

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3036634
Richard Adams	:	C-2022-3037266
	:	
v.	:	
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

**RECOMMENDED DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

Aqua Pennsylvania Wastewater, Inc. filed Supplement No. 2 to Tariff Sewer- PA P.U.C. No. 3 which revises language concerning the use of secondary water meters for acquired wastewater customers in Limerick Township, East Norriton Township and Lower Makefield Township. Specifically, the Proposed Tariff Supplement allows customers who, prior to the wastewater system acquisition by Aqua and as implemented by the townships, owned and installed a deduct meter to receive a sewer billing deduction for the measured water consumption that is used but does not enter the Company’s wastewater systems.

A Complaint was filed by Mr. Richard Adams, a current Aqua customer and former customer of the Lower Makefield operated wastewater system. He challenged the sufficiency of the filing of the Proposed Tariff Supplement notice issued by Aqua and sought removal of any “grandfather clauses” regarding the deduct meter from the Proposed Tariff Supplement. Mr. Adams also requested that the Commission not allow Aqua to charge for a

service that is not being performed, i.e, for water that does not flow through its system. Lower Makefield Township intervened, stating that it “fully supports” the Proposed Tariff Supplement as submitted by Aqua and supports “approval of deductions, credit and/or exemptions to any past, present and future residential water meter holders” in Lower Makefield. Lower Makefield Petition to Intervene at 5-6.

This Decision recommends approval of the Proposed Tariff Supplement without modification as it is lawful, just, and reasonable. This Decision also finds that the Proposed Tariff Supplement filing included all of the information required by 52 Pa. Code §53.52(a) and (b) and that the Company provided notice to the appropriate parties as required by 66 Pa.C.S. §1308(a); 52 Pa. Code §53.51(d).<sup>1</sup>

#### HISTORY OF THE PROCEEDING

On November 8, 2022, Aqua Pennsylvania Wastewater, Inc. (“APW” or “Company”) filed Supplement No. 2 to Tariff Sewer- PA P.U.C. No. 3 (“Proposed Tariff Supplement”) with the Public Utility Commission (“Commission”), for approval pursuant to Section 1308(b) the Public Utility Code (“Code”). The Proposed Tariff Supplement revises language concerning the use of secondary water meters (“deduct meters”) for acquired wastewater customers in Limerick Township, East Norriton Township and Lower Makefield Township (“Townships”).<sup>2</sup>

On December 14, 2022, Mr. Richard Adams (“Mr. Adams” or “Complainant”) filed a Formal Complaint objecting to the Proposed Tariff Supplement, followed by a letter filed on December 15, 2022.

On December 22, 2022, pursuant to the Public Utility Code, 66 Pa. C.S. § 1308(b), the Commission issued an Order suspending the Proposed Tariff Supplement by

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<sup>1</sup> In accordance with statutory deadlines, a recommended decision is due April 7, 2023.

<sup>2</sup> Prehearing Memorandum of APW at 1.

operation of law until July 7, 2023, unless permitted by Commission Order to become effective at an earlier date. The Commission’s Order directed that the case be “assigned to the Office of Administrative Law Judge for Alternative Dispute Resolution, if possible, and for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a recommended decision.”

On December 22, 2022, the matter was assigned to me and the Commission issued a notice scheduling a Prehearing Conference for January 5, 2023, at 2:00 p.m. A Prehearing Order was issued on December 27, 2022 directing the Parties to submit a proposed schedule no later than January 4, 2023. On January 3, 2023, the Company filed Supplement No. 6 to Tariff Sewer- PA P.U.C. No. 3 to suspend the Proposed Tariff Supplement until July 7, 2023.

The January 5, 2023 Prehearing Conference was continued at the request of Mr. Adams and set for January 10, 2023. On January 9, 2023, Aqua filed a Prehearing Memorandum. The Prehearing Conference was held on January 10, 2023 and Commission Mediator Teri-Lee Rhoades participated. During the conference, the parties agreed to a mediation session on January 20, 2023. On January 10, 2023, a Telephonic Mediation Notice was issued to the parties and provided information for the mediation session to be held on January 20, 2022.

On January 17, 2023, a Prehearing Order was issued, setting out procedural matters and due dates addressed at the prehearing conference with which the parties would comply should they not reach an agreement during mediation, including setting evidentiary hearing dates of February 23-24, 2023. Mr. Adams withdrew from Mediation on January 17, 2023, and a Mediation Cancellation Order was issued on January 18, 2023. Also on January 18, 2023, a Telephonic Evidentiary Hearing Notice was issued, confirming the evidentiary hearing for February 23–24, 2023.

On January 25, 2018, Lower Makefield Township filed a Petition to Intervene. In the Petition, the township stated that it “fully supports the Proposed Tariff Supplement as

submitted by Aqua, seeks the implementation of same at the earliest moment possible, and, furthermore supports approval of deductions, credits, and/or exemptions to any past, present and future residential secondary water meter holders.” Petition to Intervene, at ¶24. No party objected to Lower Makefield’s Petition to Intervene. An Order granting the Petition to Intervene was issued on February 3, 2023.

The parties engaged in discovery and submitted written testimony.

The hearing began as scheduled on February 23, 2023. Mary McFall Hopper, Esquire, appeared on behalf of APW. Aqua Pennsylvania Manager of Rates Erin Feen testified on behalf of APW.

Mr. Richard Adams appeared *pro se* and testified on his own behalf. Mr. Adams did not present any additional witnesses.

David J. Truelove, Esquire, along with Benjamin W.R. Hauser, Esquire, represented Lower Makefield Township. Greg Hucklebridge, Lower Makefield Sewer System Consultant, and James Majewski, Lower Makefield Community Development Director, Zoning Officer and Floodplain Manager, testified on behalf of Lower Makefield Township.

The following Exhibits were admitted into the record:

Adams Statement (“Adams St.”) -	Direct Testimony of Mr. Richard Adams
APW Statement 1 (“APW St. 1”)-	Direct Testimony of Erin Feeney
APW Statement 2 (“APW St. 2”)-	Rebuttal Testimony of Erin Feeney with attachments
Lower Makefield 1 (“LM St. 1”)-	Direct Testimony of J. Majewski
Lower Makefield 2 (“LM St. 2”)-	Direct Testimony of G. Hucklebridge

As the hearing was completed on February 23, 2023, the second day of hearing was cancelled by Hearing Cancellation Notice issued that day.

The January 17, 2023 Prehearing Order instructed that Main Briefs were due March 7, 2023 and Reply Briefs were due March 17, 2023. On March 6, 2023, Lower Makefield Township requested an extension of time to file briefs. APW had no objection to the request and Mr. Adams neither objected nor agreed. On March 7, 2023, an Order was issued granting the request and the deadlines were extended to March 10, 2023 for Main Briefs and March 20, 2023 for Reply Briefs. This matter is now ready for a decision.

### FINDINGS OF FACT

1. Aqua Pennsylvania Wastewater, Inc., or APW, is a public utility within the meaning of the Pennsylvania Public Utility Code, 66 Pa.C.S. §101–3316.

2. Mr. Richard Adams is a wastewater customer of APW in Yardley, Pennsylvania. Tr. 10, 55, 61-62.

3. Lower Makefield Township is a Pennsylvania township of the second class organized and operated pursuant to Act May 1, 1933, P.L. 104, 53 P.S. Sections 65101-67201, as amended. Petition to Intervene at 1.

4. Mr. Adams was a customer of the Lower Makefield Township operated wastewater system. Tr. 10, 55, 61-62.

5. On July 12, 2018, the Commission issued an order approving Aqua’s Application to acquire the wastewater assets of Limerick Township.<sup>3</sup> APW St. 1 at 2.

6. On May 21, 2020, the Commission issued an order approving Aqua’s Application to acquire the wastewater assets of East Norriton Township.<sup>4</sup> *See, Id.*

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<sup>3</sup> Docket No. A-2017-2605434.

<sup>4</sup> Docket No. A-2019-3009052.

7. On January 13, 2022, the Commission issued an order approving Aqua’s Application to acquire the wastewater assets of Lower Makefield Township.<sup>5</sup> *See, Id.*

8. On March 4, 2022, Lower Makefield Township (hereinafter “Lower Makefield”) formally sold its sewer system to Aqua. LM St. 2 at 2.

9. On March 5, 2022, Lower Makefield sewer operations transferred to APW. *Id.*

10. On November 8, 2022, Aqua Pennsylvania Wastewater, Inc. filed with the Commission pursuant to Section 1308(b) of the Public Utility Code for approval of Supplement No. 2 to Tariff Sewer- PA P.U.C. No. 3. APW St. 2 - Exhibit 1

11. The Proposed Tariff Supplement revises language concerning the use of secondary water meters for acquired wastewater customers in Limerick Township, East Norriton Township and Lower Makefield Township. *Id.*

12. The Proposed Tariff Supplement is a voluntary change in rates and the notice requirements for this type of filing do not require a general notice to be issued. 66 Pa.C.S. §1308(b); 52 Pa. Code §53.51(d).

13. None of the Statutory Advocates<sup>6</sup> or TUS, who were notified of the filing as potential interested parties, filed to be a party in this proceeding.

14. The Commission did not issue any directive that the Proposed Tariff Supplement be noticed to any other interested parties pursuant to Section 1308(a).

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<sup>5</sup> Docket No. A-2021-3024267

<sup>6</sup> The Statutory Advocates are the Office of Small Business Advocate and the Office of Consumer Advocate.

15. Under Supplement No. 2, Aqua is incorporating an existing practice from three wastewater systems it has acquired. APW St. 2 at 3.

16. Prior to the acquisition by Aqua, Limerick Township, East Norriton Township and Lower Makefield Township offered a secondary meter (“deduct meter) program for residents. APW St. 2 at 2, *Id.* - Exhibit 2.

17. The Proposed Tariff Supplement is incorporating an existing practice from three wastewater systems it has acquired that allows customers who previously owned and installed a deduct meter to receive a sewer billing deduction for the measured water consumption that is used but does not enter the Company’s wastewater systems as previously provided for by the Townships. APW St. 1 at 3.

18. Prior to Aqua’s acquisition of Lower Makefield’s sewer system, a ratepayer paid for sewer usage based on water meter readings from a water utility company (Morrisville Municipal Authority customers or Pennsylvania American Water customers). LM St. 2 at 3.

19. The customers with deduct meters were required to provide readings to the Townships during a designated time period, usually the spring and summer months, and the Townships would apply a sewer billing deduction for the water measured by the deduct meter and which did not enter the townships wastewater system. APW St. 1 at 3.

20. By limiting the eligible customers to those that already purchased a deduct meter at their own expense, and installed on their own water lines in these three rate zones, the Company will not incur any additional expenses to install deduct meters on customer-owned water lines, particularly in areas where Aqua is not the water provider. *Id.*

21. The Proposed Tariff Supplement includes an administration fee that eligible customers will have to pay to cover the costs of participating in the deduct meter program. APW St. 1 at 5; APW St. 2 - Exhibit 1.

22. The \$50 fee to be charged by APW is less than the \$100 fee charged to customers with a deduct meter under the Lower Makefield program. Proposed Tariff Supplement at F; SET I DATA REQUESTS, TUS-R-2m, part d.

23. The inclusion of secondary meters from acquired systems is consistent with recent filings under Section 1329 where the Commission has required the Company to adopt existing deduct programs of the acquired municipalities. APW St. 1 at 4.

24. Aqua's wastewater tariff currently has two rate zones (Cheltenham and East Whiteland) where deduct meters for customers who had participated in their township's deduct program are permitted. Tr. 115.

25. The Proposed Tariff Supplement is limited in scope to customers in the three particular rate zones who, prior to the acquisition by Aqua, had purchased a secondary meter at their own expense in compliance with the Townships' program and who wish to continue to have the deduction from their bill for the usage from the secondary meter. APW St. 2 at 4.

26. While the Complainant is the only customer who has filed a Formal Complaint to object to the Proposed Tariff Supplement, the Company has received several complaints, both informal complaints filed with the Commission's Bureau of Consumer Services and Formal Complaints filed with the Commission Secretary, requesting that the Commission require Aqua to honor the use of their deduct meters. APW St. 2 at 3; *Id.* at Exhibit 2, p. 3.

27. APW will charge the Complainant at the same rate that he had when he was a customer of Lower Makefield and his wastewater bill was based on water readings from his water supplier. Tr. 66-67.

28. Mr. Adams has had a swimming pool since around 1961. Tr. 65.

29. The Complainant did not acquire a secondary meter for wastewater when offered by Lower Makefield prior to the acquisition of the system by APW. Tr. 68.

30. The Complainant paid for wastewater service while he was a customer of Lower Makefield during the township's ownership of the sewer system. *Id.* at 65-66.

31. Since having his pool installed, Mr. Adams has had to have his pool drained roughly every twenty years when replacing the pool liner. *See, Id.* at 66.

32. While natural rainfall often ensured that the pool had sufficient water in the periods between liner replacement, both before and after the transfer of the wastewater service to Aqua, Mr. Adams occasionally added water to his pool during the spring and fall. *Id.* at 66-68.

33. Despite the waiver for a secondary meter existing for years prior to Aqua's purchase, Mr. Adams did not obtain a secondary meter although it was available to him and he was aware of the secondary meter program. *Id.* at 68, 75-76.

34. Approximately 500 accounts received a waiver from sewer charges prior to the sale of the Sewer System with approximately 300-350 of those accounts actively participating to receive credits. LM St. 2 at 6.

35. The Lower Makefield waiver program existed starting no later than 2017. Tr. 101,107-08.

36. Lower Makefield's waiver program was publicized on the Lower Makefield website during the time Lower Makefield owned the sewer system; Also, the general public was aware of the program through word of mouth. *Id.*

37. Complainant had a computer and access to the Lower Makefield website during the time information about the deduct meter program was posted. *Id.* at 75-76.

38. Lower Makefield has secondary water meters for its Pool Complex's four pools and the township-owned Makefield Highlands Golf Course for irrigation purposes. LM St. 1 at 7.

39. At the start of each pool season, Lower Makefield fills the four pools at the complex with a total of 725,171 gallons of water. LM St. 1 at 7.

40. For 2022, Lower Makefield received 43 permit applications for an inground or an above ground swimming pool. *Id.*

41. As of February 3, 2023, Lower Makefield has received 4 permit applications for an inground or an above ground swimming pool. *Id.*

42. As a result of the Proposed Tariff Supplement, Aqua anticipates there will be a reduction in revenue of \$97,853 as a result of the deducted volume and a miscellaneous revenue increase of \$41,600, which would be collected by way of an Administrative Fee for a net decrease in its annual income of \$56,253. APW St. 1 at 3-5.

43. APW will not incur any additional expenses to install secondary water meters on customer-owned water lines, particularly in areas where Aqua is not the water provider because under the Proposed Tariff Supplement, eligible customers are limited to those that prior to APW acquisition purchased a secondary meter at their own expense. *See, Id.*

## DISCUSSION

As stated by APW, the company "filed the Proposed Tariff Supplement for customers acquired from the Townships who had previously installed deduct meters, at their own expense, and their bill reflected a deduction to their sewer bills prior to their acquisition by the Company. The Company, upon request from affected customers and Townships, is proposing to incorporate this practice in its tariff. APW Main Brief at 2-3. Lower Makefield Township supports approval of the Proposed Tariff Supplement.

The Complainant opposes approval of the Proposed Tariff Supplement. He alleges that there was insufficient notice and that approval unreasonably discriminates against those not notified. Mr. Adams further contends that the Company is defrauding its customers by requiring them to pay wastewater charges based on incoming water usage. Adams Main Brief at 1-2.

In its Suspension Order, the Commission ordered, in pertinent part, the following:

1. That an investigation ... to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Aqua Pennsylvania Wastewater, Inc.'s proposed Supplement No. 2 to Tariff Sewer-PA P.U.C. No. 3 ...
4. That the investigation instituted in ... this Order shall include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules, and regulations of Aqua Pennsylvania Wastewater, Inc

A. Proposed Tariff Supplement Provisions

With the Proposed Tariff Supplement, the Company “is authorized to allow deductions on sewer bills for water which is used but does not enter the Company’s system from April through October.” Proposed Tariff Supplement p. 2. The Proposed Tariff Supplement also contains provisions that, in addition to customers in Lower Makefield (Rate Zone 12), would permit customers in Limerick Township (Rate Zone 7) and East Norriton (Rate Zone 10) who had previously installed secondary meters to receive the deduction.

To be eligible, the customer must have either applied for or was using the deduct meter as of the execution date of the asset purchase agreement between the Company and the Lower Makefield. Proposed Tariff Supplement at A. The customer is responsible for the purchase, installation and maintenance of the approved meter and inspected water outlet at the property. Proposed Tariff Supplement at E. The Proposed Tariff Supplement also provides that there will be an annual inspection by the Company and an administrative fee of \$50. Proposed Tariff Supplement at F. The Lower Makefield fee was \$100. APW Response to Commission

Set I Data Requests. The Proposed Tariff Supplement also provides that it is the responsibility of the customer to submit the data required to calculate the credit or deduction. Proposed Tariff Supplement at H.

The Company anticipates that there will be a reduction in revenue of \$97,853 as a result of the deducted volume and that the total overall change in volume is a decrease of 181,830 gallons. Miscellaneous revenue is anticipated to increase by \$41,600 collected through an Administration Fee, which is offset by an increase in expenses for annual meter inspections. APW St. 1 at 5.

B. Lower Makefield Secondary Water Meters

The Lower Makefield’s sewer system was formally sold to Aqua on March 4, 2022, with operations transferring to APW on March 5, 2022. LM St. 2 at 2. As explained by Lower Makefield sewer system Consultant Greg Hucklebridge, formerly the township’s Public Works Director, there was a billing arrangement in Lower Makefield for secondary meters during the township’s ownership of the sewer system. *Id.*

Mr. Hucklebridge noted that “[t]ypically, a property pays for sewer usage based on water meter readings from a water utility company (Morrisville Municipal Authority customers or Pennsylvania American Water customers). Lower Makefield Township had agreements to obtain the water meter records in order to perform the sewer billing. If the properties utilize a well for water supply, they pay a flat rate for the sewer since they do not have a water meter.” LM St. 2 at 4.

With respect to secondary water meters, Mr. Hucklebridge explained that a “property connected to the Lower Makefield Sewer System would hook up a second water meter to a water pipe leading outside of the home where the water would be used for various functions (irrigation, filling a pool, washing a car...) and not go into the sewer system.” This meter would need to be installed by a licensed plumber with a permit through Lower Makefield Planning and Zoning Department. *Id.* at 6.

The property owner or ratepayer was responsible for the cost to procure and install the second meter, obtain the necessary permits, have it installed by a licensed plumber, and submit the pictures of the readings annually for consideration. *Id.* at 7. Once a property was approved for a waiver, the property owner or ratepayer would then be responsible to send a picture of the meter reading on an annual basis. These readings would then be used to determine the amount of usage which did not go into the public sewer and this amount would then be discounted on the next sewer bill for that property. Lower Makefield would grant and process these requests. *Id.*

The Commission issued orders approving Aqua's applications to acquire the wastewater assets of Limerick Township on July 12, 2018 (Docket No. A-2017-2605434), East Norriton Township on May 21, 2020 (Docket No. A-2019-3009052) and Lower Makefield Township on January 13, 2022 (Docket No. A-2021-3024267). APW St. 1 at 2.<sup>7</sup>

C. Applicable Law

Here, the public utility has the burden of proof to establish the justness and reasonableness of every element of its Proposed Tariff Supplement in this proceeding under Section 1308(b) of the Code, 66 Pa. C.S. § 1308(b). As the Commission explained in *Pennsylvania. Public Utility Commission v. Duquesne Light Company (Duquesne)*, Docket Number R-2021-3024750 (Opinion and Order entered Dec. 16, 2021):

The standard of proof which a public utility must meet, as discussed above, is set forth in Section 315(a) of the Code, as follows:

(a) Reasonableness of rates. -- In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and

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<sup>7</sup> East Norriton Township and Limerick Township also had customers who had previously installed deduct meters to measure water which is used but does not enter the Company's wastewater system. The billing deduction was not a part of the acquisition application orders for Lower Makefield, East Norriton and Limerick townships. APW St. 1 at 3.

reasonable shall be upon the public utility ... 66 Pa. C.S. § 315(a).

The Commonwealth Court has upheld this standard of proof and has applied it in base rate proceedings:

Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial. *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

*Duquesne* at 11-13.

The Commission further noted that:

Moreover, the statutory burden of proof placed on the utility under Section 315(a) of the Code, 66 Pa.C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue that the utility did not propose in its general rate case filing, and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments, *see*, 1 Pa. C.S. § 1922(1), *PA Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430-431, 64 A.2d 84, 87 (1995), the statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility's 1308(d) general base rate proceeding. *See* 66 Pa. C.S. 332(a) ("Except as may be otherwise provided in section 315...or other provisions of this part...the proponent of a rule or order has the burden of proof."); *see generally Pa. PUC v. PPL Electric; Pa. PUC. et al. v. West Penn Power Company*, Docket Nos. R-2014-2428742 et al. (Order entered April 9, 2015), adopting the Recommended Decision of ALJs Dennis J. Buckley and Katrina L. Dunderdale (Issued March 9, 2015); and *Pa. PUC v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366 et al., 2007 Pa. PUC LEXIS 5 \*111 (Order entered January 11, 2007).

*Duquesne* at 14.

follows: Title 52 Pa. Code § 53.52 (a) and (b) are also applicable here, which states as

(a) Whenever a public utility, other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement effecting changes in the terms and conditions of service rendered or to be rendered, it shall submit to the Commission, with the tariff, revision or supplement, statements showing all of the following:

- (1) The specific reasons for each change.
- (2) The total number of customers served by the utility.
- (3) A calculation of the number of customers, by tariff subdivision, whose bills will be affected by the change.
- (4) The effect of the change on the utility's customers.
- (5) The direct or indirect effect of the proposed change on the utility's revenue and expenses.
- (6) The effect of the change on the service rendered by the utility.
- (7) A list of factors considered by the utility in its determination to make the change. The list shall include a comprehensive statement about why these factors were chosen and the relative importance of each. This subsection does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).
- (8) Studies undertaken by the utility in order to draft its proposed change. This paragraph does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308.
- (9) Customer polls taken and other documents which indicate customer acceptance and desire for the proposed change. If the poll or other documents reveal discernible public opposition, an explanation of why the change is in the public interest shall be provided.
- (10) Plans the utility has for introducing or implementing the changes with respect to its ratepayers.
- (11) FCC, FERC or Commission orders or rulings applicable to the filing.

(b) Whenever a public utility other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement which will increase or decrease the bills to its customers, it shall submit in addition to the requirements of subsection (a), to the Commission, with the tariff, revision or supplement, statements showing the following:

- (1) The specific reasons for each increase or decrease.
- (2) The operating income statement of the utility for a 12-month period, the end of which may not be more than 120 days prior to the filing. Water and wastewater utilities with annual revenues under \$100,000 and municipal corporations subject to Commission jurisdiction may provide operating income statements for a 12-month period, the end of which may not be more than 180 days prior to the filing.
- (3) A calculation of the number of customers, by tariff subdivision, whose bills will be increased.
- (4) A calculation of the total increases, in dollars, by tariff subdivision, projected to an annual basis.
- (5) A calculation of the number of customers, by tariff subdivision, whose bills will be decreased.
- (6) A calculation of the total decreases, in dollars, by tariff subdivision, projected to an annual basis.

52 Pa. Code § 53.52(a)-(b). Also, as to notice, the Code provides that each utility filing a proposed rate change with the Commission shall serve a copy of the proposed rate change and supporting data required by this chapter upon the Office of Consumer Advocate. 52 Pa. Code §53.51(d).

The public utility bears the burden of proof to establish the justness and reasonableness of its requested rate increase. As set forth in Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a):

- (a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility[.]

66 Pa.C.S. § 315(a). The Commonwealth Court has stated:

Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

*Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (citations omitted). *See also, Brockway Glass v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

The Pennsylvania Supreme Court has also stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1236 (Pa. 1983). Furthermore, it is well-established that the degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence. *Samuel J. Lansberry Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, (Pa. Cmwlth. 1990). Additionally, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *Id.* A utility has an affirmative burden to establish the justness and reasonableness of its rate request.

However, as the Commonwealth Court has explained: “While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.” *Allegheny Ctr. Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990). Therefore, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *See, e.g., Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, Docket No. R-00891364 (Opinion and Order entered Dec. 7, 1989); *Pa. Pub. Util. Comm'n v. Breezewood Tel. Co.*, Docket No. R-00901666, (Opinion and Order entered Feb. 15, 1991). Furthermore, “a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof” regarding that issue. *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc.*, R-2010-2215623 at 28 (Opinion and Order dated Oct. 14, 2011).

The Public Utility Code bars discrimination in rates charged to ratepayers. Section 1304 states that:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service ... This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates ... No rate charged by a municipality for any public utility service rendered or furnished beyond its corporate limits shall be considered unjustly discriminatory solely by reason of the fact that a different rate is charged for a similar service within its corporate limits.

66 Pa.C.S. §1304.

The Commonwealth Court has further observed that “[i]t must first be noted that not all differences in rates are discriminatory and, therefore, unlawful. Only unreasonable differences are prohibited.” *Phila. Elec. Co. v. Pa. Pub. Util. Comm’n*, 470 A.2d 654, 657 (Pa. Cmwlth. 1984) (citations omitted). Furthermore:

Before a rate can be declared unduly preferential and therefore unlawful, it is essential that there be not only an advantage to one, but a resulting injury to another. Such an injury may arise from collecting from one more than a reasonable rate to him in order to make up for inadequate rates charged to another, or because of a lower rate to one of two patrons who are competitors in business. There must be an advantage to one at the expense of the other.

*Id.*, at 657.

D. Positions of the Parties

The Commission has directed this investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations in the Proposed Tariff Supplement and the Company's existing rates, rules and regulations. Prior to Aqua's acquisition of the Lower Makefield wastewater service, Lower Makefield offered a deduct meter program for its residents. The proposed tariff seeks to continue to this program for Lower Makefield as well as East Norriton and Limerick Townships.

1. Notice

a. Complainant Richard Adams

Mr. Adams contends that change sought here "unreasonably discriminates against those not notified, approximately 21,383 customers as of the filing, who are being denied the optional ability to provide a usage reading to accurately report wastewater consumption." Adams Main Brief at 1-2. He asserts that all customers have the right to know that the change at issue exists, and how it will impact costs, property value and future resale value. Id at 2.

b. APW

Ms. Feeney testified on behalf of the Company that the Proposed Tariff Supplement is a voluntary change in rates and the notice requirements for this type of filing do not require a general notice to be issued. APW ST. 2 at 1. APW notes that Section 1308(a) of the Code requires that the utility shall notify the Commission and give such notice of the proposed changes to other interested persons as the Commission in its discretion may direct. Id. APW further clarifies that the Commission's regulations notice requirements provide that a copy of the proposed rate change and supporting data required by this chapter must be served upon the Office of Consumer Advocate. 52 Pa. Code §53.51(d); APW Main Brief at 5. The Company points to the November 8, 2022 filing documents, APW Rebuttal Testimony Exhibit 1, showing that such service was made.

The Company's November 8, 2022 filing of the Proposed Tariff Supplement was served upon the Statutory Advocates and TUS. APW St. 2 – Exhibit 1. APW emphasizes that none of the Statutory Advocates nor TUS intervened or sought to become parties to this action. Further, APW notes, the Commission did not issue any directive that notice of the Proposed Tariff Supplement be served on any other interested parties and did not require notice be sent generally to customers, such as Mr. Adams, in other proceedings.<sup>8</sup>

c. Lower Makefield Township

Lower Makefield supports APW's position that the notice was sufficient. Lower Makefield first observes that the Proposed Tariff Supplement is a voluntary change in rates pursuant to Section 1308 of the Public Utility Code. Lower Makefield contends that Section 1308's general rule is applicable here, which provides:

Unless the commission otherwise orders, no public utility shall make any change in any existing and duly established rate, except after 60 days notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice of the proposed changes to other interested persons as the commission in its discretion may direct. Such notices regarding the proposed changes which are provided to the utility's customers shall be in plain understandable language as the commission shall prescribe. All proposed changes shall be shown by filing new tariffs, or supplements to existing tariffs filed and in force at the time. The commission, for good cause shown, may allow changes in rates, without requiring the 60 days notice, under such conditions as it may prescribe.

66 Pa.C.S. § 1308(a). Lower Makefield also references Section 1308(b), which provides that:

Whenever there is filed with the commission by any public utility any tariff stating a new rate, the commission may, either upon complaint or upon its own motion, upon reasonable notice,

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<sup>8</sup> As examples, Ms. Feeney testified that the Company's Lead Service Line Replacement Program in Supplement No. 12 to Tariff- Water PA P.U.C. No. 2 and the addition of a 12" meter rate Supplement No. 4 to Tariff Water PA P.U.C. No. 2 did not require notice to Aqua's entire customer base. Aqua St. 2 at 2.

enter upon a hearing concerning the lawfulness of such rate, and pending such hearing and the decision thereon, the commission, upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision. The rate in force when the tariff stating the new rate was filed shall continue in force during the period of suspension, unless the commission shall establish a temporary rate as authorized in section 1310 (relating to temporary rates). The commission shall consider the effect of such suspension in finally determining and prescribing the rates to be thereafter charged and collected by such public utility. This subsection shall not apply to any tariff stating a new rate which constitutes a general rate increase as defined in subsection (d).

66 Pa.C.S. § 1308(b). Lower Makefield also cites 66 Pa.C.S. § 1308(c), which states: “If, after such hearing, the commission finds any such rate to be unjust or unreasonable, or in anywise in violation of law, the commission shall determine the just and reasonable rate to be charged or applied by the public utility for the service in question, and shall fix the same by order to be served upon the public utility and such rate shall thereafter be observed until changed as provided by this part.”

Lower Makefield contends that, on its face, the Proposed Tariff Supplement does not impose a rate increase upon Complainant or any other Aqua ratepayer. In fact, Lower Makefield argues, Supplement No. 2 provides that eligible customers will not be required to pay for drinking water use that is not conveyed or treated by APW in its wastewater system. In other words, Lower Makefield continues, the Proposed Tariff Supplement is actually a decrease in rates for a specific set of customers as Supplement No. 2 is designed to apply to customers who, at their own cost and expense, obtained secondary water meters to measure water obtained from their water providers for uses that would not result in the water being sent through three of Aqua’s recently acquired sewer systems for treatment.

Lower Makefield also points out that the Proposed Tariff Supplement will not have any impact to rates at this time. Lower Makefield refers to the testimony of Aqua Rate

Manager Feeney that the Company anticipates that there will be a reduction in revenue. Lower Makefield Main Brief at 2,9.

2. Proposed Tariff Supplement

a. Complainant Richard Adams

Mr. Adams contends that the proposed change discriminates against those customers who do not have a secondary meter. He believes that he is being deprived of the ability to own and report usage from a water meter to avoid paying for wastewater not entering the wastewater system. Tr. 46-47. He asserts that the change creates a preferential class of customers and disenfranchises those customers who do not have deduct meters. He argues that the change is unreasonably inequitable for those customers that have swimming pools, private wells and lawn irrigation systems because they have an “enormous imbalance” between incoming water usage and waste water. *Id.* While permitting that a customer would be responsible for installing and maintaining a secondary meter, he also asserts that only a subset of customers would be able to afford the expense and therefore the burden to APW is minimal. *Id.*

Allowing that wastewater billing is generally based on the metering of incoming water, Mr. Adams contends, however, that where there is a substantial difference between incoming and outgoing water, there is overbilling by the company. He also asserts that this has a particular burden on senior citizens. He contends that not allowing secondary meters results in a windfall to the company being paid for services it does not perform. *Id.*

As far as how this applies to him directly, he has stated that due to evaporation, he has had to raise the level in his swimming pool and that it costs a lot of money. Tr. 47. Although the secondary meters have been available for some time when Lower Makefield

handled the wastewater system, since at least 2017, Mr. Adams contends that Lower Makefield “played favorites” with the meters. Tr. 48.<sup>9</sup>

b. APW

APW St. 2 - Exhibit 1 includes the Company response to the Commission’s data requests and provides the information required by 52 Pa. Code § 53.52 (a) and (b). Of note, 188 customers in Limerick, 87 customers in East Norriton and 557 Customers in Lower Makefield will be affected by the Proposed Tariff Supplement. *Id.* The Company also points out that numerous formal and informal complaints were filed requesting the Commission require Aqua to honor the use of their deduct meters, i.e. implement the change contained in the Proposed Tariff Supplement and only the Complainant formally opposes this change. *See* APW St. 2 - Exhibit 2.

It is APW’s position that the Proposed Tariff Supplement is not discriminatory in rates or service and is not prohibited by the Code, which does not require every rate zone to be exactly the same. The Company argues that the Proposed Tariff Supplement is not discriminatory as long as “the differential can be justified.” *See* APW Main Brief at 6 referencing *Lloyd v. Pennsylvania Public Utility Commission* 904 A.2d 1010, 1020 (2006); *Pettko v. Pa. Am. Water Co.*, (Docket No. C-2011-2226096, Opinion and Order issued Feb. 28, 2013). APW argues that the differential is justified here because rate Zones 7 (Limerick), 10 (East Norriton) and 12 (Lower Makefield) differ from other Company rate zones by nature of the Commission-approved acquisitions of the municipalities and the rates in place at the time they were acquired.

APW continues that by limiting the eligible customers to those in these three rate zones that already purchased a deduct meter at their own expense, and installed on their own water lines, the Company will not incur any additional expenses to install deduct meters on

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<sup>9</sup> Mr. Adams also testified that he was challenging the rate charges to customers with wells and for people in Pennsylvania that did not have secondary meters. Tr 51, 54, 60-63. The objection to such broad testimony and claims was sustained and therefore these issues will not be addressed herein. Tr. 63. Mr. Adams also acknowledged that such claims were not part of his Complaint here and that he would raise such issues in a future rate case. Tr. 63.

customer-owned water lines, particularly in areas where Aqua is not the water provider. The Proposed Tariff Supplement includes an administration fee that eligible customers will have to pay to cover the costs of participating in the deduct meter program. APW St. 2-Exhibit 1.

APW witness Feeney testified that the inclusion of secondary meters from acquired systems is consistent with recent filings under 66 Pa.C.S. § 1329, where the Commission required the Company to adopt existing deduct programs of the acquired municipalities. Aqua's wastewater tariff currently has two rate zones (Cheltenham and East Whiteland) where deduct meters for customers who had participated in their township's deduct program are permitted. Tr. 115.

Finally, APW argues that under Pennsylvania law, similar tariff provisions have been properly submitted to and approved by the Commission and are therefore *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Shenango Twp. Bd of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1966); *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997). Therefore, APW argues, the inclusion of this practice here is deemed just and reasonable and not discriminatory.

c. Lower Makefield Township

Lower Makefield supports the Proposed Tariff Supplement and petitioned to intervene in this proceeding. Lower Makefield believes that expanding the coverage of the Proposed Tariff Supplement to prospective ratepayers who go through the time and expense to obtain a permit, equipment, and installation of a secondary water meter to measure water not discharged into Aqua's sewer system should be considered. However, in the absence of that expansion, Lower Makefield's position is that there is no bar to implementation of the Proposed Tariff Supplement as presented "at the earliest moment possible." *See* Lower Makefield Main Brief at 7.

Lower Makefield contends that the Complainant has failed to prove that the exemption proposed under the Proposed Tariff Supplement to customers who had previously

installed secondary water meters is discriminatory. Lower Makefield further submits that APW is merely reinstating billing practices from acquired entities. Even in light of its anticipation that the deduct meter program will be offered to other customers in the future, Lower Makefield is of the position that there is no basis to delay or otherwise bar implementation of the Proposed Tariff Supplement.

Lower Makefield addressed the Complainant's allegations that APW is defrauding customers, and him in particular, by charging for water service it does not provide and that he did not receive adequate notice of the availability of the deduct meters. Tr. 56. First, Lower Makefield argues that, to the extent the Complainant is arguing that he was unaware of the deduct program *prior* to the acquisition by Aqua, this issue is not before the Commission in this proceeding. Tr. 112. \

If the Commission does consider that issue, Lower Makefield notes that the Complainant testified that he is a resident of Lower Makefield and has had a pool at his property since approximately 1960 or 1961. Tr. 65. Representatives from Lower Makefield testified that its deduct metering program was a long standing program available to its residents for a number of years. Moreover, Lower Makefield witness Hucklebridge testified that the information on the deduct program was publicly available on the Lower Makefield's website, and the Complainant admitted that he did have access to the Lower Makefield website. Tr 76, 106.

#### RECOMMENDATION

The record does not support a finding that the notice of the Proposed Tariff Supplement was insufficient or that the Proposed Tariff Supplement is discriminatory or should not be approved.

There is not a rate increase here. Further, there is no "differential" at issue that needs justification. The Proposed Tariff Supplement merely continues the deduct meters programs used by all three Townships prior to the acquisition by APW.

While the Complainant initially testified that he has seen an increase in his bill, which can be attributed to his use of more water, he acknowledged that his actual wastewater rate has not changed since Aqua's acquisition of the Lower Makefield system. Tr. 67. Complainant is being charged the same rates he had been charged when he was a customer of Lower Makefield, and his wastewater bill was, and still is, based on water readings from his water supplier, Pennsylvania American Water. Tr. 66-67.

Although he challenged the adequacy of the Notice in his Complaint, Mr. Adams stated in his testimony that the Company did provide the appropriate notice required by the Commission, but that he thought more notice should be required. Tr. 54. Mr. Adams did not offer any additional support for his position beyond his opinion. A Complainant's assertion, personal opinion or perception does not constitute evidence. *Mid-Atlantic Power Supply Ass'n v. Pa Pub. Util. Comm'n*, 746 A.2d 1106 (Pa. Cmwlth. 2000). *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). *Pro se* complainants also must provide relevant and necessary information. *Groch v. Unemployment Comp. Bd. of Rev.*, 472 A.2d 286 (Pa. Cmwlth, 1984); *Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081 (Pa. 1985).

Of note is that Lower Makefield uses a substantial amount of water and has deduct meters for its various municipal operations such as its pools and golf course. It urges that the Proposed Tariff Supplement be implemented as soon as possible.

Additionally, APW has provided the information required by 52 Pa. Code § 53.52 (a) and (b). The information provided does not show a rate increase that would require the additional notice sought by Mr. Adams.

In the Operating Income Statement and analysis provided by Aqua Rate Manager Feeney, APW contends that there will be a net decrease of income for the Company with implementation of the Proposed Tariff Supplement and not a rate increase which would require additional notice. *See* APW St. 2 -Exhibit 1; Tr. 127-128. While the accuracy of the estimate of reduced revenue is difficult to verify, APW's estimate of reduced revenue is likely moot as this issue is more appropriately reviewed during a rate case and, pursuant to 66 Pa.C.S. § 1329, APW

was required at the time of these acquisitions to adopt the rates of the municipality. Therefore, it cannot be definitively concluded that the company will experience reduced revenue - APW never had the right to collect revenue on the deduct meter volumes. Nor is there an increase established here.

As far as the claim of discrimination, the record does not support finding for the Complainant. Prior to the acquisition by APW, Lower Makefield provided notice to its citizens that deduct meters could be obtained and how to obtain them. Over a hundred residents obtained the meters. Mr. Adams did not acquire one. In any event, how the Townships notified its wastewater customers and whether that notice was sufficient is not before the Commission and has little if any bearing on the claims of Mr. Adams or whether the Proposed Tariff Supplement should be approved.

Complainant's opinion that the rates are unjust and unreasonable does not constitute evidence. *Hersca v. Twin Lakes Utils., Inc.* Docket No. C-2020-3020883, (Opinion and Order issued Aug. 5, 2021). In order for a Complainant to succeed in a claim of unlawful rate discrimination, he must demonstrate that certain customers are paying an unreasonably high rate in order to make up a deficiency created by unreasonably low rates charged to other customers. *See, Bldg. Owners and Managers Assoc. v. Pa. Pub Util. Comm'n*, 470 A.2d 1092 (Pa. Cmwlth. 1984). The Complainant has made no such showing here. Further, given that his rates have not changed and the Proposed Tariff simply continues the deduct program of the Lower Makefield prior to acquisition by APW, Mr. Adams cannot establish an injury as required by *Philadelphia Elec. Co.* *See* 470 A.2d at 657.

The evidence presented established the lawfulness, justness, and reasonableness of the Proposed Tariff Supplement. Also, the record does not support a finding that the existing rates, rules, and regulations of Aqua Pennsylvania Wastewater, Inc are not lawful, just and reasonable. Therefore, it is recommended that the Proposed Tariff Supplement of APW be

approved for Limerick Township, East Norriton Township and Lower Makefield Township, without modification, and that the Complaint of Mr. Adams be dismissed, without prejudice.<sup>10</sup>

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 1308(b).

2. Aqua Pennsylvania Wastewater, Inc.'s proposed Supplement No. 2 to Tariff Sewer-PA P.U.C. No. 3 is a voluntary change in rates and is not a rate increase under the Public Utility Code. 66 Pa.C.S. § 1308.

3. The burden of proof, also known as the burden of persuasion, means, a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The burden of proof must be shown by a preponderance of the evidence, which is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); and *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. Assertions, personal opinions or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 10156 (Pa. Cmwlth. 2000); *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

6. Complainant Richard Adams has not met his burden of demonstrating that the Proposed Tariff Supplement is discriminatory or is otherwise illegal or that there was insufficient notice of the Proposed Tariff Supplement. 52 Pa. Code §53.52(a) and (d); 66 Pa.C.S. §1308(a); *Phila. Elec. Co. v. Pa. Pub. Util. Comm'n*, 470 A.2d 654, 657 (Pa. Cmwlth. 1984).

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<sup>10</sup> Mr. Adams may wish to pursue his concerns in the next rate case pertaining to Lower Makefield Township.

7. The Company has met its burden of proof of establishing that the Proposed Tariff Supplement is lawful, just and reasonable and that sufficient notice of the Proposed Tariff Supplement was provided. 66 Pa.C.S. § 315(a); *Pa. Pub. Util. Comm'n v. Duquesne Light Co.*, Docket Number R-2021-3024750 (Opinion and Order entered Dec. 16, 2021): .

8. The information provided in the notice by the Company is just and reasonable. 52 Pa. Code §53.52(a) and (b).

9. The record establishes that the existing rates, rules, and regulations of Aqua Pennsylvania Wastewater, Inc are lawful, just, and reasonable. 66 Pa.C.S. § 315(a); *Alpha Portland Cement Co. v. Pub. Serv. Comm'n*, 1925 WL 4826 (Pa. Super. 1925).

#### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Complaint filed by Richard Adams at Docket No. R-2022-3036634 and C-2022-3037266 be denied and dismissed, without prejudice.

2. That the changes in rates, rules, regulations set forth in the tariff submitted as Supplement No. 2 to Tariff Sewer-PA P.U.C. No. 3 are lawful, just, and reasonable, and are approved without modification.

3. That Aqua Pennsylvania Wastewater, Inc. is authorized to file Supplement No. 2 to Tariff Sewer-PA P.U.C. No. 3 containing rates, rules, and regulations, consistent with the findings herein, on and after July 7, 2023.

