

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

Public Meeting held May 18, 2023

Commissioners Present:

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

Pennsylvania Public Utility Commission
Richard Adams

R-2022-3036634
C-2022-3037266

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Exception filed by Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company), on April 17, 2023, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued on April 5, 2023, in the above-captioned proceeding. No Reply to the Exception was filed. For the reasons stated below, we shall grant Aqua's Exception, and modify the ALJ's Recommended Decision, consistent with this Opinion and Order.

I. History of the Proceeding

On November 8, 2022, Aqua filed Supplement No. 2 to Tariff Sewer- PA P.U.C. No. 3 (Proposed Tariff Supplement) with the Commission, for approval pursuant to Section 1308(b) the Public Utility Code (Code), 66 Pa. C.S. § 1308(b). 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 (Lower Makefield) (collectively, Townships).

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

On December 22, 2022, the Commission suspended the Proposed Tariff Supplement until July 7, 2023, unless permitted by Commission Order to become effective at an earlier date. This case was assigned to the Office of Administrative Law Judge (OALJ) 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 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.

On January 25, 2018, Lower Makefield filed a Petition to Intervene. No Party objected to Lower Makefield's Petition to Intervene; therefore, an Order granting the Petition to Intervene was issued on February 3, 2023.

Inasmuch as mediation was unsuccessful, an evidentiary hearing was held on February 23, 2023. Aqua was represented by counsel and presented one witness.

Mr. Adams appeared *pro se*, testified on his own behalf, and did not present any additional witnesses. Lower Makefield was represented by counsel and presented two witnesses. Five exhibits were admitted into the record. Briefs and Reply Briefs were submitted.

In the Recommended Decision, issued on April 5, 2023, ALJ Heep found that the Proposed Tariff Supplement is lawful, just and reasonable, and recommended its approval without modification. In addition, the ALJ's Recommended Decision found that the Proposed Tariff Supplement included all 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) and 52 Pa. Code § 53.51(d).

As noted, *supra*, Aqua filed an Exception on April 17, 2023. No Reply to the Exception was filed.

II. Discussion

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

A. Legal Standard

The public utility has the burden of proof to establish the justness and reasonableness of every element of a proposed tariff filing under 66 Pa. C.S. § 1308(b). Section 315(a) of the Code provides, in relevant part, 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 reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a).

In construing Section 315(a) of the Code, 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 public 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); *See also*, *Brockway Glass v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981).

In rate proceedings, it is well-established at both the Commission and in the courts that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one and that burden remains with the utility throughout the course of the rate proceeding. The courts have held that there is no

similar burden placed on other parties to justify a proposed adjustment to the utility's filing. *Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955).

Consequently, in this proceeding, Aqua has the burden of proving that its Proposed Tariff Supplement is just and reasonable under the Code.

B. Positions of the Parties¹

Mr. Adams contended that the Proposed Tariff Supplement discriminates against those customers who do not have a secondary meter. Also, Mr. Adams challenged the adequacy of the notice provided by Aqua in this proceeding. R.D. at 19, 22.

Aqua argued that its Proposed Tariff Supplement is not discriminatory in rates or service as is not prohibited by the Code. With respect to notice of the filing, Aqua averred a general notice was not required here because the Proposed Tariff Supplement is a voluntary change in rates. Further, Aqua contended that its notice comported with the requirements in the Commission's Regulations, and the Commission did not issue any directive that notice of the Proposed Tariff Supplement be served on any other parties or generally to customers. *Id.* at 19-20, 23.

Lower Makefield supported Aqua's Proposed Tariff Supplement. Lower Makefield stated that expanding the coverage of the Proposed Tariff Supplement to interested, prospective customers should be considered; however, it posited that there is no bar to implementation of the Proposed Tariff Supplement as presented. In addition, Lower Makefield supported Aqua's position that the notice provided regarding the Proposed Tariff Supplement was sufficient. *Id.* at 20, 24.

¹ See, R.D. at 19-25 for a detailed description of the positions of the Parties.

C. ALJ's Recommended Decision

In her Recommended Decision, the ALJ found that the record does not support a finding that the notice of the Proposed Tariff Supplement was insufficient or that it is discriminatory or should not be approved. R.D. at 25.

The ALJ concluded that there is not a proposed rate increase here, nor is there any “differential” at issue that needs justification. Moreover, the ALJ stated that the Proposed Tariff Supplement continues the deduct meter programs that were used by all three Townships prior to being acquired by Aqua. The ALJ also found that the information provided by Aqua pursuant to the Commission’s Regulations and record evidence do not establish a rate increase that would require additional notice. *Id.* at 25-26.

Furthermore, the ALJ found that the record does not support a finding for the Complainant, Mr. Adams, regarding his claim of discrimination. The ALJ concluded that Mr. Adams made no showing of unlawful rate discrimination here because he did not establish 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. *Id.* at 27.

For the reasons set forth above, the ALJ found the Proposed Tariff Supplement to be lawful, just, and reasonable, and she recommended that the Proposed Tariff Supplement be approved without modification. In addition, the Recommended Decision found that the Proposed Tariff Supplement filing included all of the information required by 52 Pa. Code § 53.52(a) and (b), and that Aqua provided notice to the appropriate parties as required by 66 Pa. C.S. § 1308(a) and 52 Pa. Code § 53.51(d). *Id.* at 2, 27-28.

D. Exception

In its Exception, Aqua contends that the Recommended Decision included facts not contained in the Proposed Tariff Supplement and are unnecessary for approval of the Proposed Tariff Supplement. While Aqua supports the ALJ's Recommended Decision to approve the Proposed Tariff Supplement, without modification, the Company seeks to clarify the ALJ's statement at Page 27 of the Recommended Decision where the ALJ concludes that Aqua "never had the right to collect revenue on the deduct volumes." Exc. at 2.

Aqua avers that the Proposed Tariff Supplement addressed an issue arising out of recent, Commission-approved acquisitions by Aqua for the Townships. Aqua explains that prior to those acquisitions, the Townships offered a deduct metering program for residents. Further, Aqua states that the Proposed Tariff Supplement would permit customers who previously owned and installed a deduct meter to receive a sewer billing deduction for the metered water consumption that is used but does not enter the Company's wastewater system as previously provided for by the Townships. Aqua clarifies that the deduct meter billing deduction was not part of the application approval orders for the Townships. *Id.*

Specifically, Aqua argues that the discussion within the ALJ's Recommended Decision that Aqua never had the right to collect revenue on the deduct volumes is not correct because the Company adopted, and the Commission approved, the rates charged to the Townships' customers. Although the Company agrees with the ALJ's statement that the estimate of reduced revenue due to the Proposed Tariff Supplement may be difficult to verify and is more appropriately reviewed in a rate case, Aqua submits that the ALJ's statement at Page 27 of the Recommended Decision that the Company did not have the right to collect on the deduct revenues is incorrect because the Townships' customers are charged the Commission-approved rates included in Aqua's

Commission-approved tariff. Finally, Aqua avers that it was not able to offer the deduct billing credit without the Commission approval sought in the Proposed Tariff Supplement. Aqua requests that the Commission clarify, or refrain from adopting, certain aspects of the Recommended Decision, consistent with the Company's Exception. *Id.* at 2-3.

E. Disposition

Upon review, we agree with Aqua that the Recommended Decision should be clarified with respect to the ALJ's specific statement that Aqua "never had the right to collect revenue on the deduct volumes." R.D. at 27. In explaining that additional notice of the Proposed Tariff Supplement was not required because there is no rate increase that results from its implementation, the Recommended Decision stated:

In the Operating Income statement and analysis provided by Aqua Rate Manager Feeny, APW contends 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.

R.D. at 26-27.

Prior to Aqua's acquisitions of the Townships' wastewater systems, deduct metering programs were offered for residents of the Townships. Upon Commission

approval of those acquisitions, the Company, pursuant to 66 Pa. C.S. § 1329, adopted the rates that were being charged to the Townships' customers. However, the deduct meter billing deduction was not part of the application approval orders for the Townships. Therefore, Aqua sought approval of the Proposed Tariff Supplement in order to provide customers who previously owned and installed a deduct meter with the opportunity to receive a sewer billing deduction for the metered water consumption that is used but does not enter the Company's wastewater system, as previously provided for by the Townships.

We agree with the statements in the ALJ's Recommended Decision that there is no rate increase established as a result of the Proposed Tariff Supplement, and an estimate of reduced revenue due to the filing may be difficult to verify and is more appropriately reviewed in a rate case. However, inasmuch as the Townships' customers are being charged the Commission-approved rates in Aqua's Commission-approved tariff following the approval of the Company's acquisition of the Townships' wastewater systems, we find that, while Aqua needed Commission approval to offer a deduct metering billing credit, stating that the Company did not have the right to collect on the deduct revenues was not accurate. For this reason, we conclude that the Recommended Decision should be modified accordingly. Therefore, we shall grant the Exception of Aqua.

III. Conclusion

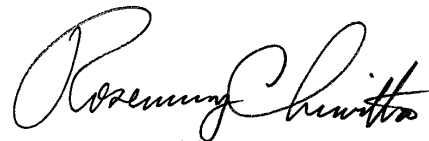
Based upon our review of the Exception, the ALJ's Recommended Decision, and the record, we shall grant Aqua's Exception, and therefore, modify the ALJ's Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exception of Aqua Pennsylvania Wastewater, Inc., filed on April 17, 2023, to the Recommended Decision of Administrative Law Judge Darlene Heep, issued on April 5, 2023, at this docket, is granted, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Darlene Heep, issued on April 5, 2023, at this docket, is modified, consistent with the Opinion and Order.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 18, 2023

ORDER ENTERED: May 18, 2023