equivalent Dwelling Unit ("EDU") billing being used by Aqua for SCH USA is unreasonable **as applied** to SCH USA.⁷ The provisions of Aqua's tariff are prima facie reasonable, have the full force of law and are binding on the utility and the customer.⁸ That being said, the "standard" conditions in

⁶ Complaint at ¶ 4 (Incorrect charges are on my bill).

⁷ Utilities are not allowed to put a customer at an unreasonable prejudice or disadvantage. Section 1502 of the Public Utility Code, 66 Pa. C.S. § 1502. A utility may even be required to disregard its tariff — if the tariff, as applied to the specific facts presented, would produce an unreasonable prejudice or disadvantage. *Keystone Water Company v. Pa. P.U.C.*, 515 A.2d 367 (Pa.Cmwlth. 1986); *Erdos v. Western Pennsylvania Water Company*, 63 Pa. P.U.C. 453 (1987). In *Erdos*, the Commission reasoned that a policy which is uniformly applied may be unreasonably discriminatory by ignoring the peculiar facts and circumstances of a particular case.

⁸ 66 Pa.C.S. § 316; *Kossmann v. PUC*, 694 A.2d 1147 (Pa.Cmwlth. 1997).

Aqua's tariff can still be unlawful or unreasonable **as applied** to a particular customer (or applicant).⁹ Here, EDU billing by Aqua is unreasonable **as applied** to SCH USA because SCH USA's usage of wastewater (based on the average occupancy rate of the Resort) is substantially lower than the quantity of service being billed by Aqua.

Aqua did not directly respond to SCH USA's request to be charged on a metered basis.¹⁰ SCH USA's position is that using a fixed number of EDUs that has no relation to either the actual occupancy rate at the Resort and actual usage of wastewater service by the Resort. SCH USA believes that meter would be a more accurate, and more reasonable, indicator of the quantity of wastewater being discharged to Aqua's wastewater system by the Resort. SCH USA proposed that Aqua could measure sewage discharges to Aqua's system. In the alternative, SCH USA believes that Aqua could also use metered water consumption as a proxy for wastewater usage.¹¹ That being said, rather than metered billing (of either wastewater discharges or water consumption), SCH USA would suggest that Aqua develop **for billing purposes** an EDU level that more reasonably matches the wastewater being discharged to Aqua's wastewater system.

SCH USA would like [a] prior wastewater bills to be reduced to reflect SCH USA's usage of wastewater (based on the average occupancy rate of the Resort); [b] a payment arrangement for the outstanding amounts (with or without any adjustment);¹² and, [c] to avoid termination of wastewater service to the Resort.¹³

⁹ Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. PUC*, 437 A.2d 1067 (Pa.Cmwlth. 1981) (Brockway).

¹⁰ Complaint at ¶ 4 (Other: The utility company has been unapproachable and has not responded directly to our request to be charged on a metered basis.”).

¹¹ If this is done, there would need to be appropriate deductions for the Waterpark and pools, etc.

¹² Complaint at ¶ 4 (I would like a payment agreement).

¹³ Complaint at ¶ 4 (The utility is threatening to shut off my service).

IV. WITNESSES

SCH USA is still in the process of identifying its witnesses but, at a minimum, anticipates presenting the testimony of [1] Carlos Padilla, Senior Counsel, as a fact witness. All of the factual issues to be addressed in this proceeding are expected to be within Mr. Padilla's knowledge, information and belief; and, [2] Bill Bohner, P.E., the Assistant Vice President of ARRO Consulting, Inc., as an engineering witness.

SCH USA reserves its right to add additional witnesses or change the identity of its witnesses at any time upon appropriate notice to the ALJ and the parties.

V. PROCEDURAL SCHEDULE

SCH USA will cooperate with the ALJ and the parties at the Prehearing Conference to develop a complete procedural schedule, including the amount of hearing time needed.

VI. DISCOVERY

SCH USA will cooperate with the ALJ and the parties to develop appropriate discovery rules in accordance with the Commission's regulations and any ALJ directives.

VII. SETTLEMENT

SCH USA is willing to discuss the settlement of any or all aspects of this proceeding.

Respectfully submitted,

/s/ Carl R. Shultz

Carl R. Shultz, Esquire (I.D. No. 70328)

Bryce Beard, Esquire (I.D. No. 325837)

Eckert Seamans Cherin & Mellott, LLC

213 Market St., 8th Floor

Harrisburg, PA 17101

(717) 237-6000 (phone)

(717) 237-6019 (fax)

csultz@eckertseamans.com

bbeard@eckertseamans.com

Lauren M. Burge, Esquire (I.D. No. 311570)

Eckert Seamans Cherin & Mellott, LLC

600 Grant Street, 44th Floor

Pittsburgh, PA 15219

(412) 566-2146 (phone)

(412) 566-6099 (fax)

lburge@eckertseamans.com

Date: March 15, 2023

Counsel for SCH USA, LLC