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May 8, 2023

**Via Electronic Email**

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

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

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find SCH USA, LLC's Answer to Motion for Judgment on the Pleadings with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Carl R. Shultz*

Carl R. Shultz

CRS/lww

Enclosure

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

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the SCH USA, LLC's Answer to Motion of Aqua Pennsylvania Wastewater, Inc. for Judgment on the Pleadings upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

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Date: May 8, 2023

*/s/ Carl R. Shultz*

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Attorney for SCH USA, LLC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC	:	
	:	Docket Nos. C-2022-3036893
v.	:	C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

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**SCH USA, LLC’S ANSWER TO THE MOTION OF AQUA PENNSYLVANIA  
WASTEWATER, INC. FOR JUDGMENT ON THE PLEADINGS**

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Pursuant to 52 Pa. Code § 5.102(b) and the Scheduling Order issued on March 10, 2023 by Administrative Law Judge John M. Coogan (“ALJ” or “Judge Coogan”), SCH USA LLC (“SCH USA” or the “Complainant”), by and through its undersigned counsel, submits this Answer to the Motion of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) for Judgment on the Pleadings.

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. In November 2020, SCH USA purchased the Split Rock Resort<sup>1</sup> (“Resort”), which is located in the “Lake Harmony” area of Kidder Township, Carbon County, Pennsylvania. The Resort has four commercial wastewater accounts with Aqua. The accounts are for [1] the Lodge,<sup>2</sup> a luxury resort hotel with 50 rooms, a restaurant and a meeting room; [2] Willowbrook,<sup>3</sup> is a resort hotel with 256 rooms; [3] the Galleria,<sup>4</sup> a resort hotel with 77 hotel rooms and 8 VIP rooms. The Galleria’s wastewater account includes other on-property features, such as food

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<sup>1</sup> <https://splitrockhotel.com/>

<sup>2</sup> With the address of 1 Lake Drive and the wastewater account ending in 1138038.

<sup>3</sup> With the address of 159 Willowbrook and the wastewater account ending in 1138095.

<sup>4</sup> With the address of 100 Moseywood and the wastewater account ending in 1138096.

court/shops, restaurants, waterpark, indoor pool, and a large meeting space; and, [4] the Laundry<sup>5</sup> for the Resort.

2. In or around May 2021, SCH USA started discussions with Aqua regarding SCH USA's concerns with wastewater bills for the Resort. During those discussions with Aqua (which lasted for approximately 18 months), SCH USA requested at different times in 2021 and 2022 explanations from Aqua on the disputed bills, as well as to be charged on a metered basis for wastewater service. With little to no responses from Aqua, Aqua threatened to terminate wastewater service to the Resort in November 2022.

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

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

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

6. On January 6, 2023, the Formal Complaints were consolidated by the ALJ.

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

8. On March 17, 2023, the Prehearing Conference was held with counsel for both parties in attendance.

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

9. On March 10, 2023, Judge Coogan issues a Scheduling Order directing Aqua to file a Motion regarding issues it seeks to resolve and ordered that SCH USA provide a response to any Motion filed by Aqua by May 8, 2023. This response follows.

## **II. COUNTER STATEMENT OF LEGAL STANDARDS**

10. In its Motion at paragraphs 12-16, Aqua puts forth the general legal standards for a Motion for Judgment on the Pleadings. SCH USA does not dispute the general legal principles put forth by Aqua in Paragraphs 12-16.

11. Notwithstanding, and as applicable to the consolidated complaints, utilities are not allowed to subject any customer to any unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1502.

12. A utility may be required to disregard its tariff — if the tariff, as applied to the specific facts presented, would produce an unreasonable prejudice or disadvantage. *Keystone Water Company v. Pa. P.U.C.*, 515 A.2d 367 (Pa.Cmwlth. 1986); *Erdos v. Western Pennsylvania Water Company*, 63 Pa. P.U.C. 453 (1987).

13. “Blind application of [a utility’s] policy without consideration of the facts and circumstances of [a particular] case... would result in an unreasonable prejudice or disadvantage.” *Erdos v. Western Pennsylvania Water Company*, 63 Pa. P.U.C. 453 (1987).

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

15. “Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service...as shall be necessary or proper for the accommodation, convenience, and safety of its

patrons, employees, and the public.” 66 Pa.C.S. § 1501. “Service... includes any and all acts done, rendered, or performed, and any and all things furnished or supplied... by public utilities.” 66 Pa.C.S. § 102. Statutory definition of “service” regarding grant of authority of the Commission to regulate service of every public utility is broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995). Where a utility provides unreasonable and inadequate service, a civil penalty may be assessed. 66 Pa. C.S. § 3301.

**III. THE COMMISSION HAS JURISDICTION OVER AQUA’S RATES AND TARIFF WHERE SCH USA IS PLACED AT AN UNREASONABLE PREJUDICE OR DISADVANTAGE AND DISMISSAL OF THE COMPLAINTS ON THE PLEADINGS IS INAPPROPRIATE.**

16. The Commission has the regulatory authority over the rates charged by Aqua as provided in Aqua’s tariff. 66 Pa. C.S. § 1301 *et seq.*

17. The authority lies with the Commission to adjudicate complaints regarding billing disputes, especially where a utility is subjecting a customer to unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1502. Blind application of a utility’s policies without consideration of the facts and circumstances when those facts and circumstances place the customer at an unreasonable disadvantage is not permitted. *Erdos v. Western Pennsylvania Water Company*, 63 Pa. P.U.C. 453 (1987).

18. While SCH USA agrees that the Commission does not have jurisdiction over the Act 537 Sewage Facilities Plan for Kidder Township, Carbon County, PA (“537 Plan”), and that the Commission has no authority to modify that plan as approved by the Pennsylvania Department of Environmental Protection (“DEP”), Aqua’s motion should be denied as viewing the facts in a light most favorable to SCH USA as the Complaints do not seek to challenge the 537 Plan before the Commission, but rather the unreasonableness of the rates **as applied** and bills issued by Aqua

to SCH USA, and Aqua is not entitled to dismissal of the Complaint on the pleadings as a matter of law as material facts in dispute remain.

19. SCH USA represents that there are incorrect charge on its bills,<sup>6</sup> since the Equivalent Dwelling Unit (“EDU”) billing being used by Aqua for SCH USA is unreasonable **as applied** to SCH USA.<sup>7</sup>

20. While the provisions of Aqua’s tariff are prima facie reasonable and have the full force of law and are binding on the utility and the customer,<sup>8</sup> the “standard” conditions in Aqua’s tariff can still be unlawful or unreasonable **as applied** to a particular customer based on evidence provided during a proceeding.<sup>9</sup>

21. SCH USA’s Complaints allege that the billing by Aqua is unreasonable **as applied** to SCH USA because SCH USA’s usage of wastewater (based on the average occupancy rate of the Resort) is substantially lower than the quantity of service being billed by Aqua. In other words, SCH USA is paying substantially more in wastewater rates pursuant to Aqua’s tariff simply because it is being blindly applied, and Aqua has refused to consider the unique facts and circumstances that the unreasonable application of Aqua’s tariff is creating, leading to an unjust, prejudicial, and unreasonable result of SCH USA paying significantly more than it should be for the wastewater service provided.

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<sup>6</sup> Complaint at ¶ 4 (Incorrect charges are on my bill).

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

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

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

22. Under the Commission’s regulations, a Motion for Judgment on the Pleadings will only be granted if, as applied here, SCH USA’s Complaint and Answer to New Matter when viewed in a light most favorable to SCH USA, “show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.” 52 PA. Code § 5.102(d).

23. Clearly, there remains a genuine issue of material fact and dismissing the complaint on the pleadings is inappropriate. The Commission is empowered to adjudicate whether the alleged incorrect charges from Aqua on SCH USA’s wastewater bills are unreasonable and discriminatory where the charges, **as applied** to SCH USA’s unique and changed circumstances based on the average occupancy rate of the properties at issue are leading to unjust results. The question of rates being unreasonable **as applied** falls squarely within the Commission’s jurisdiction over Aqua’s tariff, rates, and service. To accept Aqua’s arguments and dismiss the Complaints on the pleadings alone and find that the Commission lacks jurisdiction over the rates charged by Aqua would effectively mean that no entity could ever challenge or dispute a wastewater bill or the wastewater rates being unreasonable **as applied** to them so long as there exists an Act 537 Plan approved by DEP – an absurd result where the Commission clearly has the regulatory authority under 66 Pa. C.S. § 1301 *et seq.* over the rates charged by Aqua.

24. Therefore, as genuine issues of material fact remain, SCH USA requests that Your Honor deny Aqua’s Motion for Judgment on the Pleadings. The Commission’s stated mission is to balance the needs of consumers and utilities.<sup>10</sup> There would be no “balancing” of interests if wastewater ratepayers cannot raise challenges as to how wastewater rates **are applied** to them.<sup>11</sup>

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<sup>10</sup> <https://www.puc.pa.gov/about-the-puc/>

<sup>11</sup> Section 1309 of the Code, 66 Pa. C.S. § 1309(a), empowers the Commission to find that any rate of a public utility for any service is unjust and unreasonable upon complaint.

**IV. THE COMPLAINTS DO NOT REQUEST TO ALTER AQUA’S APPROVED RATE DESIGN OR RATE STRUCTURE FOR RATE ZONE 4 CUSTOMERS.**

25. In its motion, Aqua next argues that SCH USA cannot challenge Aqua’s *application* of its rates or dispute the bills provided to SCH USA, as a Complaint proceeding is not the proper forum to “change the Commission-approved rate design for Rate Zone 4.” To be clear, SCH USA is not requesting in its complaints that the Commission change or alter the Commission approved rate design for Aqua’s Rate Zone 4 customers, or the unmetered charged per Equivalent Dwelling Unit established in the Commission’s May 16, 2022 Aqua rate case order.<sup>12</sup>

26. As stated previously, SCH USA is challenging the reasonableness of the rates **as applied** to SCH USA, and its unique and changed circumstances based on the average occupancy rate of the properties at issue. Indeed, nowhere in the complaints is SCH USA challenging the rate design or rate allocation of Rate Zone 4 as determined in the Commission’s May 16, 2022 Order.

27. That being said, the “standard” conditions in Aqua’s tariff can still be unlawful or unreasonable **as applied** to a particular customer based on an evidentiary record.<sup>13</sup> Here, EDU billing by Aqua is unreasonable **as applied** to SCH USA because SCH USA’s usage of wastewater (based on the average occupancy rate of the Resort) is substantially lower than the quantity of service actually provided by and being billed by Aqua. The Commission’s adjudication of this issue does not require any “revision to the rate structure authorized in the *2022 Rate Order*.” Motion at ¶ 36.

28. Additionally, Aqua’s reliance on the disposition of the Lake Harmony pilot program proposal for residential metering issues in the Commission’s May 16, 2022 Order lacks merit

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<sup>12</sup> *PAPUC v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. R-2021-3027386, Opinion and Order (Order Entered May 16, 2022).

<sup>13</sup> Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. PUC*, 437 A.2d 1067 (Pa.Cmwlth. 1981).

and are is binding on SCH USA's Complaints. It is beyond dispute that SCH USA is not a residential customer, and SCH USA's commercial accounts and allegations in the Complaints are distinguishable from the residential issues raised in the May 16, 2022 Order.

29. As a commercial customer with 3 resorts, waterpark, and other supporting facilities, the Commission's holding regarding the Rate Zone 4 residential customers who requested volumetric wastewater rates based on their individual residential wells is not binding on the resolution of this Complaint. In short, while the Commission may have rejected the request for a pilot program for volumetric rates for individually owned residential wells to be metered and for Aqua to charged them at volumetric rates, the facts of SCH USA's complaint are distinguishable and raise a genuine issue of material fact appropriate under 66 Pa. C.S. § 701.

30. As SCH USA is planning on presenting during an evidentiary hearing that may be held in this matter, unlike the individual residential wells previously adjudicated, SCH USA is a large commercial consumer of water and producer of wastewater with many distinguishing and unique circumstances from the residential customer issues,<sup>14</sup> and the Commission's prior Order is not binding here.

31. Therefore, as genuine issues of material fact remain, SCH USA requests that Your Honor deny Aqua's Motion for Judgment on the Pleadings.

**V. THE COMPLAINT ALLEGES INADEQUATE SERVICE FROM AQUA FOR AQUA'S FAILURE TO EXPLAIN ITS BILLING FOR APPROXIMATELY 18 MONTHS.**

32. Not addressed in Aqua's motion are SCH USA's allegations regarding Aqua's failure to communicate with and respond to SCH USA's inquiries for explanations regarding its accounts

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<sup>14</sup> For instance, unlike the residential issues, SCH USA has requested that Aqua install wastewater meters which SCH USA is willing to pay the entire costs of to measure the actual sewage discharge to Aqua's systems, and wastewater meters are regularly used across the industry.

and billing disputes. As stated in the Complaint, Aqua did not directly respond to SCH USA's request to be charged on a metered basis.<sup>15</sup>

33. SCH USA avers that Aqua's failure to adequately communicate with SCH USA over the approximately 18 months leading up to the filing of the instant complaints is a service violation of 66 Pa. C.S. § 1501.<sup>16</sup>

34. Therefore, as genuine issues of material fact remain related to SCH USA's complaints, SCH USA requests that Your Honor deny Aqua's Motion for Judgment on the Pleadings.

Respectfully submitted,

/s/ Carl R. Shultz

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Date: May 8, 2023

*Counsel for SCH USA, LLC*

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<sup>15</sup> Complaint at ¶ 4 (Other: The utility company has been unapproachable and has not responded directly to our request to be charged on a metered basis.”).

<sup>16</sup> “Service... includes any and all acts done, rendered, or performed, and any and all things furnished or supplied... by public utilities.” 66 Pa.C.S. § 102. The statutory definition of “service” regarding grant of authority of the Commission to regulate service of every public utility is broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995). Where a utility provides unreasonable and inadequate service, a civil penalty may be assessed. 66 Pa. C.S. § 3301.