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April 28, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission, *et al.* v. Aqua Pennsylvania Wastewater, Inc. (Supplement No. 3 to Tariff Sewer-PA PUC No. 3)
Docket Nos. R-2022-3037141, *et al.***

Dear Secretary Chiavetta:

Attached for filing on behalf of Aqua Pennsylvania Wastewater, Inc., is the Main Brief and associated Appendices A through C for the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: Honorable Gail Chiodo (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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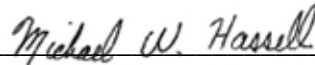


Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* : Docket Nos. R-2022-3037141, *et al.*
: :
v. : :
: :
Aqua Pennsylvania Wastewater, Inc. : :

**MAIN BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.**



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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
A. STATEMENT OF THE CASE.....	1
B. BURDEN OF PROOF	4
C. QUESTIONS PRESENTED	6
II. SUMMARY OF ARGUMENT.....	6
III. ARGUMENT.....	8
A. PROPOSED RIDER DESIGN.....	8
1. Description And Purpose Of Proposed Rider.	8
2. Eligibility Criteria.....	8
B. THE PROPOSED RIDER IS JUST AND REASONABLE AND SHOULD BE APPROVED AS BEING IN THE PUBLIC INTEREST	12
1. The Proposed Rider Incentives Eligible Large Industrial Customers, Now Or In The Future, To Continue Receiving Or Begin Receiving Wastewater Service from Aqua.....	12
2. The Proposed Rider Is Similar To Other Riders Proposed And Approved By The Commission For Other Utilities.	18
3. The Proposed Rider Will Not Immediately Affect Any Aqua Customers' Rates.	21
IV. CONCLUSION	24
 APPENDIX A – PROPOSED FINDINGS OF FACT	
 APPENDIX B – PROPOSED CONCLUSIONS OF LAW	
 APPENDIX C – PROPOSED ORDERING PARAGRAPHS	

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Pennsylvania Court Decisions</u>	
<i>Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.</i> , 923 A.2d 1220 (Pa. Cmwlth. 2007)	5
<i>Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n</i> , 942 A.2d 274 (Pa. Cmwlth. 2008)	4
<i>Cmwlth. v. Williams</i> , 732 A.2d 1167 (Pa. 1999).....	4
<i>Dist. of Columbia’s Appeal</i> , 21 A.2d 883 (Pa. 1941)	5
<i>Kyu Son Yi v. State Bd. of Vet. Med.</i> , 960 A.2d 864 (Pa. Cmwlth. 2008).....	4, 5
<i>MacDonald v. Pa. R.R. Co.</i> , 36 A.2d 492 (Pa. 1944)	5
<i>Mid-Atlantic Power Supply Ass’n v. Pa. PUC</i> , 746 A.2d 1196 (Pa. Cmwlth. 2000)	5
<i>Pa. Bureau of Corrections v. City of Pittsburgh</i> , 532 A.2d 12 (Pa. 1987).....	5
<i>Samuel J. Lansberry, Inc. v. Pa. P.U.C.</i> , 578 A.2d 600 (Pa. Cmwlth. 1990).....	4

Pennsylvania Administrative Agency Decisions

<i>Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.</i> , Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008)	5
<i>Pa. PUC, et al., v. Pennsylvania-American Water Co.</i> , Docket Nos. R-00943231, <i>et al.</i> , 1995 Pa. PUC LEXIS 170 (Order Entered July 24, 1995)	16, 20
<i>Replogle v. Pa. Elec. Co.</i> , 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980).....	5

Pennsylvania Statutes & Regulations

2 Pa.C.S. § 704.....	4
66 Pa.C.S. § 332(a)	4, 6

I. INTRODUCTION

A. STATEMENT OF THE CASE

This proceeding concerns Supplement No. 3 to Tariff Sewer-PA P.U.C. No. 3 (“Supplement 3”) of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), filed with the Pennsylvania Public Utility Commission (“Commission”) on December 7, 2022. Supplement No. 3 proposes to establish a rider for contract rates for large industrial wastewater customer users (“LWCUR”) with an effective date of February 5, 2023 (“Proposed Rider”). The Proposed Rider would authorize the Company to negotiate discounted rates for qualifying large industrial wastewater customers that have competitive alternatives to service from Aqua. Under the Proposed Rider, potentially eligible customers must provide documentation to establish, to the Company’s satisfaction, the existence of a competitive alternative, among other things. The Proposed Rider is modelled after Aqua Pennsylvania, Inc.’s (“Aqua PA”) Rider DIS, which was approved by the Commission. Rider DIS authorizes contract rates for water service for large industrial customers with competitive alternatives.

Currently – and without the Proposed Rider – the Company has no mechanism to retain a large industrial customer receiving wastewater utility service that chooses not to receive service from the Company should a competitive alternative exist. If a large wastewater customer were to opt-out of receiving service from Aqua, the Company would lose out on revenue from that customer. As a result, that loss of revenue would be spread to other wastewater customers to recoup the loss, thereby negatively impacting other customers’ bills. Thus, as a means to incentivize those existing customers to continue receiving wastewater service from Aqua, or to incent new customers with competitive alternatives to begin receiving wastewater service in the future, the Company respectfully submits that the Proposed Rider is just and reasonable.

Aqua voluntarily postponed the effective date of Supplement 3 until February 10, 2023, via letter filed with the Commission on December 22, 2023.

The Office of Consumer Advocate (“OCA”) filed a Formal Complaint and Public Statement on January 11, 2023.

The Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement on January 20, 2023.

On February 9, 2023, the Commission entered an Order suspending Supplement 3 until August 10, 2023, and assigned the matter to the Office of Administrative Law Judge for Alternative Dispute Resolution and scheduling of hearings, if necessary. Administrative Law Judge Gail Chiodo (the “ALJ”) was assigned to preside over the proceeding.

A Call-In Telephone Prehearing Conference was noticed for February 21, 2023. The ALJ issued a Prehearing Conference Order on February 10, 2023.

On February 15, 2023, attorney Alexander R. Stahl filed a Notice of Appearance on behalf of Aqua.

On February 17, 2023, the OSBA filed a Prehearing Memorandum.

On February 20, 2023, attorneys Michael W. Hassell and Nicholas A. Stobbe filed a Notice of Appearance on behalf of Aqua.

Also on February 20, 2023, the OCA and Aqua filed Prehearing Memorandums. On February 21, 2023, the Prehearing Conference was held as scheduled. During the Prehearing Conference, the parties were able to agree on modifications to the discovery rules and a procedural schedule, among other things. The procedural schedule reflected Aqua’s agreement to a further seven (7) day extension of the suspension date.

On February 23, 2023, Aqua voluntarily postponed the effective date of Supplement 3 until August 17, 2023, via letter filed with the Commission.

On March 1, 2023, Aqua served Aqua Wastewater Statement No. 1, the Direct Testimony of Erin M. Feeney, along with Aqua Wastewater Exhibit No. EF-1.

On March 2, 2023, the ALJ issued a Scheduling Order.

On March 20, 2023, the OCA served OCA Statement 1, the Direct Testimony of Jerome D. Mierzwa.

Also on March 20, 2023, the OSBA served OSBA Statement 1, the Direct Testimony of Brian Kalcic.

On March 23, 2023, Counsel for Aqua advised the ALJ and Parties that William C. Packer would be providing the Company's Rebuttal Testimony and would be adopting the previously-served Direct Testimony and Exhibit of Ms. Feeney.

On March 30, 2023, Aqua served Aqua Wastewater Statement No. 1R, the Rebuttal Testimony of William C. Packer, along with WCP-IR Exhibit A.

On April 7, 2023, the OSBA served OSBA Statement No. 1-S, the Surrebuttal Testimony of Brian Kalcic. That same day, the OCA served OCA Statement No. 1SR, the Surrebuttal Testimony of Jerome D. Mierzwa.

On April 12, 2023, Aqua filed and served a letter indicating that it would not be submitting a Rejoinder Outline or Rejoinder Testimony in this proceeding.

On April 13, 2023, Aqua advised the ALJ that the Parties had not reached a settlement of any of the issues raised in this proceeding. Aqua also stated that the Parties had agreed to waive cross-examination of all respective witnesses and requested that all witnesses be excused from participating in the April 14, 2023, Evidentiary Hearing. Aqua also advised the ALJ that all Parties

had agreed to stipulate to the entry of all testimony and exhibits submitted in this proceeding. In response, the ALJ excused all witnesses and noted that Counsel for Aqua, OCA, and OSBA, respectively, could read the various testimony and exhibits into the record.

On April 14, 2023, the Evidentiary Hearing took place as scheduled. During the Evidentiary Hearing, all respective testimony and exhibits were entered into the evidentiary record. During the Evidentiary Hearing, the ALJ confirmed that Main Briefs would be due on or before April 28, 2023, and Reply Briefs would be due on May 10, 2023, consistent with the Scheduling Order.

B. BURDEN OF PROOF

Section 332(a) of the Public Utility Code (“Code”), 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). In this case, Aqua has the burden of proving that its Proposed Rider is just and reasonable by a preponderance of the evidence. Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Vet. Med.*, 960 A.2d 864,

874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted). Bald assertions, personal opinions, or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).

Aqua filed the Proposed Rider seeking to implement a tariff rider for large industrial wastewater customers, and thus has the burden of proof in this case. Aqua respectfully submits that it has met its burden of proof and, therefore the Proposed Rider should be approved by the Commission.

C. QUESTIONS PRESENTED

1. Whether Aqua sustained its burden of proof that the Proposed Rider is just and reasonable under Section 332(a) of the Public Utility Code.

Suggested answer: *in the affirmative.*

2. Whether Aqua's implementation of the Proposed Rider is in the public interest.

Suggested answer: *in the affirmative.*

II. SUMMARY OF ARGUMENT

Aqua has carried its burden of proof in this proceeding that Supplement 3 is just and reasonable and, therefore, should be approved by the Commission. The Proposed Rider was designed to incent existing or future large industrial wastewater customers to continue or begin receiving wastewater service from Aqua. Retention of large industrial wastewater customers, even at slightly discounted rates, will provide a net good for Aqua and its customers versus having a large industrial wastewater customer stop receiving wastewater utility service from Aqua altogether absent the Proposed Rider. Indeed, if a large industrial customer were to stop receiving wastewater service from Aqua absent the Proposed Rider, that loss of revenue would be spread to Aqua's other customers, thereby negatively impacting those customers' bills. The Proposed Rider seeks to prevent that.

Aqua has carefully targeted and restricted the eligibility criteria under the Proposed Rider to prevent large industrial customers from receiving wastewater service under a negotiated rate unless they are able to prove to the Company's satisfaction that: (1) they discharge wastewater into Aqua's collection system resulting from industrial processes; (2) they are willing to enter a service agreement of at least three years; and (3) they have a viable competitive alternative and plan to select that alternative to the detriment of the Company and its customers absent a negotiated rate. Additionally, the Company may consider whether the potentially eligible customer has made or

agrees to make a substantial contribution of capital for facilities or facilities themselves to the Company in order to take service under the Proposed Rider.

The OCA's and OSBA's argument(s) that the Proposed Rider is premature and should be rejected are without merit. Indeed, neither the OCA or the OSBA dispute the purpose or structure of the Proposed Rider. Rather, according to the OCA and OSBA, the Commission should reject the Proposed Rider because Aqua does not have any current eligible customers that are interested in entering into a negotiated rate agreement under the Proposed Rider. In making this argument, the OCA and OSBA ignore Aqua's attempt to be proactive and sidestep the fact that Aqua is expanding its footprint through active acquisitions, and will likely continue to do so in the future. Acquisitions come with new customers, some of which will be large industrial customers that may be eligible for service under the Proposed Rider given the criteria explained in more detail below. Further, approval of the Proposed Rider will have no immediate effect on Aqua's current revenues or rates.

Additionally, the Proposed Rider was modelled after Aqua Pennsylvania, Inc.'s Rider DIS, which was approved by the Commission and implemented successfully. Additionally, several other Pennsylvania utilities have received Commission approval for their own riders allowing negotiated rates for certain large industrial customers with service alternatives. The OCA and OSBA's requested rejection of Aqua's Proposed Rider does not comport with the Commission's approval of similar riders that have been successfully implemented by other Pennsylvania utilities.

For these and other reasons, as explained in more detail herein, Aqua has carried its burden of proof to show that the Proposed Rider is just and reasonable. Therefore, the ALJ should recommend approval of, and the Commission approve, Supplement No. 3 to Tariff Sewer-PA P.U.C. No. 3 of Aqua Pennsylvania Wastewater, Inc.

III. ARGUMENT

A. PROPOSED RIDER DESIGN

1. Description And Purpose Of Proposed Rider.

Supplement No. 3 would institute a rider available to certain qualifying large industrial wastewater customers. (Aqua St. No. 1, p. 3.) Large industrial customers now or in the future receiving wastewater utility service from the Company can opt to not receive service from the Company should a competitive alternative exist. (Aqua St. No. 1, p. 3.) To address this potential issue, the Proposed Rider seeks to implement a preemptive solution. Indeed, in the future it is possible that large industrial wastewater customers within Aqua's certificated service territory could find or develop alternatives to receiving wastewater utility service from the Company. These alternatives, in theory, could be but are not limited to: (1) connection to an adjacent wastewater system; (2) construction of their own wastewater treatment facility; or (3) physical relocation of the customer outside of Aqua's service territory altogether. The Proposed Rider seeks to prevent that from occurring by retaining those customers and is modelled after similar existing riders across various utility sectors in Pennsylvania. (Aqua St. No. 1, pp. 9-10.) Aqua respectfully submits that this structure is just and reasonable.

2. Eligibility Criteria.

Aqua witness William C. Packer fully explained the eligibility restrictions for customers seeking a negotiated rate under the Proposed Rider. As Aqua Exhibit No. EF-1 memorializes, the Proposed Rider would be available to a current or prospective large wastewater customer that:

1. Discharges wastewater into Aqua Wastewater's collection system resulting from industrial processes;
2. Enters into a Service Agreement for a term of not less than 3 years;
and,

3. Has a viable competitive alternative to service from the Company and, unless a new rate is established, the customer intends to select that alternative to the detriment of the Company and its customers.
4. In addition to 1-3, the Company may consider whether the current or prospective Large Wastewater Customer has made or agrees to make a substantial contribution of capital for facilities or facilities themselves to the Company in order to become or remain a customer and whether a customer plans to locate or retain a substantial facility in the Company's existing or applied-for franchise territory that provides substantial economic development and employment in the immediate local or Commonwealth.

The Company shall require documentation to establish, to the Company's satisfaction, the existence of a competitive alternative along with any other applicable qualifying condition stated above. Such documentation may include, but is not limited to an affidavit of the customer or if, the customer is a corporation, an affidavit of one of more of its senior managers or its officers.

(Aqua Exhibit EF-1, First Revised Page 16.)

These conditions will appropriately limit the availability of the Proposed Rider to only certain large industrial customers. Eligibility criterion (1) ensures that only industrial customers of Aqua – whether it be existing customers or future customers – will be eligible for the rider, thereby limiting its scope and promoting Aqua's retention of its existing and future large industrial customers. Eligibility criterion (2) also ensures that customers receiving service under a negotiated rate will be retained by Aqua for the long-term, thus contributing to Aqua's long-term revenue stability. Eligibility criterion (3) limits the eligibility scope such that large industrial customers who would otherwise be eligible for the Proposed Rider cannot receive negotiated rate service absent a viable competitive alternative to the Company's wastewater service that it intends to select. This will restrict eligibility, as customers who may otherwise qualify from a usage perspective may not have a viable service alternative. To provide negotiated rate service to customers without a viable wastewater service alternative could, in essence, grant large industrial

customers a potentially *carte blanche* rate advantage. By requiring the customer to show a viable competitive alternative, Aqua prevents that. As explained by Mr. Packer as it relates to eligibility criterion (4), the Company may consider whether the existing or prospective large wastewater customer has made or agrees to make a substantial contribution of capital for facilities or facilities themselves to the Company in order to become or remain a customer and whether a customer plans to locate or retain a substantial facility in the Company's existing or applied-for franchise territory that provides substantial economic development and employment in the immediate local area or Commonwealth of Pennsylvania. (Aqua St. No. 1, pp. 3-4.) This furthers Aqua's goal of investing in its current system and also promotes potential new or enhanced revenues in the future. Moreover, it allows Aqua to consider the positive economic effects to the local and Pennsylvania economy that may accompany that customer's service under a negotiated rate agreement.

Lastly, the Proposed Rider is limited to customers that can establish, to the Company's satisfaction, a viable competitive alternative to Aqua's wastewater service. Like eligibility criterion (3), Aqua will require proof of a competitive alternative that an existing or future customer plans to take service from absent a negotiated rate under the Proposed Rider. This will limit the number of customers that are eligible to take service under the Proposed Rider, thereby reducing overall rate and revenue effects. Similarly, this structure will prevent large industrial customers from taking wastewater service at a discount absent extenuating – and likely uncommon – circumstances.

Under the Proposed Rider, "Large Wastewater Customer User" is defined as "an industrial class customer that takes or receives wastewater collection, treatment and/or disposal services that exceeds 85,000 gallons of wastewater per month." (Aqua St. No. 1, p. 3.) Aqua elected to define Large Wastewater Customer User as discharging more than 85,000 gallons a month after

completing a comprehensive review of its industrial customer profile. Through that review, Aqua determined that customers who exceed(ed) 1,000,000 gallons of average annual volume, i.e., 85,000 gallons multiplied by twelve months, was the appropriate benchmark. (Aqua St. No. 1, p. 4.)

Importantly, the Proposed Rider also contains restrictions on the potential rates negotiated under it. Specifically, the rate to be charged for eligible customers would be negotiated and set forth in a service agreement, will not be less than the minimum rate, and be subject to an escalation clause. (Aqua St. No. 1, pp. 3-4.) As Mr. Packer explained, the minimum rate “shall be sufficient to recover: (1) variable Wastewater Treatment Cost (e.g., electric power and fuel costs for power production, sludge removal and disposal costs, wastewater conveyance costs, any chemical costs not otherwise covered by any applicable surcharges for Biochemical Oxygen Demand (“BOD”), Total Suspended Solids (“TSS”), etc.); plus (2) the fixed costs (depreciation and pre-tax return) on the facilities necessary to serve the customer; and (3) some portion of the fixed costs of the Company’s wastewater treatment and collection facilities.” (Aqua St. No. 1, p. 4.)

The minimum rate provision of the Proposed Rider was designed to ensure that variable operating and maintenance (“O&M”) costs, and depreciation and return on facilities used to serve the customer, are recovered in rates. (Aqua St. No. 1, p. 5.) In other words, Aqua designed the Proposed Rider to avoid negotiated rates being less than the Company’s incremental costs to serve a customer, thereby avoiding passing any hypothetical shortfall onto other Aqua customers. (Aqua St. No. 1, p. 5.) Relatedly, as noted above and explained by the Company, the negotiated rates entered into under the Proposed Rider will be subject to an escalation clause. (Aqua St. No. 1, p. 5.) The escalation clause is a mechanism set forth in the service agreement, in which the rate(s) during the original and any renewal terms of the Service Agreement will increase annually, which

may be a fixed annual percentage or may be based upon changes in published price indices and/or changes in the Company's cost of service, as the Company and the qualifying customer shall agree. (Aqua St. No. 1, p. 5.) The purpose of this provision is to capture incremental increases that would be expected due to variable O&M costs. (Aqua St. No. 1, p. 5.)

No party to this proceeding disputed the structure or intent of the Proposed Rider. Rather, both the OCA and OSBA posited instead that the Proposed Rider was premature. (*See* OCA St. No. 1, p. 7; *See also* OSBA St. No. 1, p. 5.) As explained in Section B.1 of this Brief, the OCA's and OSBA's claims that the Proposed Rider is premature are without merit.

B. THE PROPOSED RIDER IS JUST AND REASONABLE AND SHOULD BE APPROVED AS BEING IN THE PUBLIC INTEREST

1. The Proposed Rider Incentivizes Eligible Large Industrial Customers, Now Or In The Future, To Continue Receiving Or Begin Receiving Wastewater Service from Aqua.

As explained by the Company, through the Proposed Rider, Aqua is seeking to prevent existing or future large industrial wastewater customers from opting out of receiving Aqua's wastewater service or leaving Aqua's service territory altogether by incentivizing purchase of Aqua's service. If a large industrial customer were to opt-out of receiving wastewater service from Aqua, the Company would lose the revenue from that customer. In turn, other remaining customers' bills would be adversely affected. (Aqua St. No. 1, p. 6.) This is exemplified in OCA Exhibit JDM-1, wherein the Company explained that, should the single existing potentially eligible customer in Aqua's current service territory opt-in to the Proposed Rider, a 10% discount from Aqua's current tariffed rates would result in an annual revenue decrease of \$2,615.00 based on the prior year's consumption.¹ (OCA Exhibit No. JDM-1, p. 5.) This projected revenue decrease would then be

¹ Aqua stresses that this customer has been advised of the Proposed Rider and has expressed that it is not interested in participating should it be approved by the Commission.

spread to Aqua's other wastewater customers and recouped, creating higher bills for those remaining Aqua customers. (Aqua St. No. 1R, p. 4.) Should the large industrial wastewater customer elect to stop receiving service from Aqua altogether – either by finding an alternative wastewater service provider or by leaving the Company's territory, Aqua's customers would be forced to shoulder the entirety of that customer's lost rates, *i.e.*, approximately nine times the revenue decrease noted above after a 10% discount. (*See* Aqua St. No. 1, p. 6; *See also* OCA Exhibit JDM-1, p. 5.) In turn, this would raise bills for all of Aqua's customers significantly more than what would happen should that customer negotiate slightly discounted rates under the Proposed Rider.

Importantly, Aqua's customer base is not stagnant. Indeed, there are prospective customers that may be eligible to receive service under the Proposed Rider should it be approved. Currently, at Docket No. A-2019-3015173 before the Commission, the Company is pursuing Certificates of Public Convenience to acquire the wastewater system assets of the Delaware County Regional Water Quality Control Authority ("DELCORA"), situated within all of part of 49 municipalities within portions of Chester and Delaware Counties, Pennsylvania. Should that transaction be approved, Aqua would begin to offer, render, furnish, and supply wastewater service to the public in portions of Chester and Delaware Counties currently served by DELCORA. There are two customers that could be eligible for the proposed rider that are currently served on DELCORA's system at contract rates. (Aqua St. No. 1, p. 7.)

As part of the ongoing DELCORA proceeding, Aqua entered a Joint Stipulation with Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC (collectively, "Kimberly-Clark"). (Aqua St. No. 1R, p. 8.) Kimberly-Clark currently receives wastewater service on the DELCORA system under a negotiated rate agreement that Aqua would assume should the

DELCORA transaction closes. (See OCA Exhibit JDM-1, p. 6.) This existing negotiated rate agreement between Kimberly-Clark and DELCORA was, in part, the impetus for filing the Proposed Rider. (Aqua St. No. 1R, p. 8.) Should the DELCORA transaction be approved, it is possible that Kimberly-Clark would meet the discount criteria included in the Proposed Rider. (OCA Exhibit JDM-1, p. 8.) If the Company were to apply a 10% discount to the rates currently paid by Kimberly-Clark should Kimberly-Clark be deemed eligible and interested to receive negotiated rate service under the Proposed Rider, that discount would result in a revenue decrease of \$502,057.50 given projected consumption. (OCA Exhibit JDM-1, p. 8.) Critically, this projected revenue decrease pales in comparison to the revenue decrease that would occur if the DELCORA transaction is approved and Kimberly-Clark elects to leave Aqua's service territory altogether or begin receiving alternative wastewater service.

Beyond the DELCORA acquisition, Aqua is also expanding its footprint through other acquisitions, some of which come with large industrial customers that may qualify for service under the Proposed Rider. As explained by the Company:

Aqua filed an application with the Commission to acquire the wastewater system assets of the City of Beaver Falls at Docket No. A-2022-3033138. In that transaction there are at least two potential customers that could qualify under this rider based on usage; however, a viable competitive alternative would still be required as set forth in Aqua's proposed tariff. The proposed tariff will allow the Company the flexibility to retain customers in new service areas, should those customers have alternatives to service, thereby retaining industry in those newly serviced areas.

(Aqua St. No. 1, pp. 7-8.)

Once again, the Proposed Rider could largely remediate potentially harmful rate effects should existing or future customers of Aqua find alternatives to Aqua's wastewater service.

The OCA and OSBA both argue that, absent a qualifying and interested customer, approval of the Proposed Rider is premature. (*See* OCA St. No. 1, p. 7; *See also* OSBA St. No. 1, p. 5.) This is incorrect. As Aqua witness William C. Packer explained, Aqua will “continually evaluate whether there are potentially eligible customers for the Proposed Rider being served by the acquired systems. To deny the Proposed Rider would functionally ‘kick-the-can’ and potentially create negative rate effects for customers across Aqua’s system in the future should a system with an otherwise eligible customer or customers be acquired without the Proposed Rider in place at the time of acquisition.” (Aqua St. No. 1R, pp. 9-10.) In other words, denial of the Proposed Rider virtually guarantees that Aqua will come-back to the Commission for approval of the same at some point in the future if a customer becomes eligible for the Proposed Rider or a similar hypothetical tariff mechanism and, in the meantime, makes Aqua’s expanding wastewater service territory less desirable for prospective customers. As stated by Mr. Packer, Aqua is “attempting to be proactive rather than reactive.” (Aqua St. 1R, p. 10.) Further, Mr. Packer explained that:

The Proposed Rider is designed to incent existing or future eligible customers to continue or begin receiving wastewater service from Aqua. It is not limited to a specific and immediate customer’s needs. Rather, the Proposed Rider will be a mechanism that remediates future impacts of a large industrial customer opting out of receiving wastewater service from Aqua should a viable wastewater service alternative exist. Indeed, as explained in Aqua’s direct testimony, if a large wastewater customer were to opt-out of receiving service from Aqua, the Company would lose out on revenue from that customer. As a result, that loss of revenue would be spread to other wastewater customers to recoup the loss, thereby negatively impacting other customers’ bills.

(Aqua St. No. 1R, p. 4.)

Thus, while it is true that Aqua does not currently have any customer(s) that are eligible and interested in the Proposed Rider, the same does not mean that it is premature or otherwise

unnecessary.² Indeed, “[t]he wastewater service landscape is not static, and it is unreasonable to require Aqua to specifically identify alternative wastewater service when: (1) alternative wastewater service may become an option in the future for customers in Aqua’s current service territory; and (2) alternative wastewater service may exist – or come to exist in the future – for certain customers not yet in Aqua’s service territory but that Aqua may acquire.” (Aqua St. No. 1R, p. 5.) Furthermore, customers receiving wastewater service from Aqua could opt to leave Aqua’s service territory altogether absent a negotiated rate. (Aqua St. No. 1R, p. 5.) To delay approval of the Proposed Rider until an actual customer loss is about to occur is a risky approach, as a customer could become so invested in an alternative that subsequent approval of the Proposed Rider would come too late. A situation like this would lead Aqua to recoup the rates lost from the large industrial wastewater customer no longer receiving service from other customers in Aqua’s service territory, leading to higher bills. Indeed, the Commission has confirmed the basis and rationale for utilities seeking to avoid this, explaining in the *PAWC DIS Order*:

[W]e realize that the loss of a large industrial customer to an alternative source of supply is harmful to all remaining customers. For this reason we support negotiated incentive rates providing that it can be demonstrated that without such rates the customer can and will switch to a competitive source of supply, and that the rates charged are designed to recover all marginal costs of serving that customer plus some contribution to the utilities' fixed costs. We also insist that the utility have a strong incentive to drive a hard bargain with the customer.

PAWC DIS Order, *96.

² Notably, the Commission approved Pennsylvania-American Water Company’s similar Rider DIS without discussion of a specific customer interested and eligible in service under that rider. *See Pa. PUC, et al., v. Pennsylvania-American Water Co.*, Docket Nos. R-00943231, *et al.*, 1995 Pa. PUC LEXIS 170 (Order Entered July 24, 1995) (“*PAWC DIS Order*”).

Neither the OCA or OSBA have disputed or otherwise addressed this directive. Nor have they proffered any substantive reason why the Commission should depart from its precedent on this issue.

Further, OCA witness Mierzwa's contention that the Proposed Rider is unnecessary given that current or future customers of Aqua can advocate for lower tariff rates and favorable rate design in base rate proceedings is inappropriate. (*See* OCA St. No. 1, pp. 8-9.) Mr. Packer thoroughly rebutted this point:

While it is true that large industrial customers – whether existing or future – can participate in base rate proceedings before the Commission and advocate for favorable rates, this process is dependent on a variety of factors. First, under the Company's current tariff, large industrial customers do not have a mechanism to receive favorable rates. Thus, those customers are relegated to advocating for lower tariffed rates and favorable rate design during intermittent base rate proceedings. If an alternative to Aqua's wastewater service were to arise between Aqua's base rate cases, the customer could opt to receive that alternative service, causing Aqua to lose that customer's rate revenue altogether. Second, relying only on base rate proceedings to provide rate flexibility is misguided and inconsistent with other utility sectors' practice. As I noted, base rate proceedings are intermittent, often occurring only once every several years. The Proposed Rider circumvents the rigidity of occasional base rate proceedings, thus providing Aqua increased flexibility to attempt to meet the needs of potentially eligible large industrial customers, now or in the future, without those customers opting out of receiving Aqua's wastewater service altogether. Finally, a base rate process normally develops rates for groups of customers with similar characteristics. It also strongly relies on cost of service to develop rates for each class. This is not well suited to a customer who threatens to leave the utility entirely due to other alternatives not available to every member of the class that are lower than the average cost to serve the entire class. Furthermore, the Rider provides the framework and venue for expediency of executing agreements of this nature that is simply not afforded in a full base rate proceeding. Economic circumstances of industrial users and other customers can change quickly that necessitate a process to allow the Company to actively negotiate in an efficient manner to preserve said customer, ultimately to the benefit of Aqua's entire customer base. The reality is the fixed costs of the

utility are a relative constant, in that the loss of a customer of this nature will not result in operating or capital cost reductions that accompany the loss of revenue. In short, the remaining customers will ultimately pay higher costs.

(Aqua St. No. 1R, pp. 6-7.)

As such, while Mr. Mierzwa's contention that industrial customers can advocate for lower rates in a base rate proceeding is technically true, arguments about class rate design presented in occasional base rate proceedings are not the appropriate vehicle for customers with lower cost competitive alternatives that are not available to the rate class as a whole.

2. The Proposed Rider Is Similar To Other Riders Proposed And Approved By The Commission For Other Utilities.

Alternatively, and beyond outright rejection of the Proposed Tariff, the OCA recommends modified language for the Proposed Rider. (OCA St. No. 1, p. 10.) Specifically, the OCA recommends that, if approved, the Proposed Rider's language should be modified to read:

The Company shall require documentation to establish, to the Company's satisfaction, the existence of a competitive alternative along with any other applicable qualifying condition stated above. Such documentation **will at minimum include a feasibility study, cost-analysis or bid(s) for alternative service and may include,** ~~but is not limited to~~ an affidavit of the customer or if, the customer is a corporation, an affidavit of one of more of its senior managers or its officer.

(OCA St. No. 1, p. 10.)

Should the Proposed Rider be approved, the OCA's promoted alternative language should be rejected. Indeed, the OCA's recommended tariff language appears to be without compare in Pennsylvania. Importantly, Mr. Mierzwa did not – and likely could not – point to any utility with similar language for a negotiated rate rider provision. The OCA's alternative language also ignores the model used by Aqua to develop the Proposed Rider in the first place: Aqua PA's Rider DIS –

Demand based Industrial Service. (Aqua St. No. 1, p. 9; *See also* WCP-IR Exhibit A.) Aqua PA's Rider DIS is available to a customer or future customer that:

1. purchases or intends to purchase water from the Company for industrial purposes;
2. enters into a Service Agreement for a term of not less than 2 years;
3. during the original and any renewal terms of the Service Agreement, agrees to purchase a minimum of 10 million gallons of water per month at a daily load factor of not less than 0.60; and
4. has a viable competitive alternative to service from the Company and intends to select that alternative to the detriment of the Company and its other customers.

(*See* Aqua Pennsylvania, Inc. Tariff Water-PA P.U.C. No. 3, Original Page 19; Aqua St. No. 1, p. 9.)

Mr. Packer explained the rationale behind the Proposed Rider, which is the same rationale employed by Aqua PA when developing and implementing its Rider DIS: to incent large industrial customers to continue to receive service from Aqua, rather than seek out an alternative to service from Aqua or to relocate out of Aqua's service territory, thereby requiring Aqua to recoup lost revenues from other customers. (Aqua St. No. 1, p. 9.)

Additionally, Mr. Mierzwa argued that the Commission has not previously approved a wastewater utility's tariff that provides for discounted rates for customers with competitive alternatives. (OCA St. No. 1, p. 8.) In response, Aqua witness Mr. Packer explained that "[w]hile Aqua is unaware of any other wastewater utility that has proposed a similar tariff provision, Mr. Mierzwa does not cite any proceeding in which a similar proposal has been rejected by the Commission or other state regulatory agency. Relative novelty is not a legitimate ground to oppose the Proposed Rider." (Aqua St. No. 1R, p. 5.) Further, the OCA's arguments on this point side-step a pertinent consideration: the proposed modification that the OCA promotes is dissimilar to

other utilities' riders providing for discounted rates.³ Indeed, Aqua is unaware of any other utility in Pennsylvania with a targeted negotiated rate rider that requires prospective customers to submit a feasibility study, cost-analysis, or bid(s) for alternative service. Moreover, it is not guaranteed that a prospective customer seeking service under a negotiated rate would conduct and/or provide to Aqua a feasibility study, cost-analysis, or bid(s) for alternative service. A customer with a viable alternative may be unwilling to disclose such confidential information as it seeks to negotiate with both Aqua and the competitive alternative source. That said, in the interests of concession, Aqua is willing to perform its own feasibility study for each future potentially-eligible customer to determine whether the discounted rate is reasonable and in the Company's – and its ratepayers' – best interests.

Similarly, OSBA witness Brian Kalcic failed to reconcile the fact that the Proposed Rider, as filed by Aqua, tracks similar tariff provisions for other utilities in other sectors throughout Pennsylvania, including Aqua PA's Rider DIS. (Aqua St. No. 1, pp. 9-10.) By opposing the Proposed Rider, both the OCA and OSBA functionally call into question the efficacy of existing tariff provisions for other Pennsylvania utilities. Additionally, through its proposed alternative language, the OCA seeks to fix a proven system that is not broken. As such, the OCA's and OSBA's recommendation(s) to deny the Proposed Rider should be rejected. Further, if the Proposed Rider is approved, the OCA's alternative language should also be rejected, as it is inconsistent with comparable tariff provisions approved by the Commission for other Pennsylvania utilities.

³ See e.g., Aqua Pennsylvania, Inc., Tariff Water-PA P.U.C. No. 3, Original Page 19; Peoples Natural Gas Company LLC, Supplement No. 2 to Gas – PA P.U.C. No. 47, First Revised Pages 47-48; UGI Utilities, Inc. – Gas Division- UGI Gas – Pa. P.U.C. No. 7, Original Page No. 27, Rule 2.6; Columbia Gas of Pennsylvania, Inc. – Supplement No. 200 to Tariff Gas – PA P.U.C. No. 9, Fifth Revised Page No. 149; Duquesne Light Company, Supplement No. 36 to Electric – PA P.U.C. No. 25, Second Revised Page No. 128.

3. The Proposed Rider Will Not Immediately Affect Any Aqua Customers' Rates.

As explained by Mr. Packer, negotiated rate contracts entered into under the Proposed Rider are entirely voluntary. (Aqua St. No. 1, pp. 5-6.) As such, absent participation for wastewater service under the Proposed Rider, Aqua's existing customers' bills would not be affected. (Aqua St. No. 1, p. 8.) Additionally, approval of the Proposed Rider will have no immediate effect on customers' rates or the Company's revenues:

Because there is only one customer eligible for the rider right now, and that customer has indicated that they do not plan to participate or enter into a contracted rate with the Company, there will be no immediate impact to revenues. Moreover, the rates of any customers would not be affected until any contract that is entered into is included in a base rate proceeding in the future. Simply said, the approval of this rider does not change any revenue collected or rate currently being charged by the Company.

(Aqua St. No. 1, p. 8.)

This is further evidenced by Mr. Packer, who explained:

The Company would reflect negotiated rate revenue in future base rate proceedings. To the extent that negotiated rate revenue is less than revenue at full tariffed rates, other customers may be marginally affected. However, the rate effects would be less than if a large industrial customer were to stop receiving service from the Company entirely. Thus, Aqua believes it is reasonable to incent large industrial customers to continue to receive service from the Company at a slightly discounted rate rather than having those customers stop receiving service altogether. However, I emphasize that there would be no immediate revenue or rate impacts if the proposed rider is approved as no contract would take effect upon the approval of this proposed rider, and a determination of cost allocation would not be made until a base rate case proceeding was decided that included negotiated contract rates under this rider.

(Aqua St. No. 1, p. 6.)

Further, should the Proposed Rider be approved, the negative rate effects of large industrial customers opting out of wastewater service provided by the Company could be mitigated. (Aqua

St. No. 1, p. 6.) Indeed, “[i]f a large wastewater customer were to opt-out of receiving service from Aqua, the Company would lose out on revenue from that customer. As a result, that loss of revenue would be spread around the Company’s service territory to other wastewater customers to recoup the loss.” (Aqua St. No. 1, p. 6.) Through the Proposed Rider, Aqua is seeking to incent existing or future large industrial customers eligible for the Proposed Rider to continue or begin receiving service from Aqua, thereby reducing the effects to Aqua’s customers’ bills as a whole had the large industrial customer opted out of service from Aqua altogether. (Aqua St. No. 1R, p. 4.)

Should the Proposed Rider be approved and an eligible large industrial customer were to opt for negotiated rate service under the same, the effects to other of Aqua’s wastewater customers would be determined in future base rate proceedings. On this point, the Company explained that it “could reflect negotiated rate revenue in future base rate proceedings. To the extent that negotiated rate revenue is less than revenue at full tariff rates, other customers may be marginally affected.” (Aqua St. No. 1, p. 6.) These effects, however, would “be less than if a large industrial customer were to stop receiving service from the Company entirely.” (Aqua St. No. 1, p. 6.) Further, if a negotiated rate contract is entered into by the Company between base rate proceedings, the burden of the lost revenue would fall to the Company, at least until that next base rate case is concluded. (*See* Aqua St. No. 1R, pp. 7-8.)⁴ Additionally, “[c]ontracts entered into under rate Riders are subject to extensive review in a base rate case.” (Aqua St. No. 1R, p. 8.)

Moreover, should the Proposed Rider be approved, Aqua has committed to confidentially filing any negotiated rate contract(s) entered into under the Proposed Rider with the Commission

⁴ Importantly, because Aqua bears the burden of any lost revenues under negotiated rate contracts entered into between base rate proceedings, the Company is incented to avoid entering into negotiated rate agreements that contain unjustified or unsubstantiated discounts under the Proposed Rider.

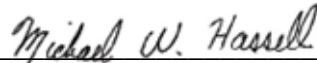
within 30-days of the contract's execution. (Aqua St. No. 1, p. 10.) Any determination of cost allocation would not be made until a base rate case proceeding was decided that included negotiated contract rates under the Proposed Rider.

Both OSBA witness Kalcic and OCA witness Mierzwa oppose approval of the Proposed Rider because Aqua has no current customers that would take service under the Proposed Rider. (See OSBA St. no. 1, p. 5; See also OCA St. No. 1, p. 8.) Aqua does not contend the opposite. Rather, Aqua is seeking structural approval of the Proposed Rider to address issues that may arise in the future under very specific, delineated circumstances. Despite the OSBA's and OCA's contentions, "the wastewater service landscape is not static, and it is unreasonable to require Aqua to specifically identify alternative wastewater service when: (1) alternative wastewater service may become an option in the future for customers in Aqua's current service territory; and (2) alternative wastewater service may exist – or come to exist in the future – for certain customers not yet in Aqua's service territory but that Aqua may acquire." (Aqua St. No. 1R, p. 5.) As such, Aqua submits that the Proposed Rider is just and reasonable insofar as it seeks to reduce future negative rate effects for its customers going forward, without any immediate effect to those customers' bills should participation under the Proposed Rider not occur. This is consistent with other similar riders approved by Commission in the past and should be approved here.

IV. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that Administrative Law Gail M. Chiodo recommend, and the Pennsylvania Public Utility Commission approve, Supplement No. 3 to Tariff Sewer-PA P.U.C. No. 3 filed by Aqua Pennsylvania Wastewater, Inc., which establishes a contract rate for qualifying large industrial wastewater customers via a rider.

Respectfully submitted,



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Date: April 28, 2023

Attorneys for Aqua Pennsylvania Wastewater, Inc.

Appendix A - Proposed Findings of Fact

1. On December 7, 2022, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed Supplement No. 3 to Tariff Sewer – PA P.U.C. No. 3, which would institute a rider (“Proposed Rider”) that would be available to certain qualifying large industrial wastewater customers. (Aqua St. No. 1, p. 3.)
2. The Proposed Rider defines a Large Wastewater Customer User as an industrial class customer that takes or receives wastewater collection, treatment and/or disposal services that exceeds 85,000 gallons of wastewater per month. (Aqua St. No. 1, p. 3.)
3. To be eligible for the Proposed Rider, the customer must: 1) Discharge wastewater into Aqua Wastewater’s collection system resulting from industrial processes; 2) Enter into a Service Agreement for a term of not less than 3 years; and 3) Have a viable competitive alternative to service from the Company and, unless a new rate is established, the customer intends to select that alternative to the detriment of the Company and its customers. (Aqua St. No. 1, p. 3.)
4. Under the Proposed Rider, Aqua may consider whether the existing or prospective Large Wastewater Customer User has made or agrees to make a substantial contribution of capital for facilities or facilities themselves to the Company in order to become or remain a customer and whether a customer plans to locate or retain a substantial facility in the Company’s existing or applied-for franchise territory that provides substantial economic development and employment in the immediate local or Commonwealth of Pennsylvania. (Aqua St. No. 1, p. 3.)
5. The rate to be charged for eligible and interested customers would be negotiated and set forth in a service agreement, will not be less than the minimum rate, and be subject to an escalation clause. (Aqua St. No. 1, p. 4.)
6. The minimum rate shall be sufficient to recover: (1) variable Wastewater Treatment Cost (e.g., electric power and fuel costs for power production, sludge removal and disposal costs, wastewater conveyance costs, any chemical costs not otherwise covered by any applicable surcharges for Biochemical Oxygen Demand (“BOD”), Total Suspended Solids (“TSS”), etc.); plus (2) the fixed costs (depreciation and pre-tax return) on the facilities necessary to serve the customer; and (3) some portion of the fixed costs of the Company’s wastewater treatment and collection facilities. (Aqua St. No. 1, p. 4.)
7. The purpose of the minimum rate is to ensure that variable operating and maintenance (“O&M”) costs, and depreciation and return on facilities used to serve the customer, are recovered in rates. Otherwise, other customers would be bearing these avoidable costs. (Aqua St. No. 1, p. 4.)
8. The escalation clause is a mechanism set forth in the service agreement, in which the rate(s) during the original and any renewal terms of the Service Agreement will increase annually, which may be a fixed annual percentage or may be based upon

- changes in published price indices and/or changes in the Company's cost of service, as the Company and the qualifying customer shall agree. (Aqua St. No. 1, p. 5.)
9. Currently, large industrial customers receiving wastewater utility service from Aqua can opt to not receive service from the Company should a competitive alternative exist. (Aqua St. No. 1, p. 5.)
 10. If a large wastewater customer were to opt-out of receiving service from Aqua, the Company would lose out on revenue from that customer. (Aqua St. No. 1, p. 5.)
 11. That loss of revenue would be spread around the Company's service territory to other wastewater customers to recoup the loss. (Aqua St. No. 1, p. 5.)
 12. The Proposed Rider is designed to incent existing or future eligible customers to continue or begin receiving wastewater service from Aqua. (Aqua St. No. 1R, p. 4.)
 13. To the extent that negotiated rate revenue is less than revenue at full tariffed rates, other customers may be marginally affected. However, the rate effects would be less than if a large industrial customer were to stop receiving service from the Company entirely. (Aqua St. No. 1, p. 6.)
 14. There is one customer on Aqua's existing wastewater system that would be eligible for the Proposed Rider. (Aqua St. No. 1, p. 6.)
 15. Aqua is pursuing Certificates of Public Convenience to acquire the wastewater system assets of the Delaware County Regional Water Quality Control Authority ("DELCORA"), situated within all of part of 49 municipalities within portions of Chester and Delaware Counties, Pennsylvania. (Aqua St. No. 1, p. 7.)
 16. There are two customers that could be eligible for the Proposed Rider that are currently served on DELCORA's system at contract rates. (Aqua St. No. 1, p. 7.)
 17. If Aqua's acquisition of DELCORA is approved, Aqua would assume a previously negotiated service agreement between DELCORA and Kimberly-Clark upon closing of the transaction. (Aqua St. No. 1R, pp. 8-9.)
 18. Absent authority to continue that service agreement in the future, Kimberly-Clark has no assurance that the contract rate will continue past the first Aqua rate case following the acquisition of DELCORA. (Aqua St. No. 1R, pp. 8-9.)
 19. Aqua is expanding its footprint through other acquisitions, some of which come with large industrial customers. (Aqua St. No. 1, p. 7.)
 20. Aqua modelled its Proposed Rider off of Aqua Pennsylvania, Inc.'s Rider DIS – Demand Based Industrial Service. (Aqua St. No. 1, p. 8.)

21. Other utilities in Pennsylvania have instituted similar riders as a means to incentivize high consumption customers from seeking alternative supply or leaving the utility's service territory altogether. (Aqua St. No. 1, p. 9.)
22. Should eligible customers opt-in to the Proposed Rider if it is approved, Aqua will confidentially file the contract(s) with the Commission within 30-days of the contract's execution. (Aqua St. No. 1, p. 9.)
23. Economic circumstances of industrial users and other customers can change quickly that necessitate a process to allow Aqua to actively negotiate in an efficient manner to preserve said customer, ultimately to the benefit of Aqua's entire customer base. (Aqua St. No. 1R, p. 7.)
24. To the extent a lower rate is negotiated via the Proposed Rider, and the rate established for a qualifying customer is lowered between a base rate case, that reduction in revenue falls entirely on Aqua and not existing customers. (Aqua St. No. 1R, p. 8.)
25. Approval of the Proposed Rider does not change any rate currently being charged by the Aqua. (Aqua St. No. 1R, p. 10.)
26. There will be no immediate impact to the Aqua's revenues if the Proposed Rider is approved. (Aqua St. No. 1, pp. 7-8.)

Appendix B - Proposed Conclusions of Law

1. Under Section 332(a) of the Public Utility Code (“Code”), 66 Pa.C.S. § 332(a), the party seeking a rule or order from the Commission has the burden of proof. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
2. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).
3. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).
4. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008).
5. Bald assertions, personal opinions, or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).
6. For the Commission to approve a tariff change, the party seeking a rule or order from the Commission has the burden of proof that the change is just and reasonable. 66 Pa.C.S. § 332(a); 66 Pa.C.S. § 1301.
7. Aqua Pennsylvania Wastewater, Inc. has sustained its burden of proof that Supplement No. 3 to Tariff Sewer – PA P.U.C. No. 3 is just and reasonable.

Appendix C - Proposed Ordering Paragraphs

1. That Aqua Pennsylvania Wastewater, Inc.'s Supplement No. 3 to Tariff Sewer – PA P.U.C. No. 3 with changes that reflect Aqua Pennsylvania Wastewater, Inc.'s establishment of a contract rate for large industrial wastewater customers via a rider is approved.
2. That Aqua Pennsylvania Wastewater, Inc. is authorized to place into effect Supplement No. 3 to Tariff Sewer – PA P.U.C. No 3 on August 17, 2023.
3. The Complaint of the Office of Consumer Advocate at Docket No. C-2023-3037579 is dismissed with prejudice.