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File #: 203069

July 10, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: William Ferguson v. Aqua Pennsylvania Wastewater, Inc.
Docket Nos. C-2023-3043108 and C-2023-3043109

Pennsylvania Public Utilities Commission, *et al.* v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2024-3047822 and R-2024-3047824

Dear Secretary Chiavetta:

Attached for filing, please find on behalf of Aqua Pennsylvania Wastewater, Inc. ("Aqua PA WW"), in the above-referenced proceedings, a Motion to Consolidate the Formal Complaints of William Ferguson at Docket Nos. C-2023-3043108 and C-2023-3043109 with the ongoing base rate case proceedings at Docket Nos. R-2024-3047824, *et al.*

Because the above-captioned matters are currently not consolidated, a copy of this Motion is being filed at each of the dockets noted. In addition, copies are being separately provided to (a) the Administrative Law Judges assigned to each matter and (b) the parties of record in each proceeding. The Certificate of Service attached to this Motion at Docket Nos. C-2023-3043108 and C-2023-3043109 reflects service upon the parties to those dockets; the Certificate of Service attached to this Motion at Docket Nos. R-2024-3047824, *et al.* reflects service upon the parties to those dockets.

Please direct any questions you have regarding this submission to the undersigned counsel.

Respectfully submitted,

Garrett P. Lent

GPL/dmc
Attachments

cc: The Honorable Eranda Vero (*pmcneal@pa.gov; w/attachments)*
The Honorable Gail M. Chiodo *(via email; w/attachments*)
The Honorable Alphonso Arnold III (*via email; w/attachments*)
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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Date: July 10, 2024

Garrett P. Lent

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson	:	
	:	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	
Pennsylvania Public Utility Commission, *et al.*	:	
	:	
	:	Docket Nos. R-2024-3047824, *et al.*
v.	:	
	:	
Aqua Pennsylvania Wastewater, Inc., *et al.*	:	
	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE, UNLESS THE PERIOD OF TIME IS OTHERWISE FIXED BY THE COMMISSION OR THE PRESIDING OFFICER. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: July 10, 2024

Attorneys for Aqua Pennsylvania Wastewater, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson	:	
	:	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Inc.	:	
Pennsylvania Public Utility Commission, *et al*.	:	
	:	
	:	Docket Nos. R-2024-3047824, *et al.*
v.	:	
	:	
Aqua Pennsylvania Wastewater, Inc., *et al*.	:	
	:	

MOTION TO CONSOLIDATE OF
AQUA PENNSYLVANIA WASTEWATER, INC.

TO THE ADMINISTRATIVE LAW JUDGE ERANDA VERO, AND
TO THE ADMINISTRATIVE LAW JUDGES GAIL M. CHIODO AND ALPHONSO ARNOLD III:

Aqua Pennsylvania Wastewater, Inc. ("Aqua PA WW") hereby moves to consolidate the Formal Complaints of Mr. William Ferguson ("Complainant") at Docket No. C-2023-3043108 (the "Revenue Complaint") and C-2023-3043109 (the "Expense Complaint"), collectively the "Consolidated Complaints" or "Complaints," with the pending base rate proceeding of Aqua PA WW and Aqua Pennsylvania Inc. ("Aqua PA Water") (collectively, "Aqua PA" or the

"Company"), pursuant to 52 Pa. Code § 5.81, for purposes of adjudication because they raise common issues of fact and law.[1]

As explained herein, the Complaints involve the existing rates of Aqua PA WW applicable to New Garden wastewater operations. Those rates were set after a fully-litigated base rate case at Docket Nos. R-2021-3027385 and R-2021-3027386 (the "*2021 Rate Case*").[2] Indeed, both the Revenue Complaint and the Expense Complaint take issue with the revenues and expense levels applicable to New Garden wastewater operations established by the *Rate Case Order*, which formed the basis for Aqua PA WW's *Compliance Tariff*.

The same rates challenged in the Complaints are also now subject to a pending base rate case. Specifically, in the Company's pending base rate case at Docket Nos. R-2024-3047824, *et al.*, Aqua PA proposed changes to Aqua PA's base water and wastewater rates designed to produce a total increase in annual revenues of $126,675,472 based upon data for a fully projected future test year ("FPFTY") ending December 31, 2025 ("2024 Base Rate Case"). The filing was made in compliance with the Commission's regulations and contains all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase. Among other things, the 2024 Base Rate Case seeks to **decrease** the base rates applicable to New Garden wastewater operations.

Each of the 2024 Base Rate Case and the Revenue and Expense Complaints deal with the same subject matter, *i.e.*, the application of base rates for wastewater service to New Garden

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[1] This Motion is being filed at each of the above-captioned dockets, and it will be separately served upon (a) the Administrative Law Judges assigned to each docket and (b) the parties in each docket.

[2] On May 16, 2022, the Commission entered an Opinion and Order on the *2021 Rate Case* (the "*Rate Case Order*"). Relevant to the Complaint, the *Rate Case Order* authorized Aqua PA WW to prepare a tariff to collect a set revenue requirement from New Garden Ratepayers, like the Complainant. On May 23, 2022, Aqua PA WW filed its compliance tariff and proof of revenues (the "*Compliance Tariff*"), consistent with the *Rate Case Order*.

customers within the Company's certificated service territory. Therefore, in the interests of administrative efficiency and judicial economy, Aqua PA WW believes that the above-captioned matters should be consolidated for purposes of litigation, as there is substantial overlap as to the factual and legal questions raised in the 2024 Base Rate Case and the Complaints.

In support of this Motion, Aqua PA WW states as follows:

I. BACKGROUND

1. Aqua PA WW is a "public utility" as that term is defined under the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Commission.

2. Aqua PA WW provides wastewater service to approximately 40,000 customers throughout the Commonwealth of Pennsylvania pursuant to its Commission-approved tariff.

3. The Complainant is a residential wastewater customer of Aqua PA WW with a service address of 313 Hyde Park Road, Landenberg, PA, 19350. The Complainant's service address is located in New Garden Township.

4. On September 19, 2023, Aqua PA WW was served with the above-captioned Revenue Complaint at Docket No. C-2023-3043108 which, *inter alia*, alleged that the method(s) in which Aqua PA WW set its New Garden Wastewater tariffs in the *2021 Rate Case* were irregular.

5. Also on September 19, 2023, Aqua PA WW was served with the Expense Complaint filed by the Complainant which alleged that Aqua PA WW was collecting revenue from New Garden ratepayers for an expense that it is not incurring. The Expense Complaint was docketed by the Commission at Docket No. C-2023-3043109.

6. On October 10, 2023, Aqua PA WW filed separate Answers and New Matter to each of the Complaints. In its New Matters, Aqua PA WW averred that the Complaints are barred

by Section 316 of the Public Utility Code (66 Pa. C.S. § 316) and the doctrine of collateral estoppel, and, if granted, would constitute impermissible retroactive ratemaking, constitute impermissible single-issue ratemaking and violate the Commission-made rate doctrine.

7. On October 25, 2023, the Complainant filed Replies to each of Aqua PA WW's New Matters at the respective dockets.

8. On October 27, 2023, the Commission issued a Telephonic Hearing Notice at both above-captioned Complaints dockets, scheduling a telephonic evidentiary hearing for December 12, 2023.

9. On November 3, 2023, Administrative Law Judge Eranda Vero issued a Prehearing Order in the Complaints proceeding.

10. On November 15, 2023, the Company filed a Motion seeking the continuance of the December 12, 2023 Complaints Evidentiary Hearing and referral of the Complaints to the Commission's Mediation unit.

11. On November 21, 2023, the ALJ issued an Order Consolidating Complaints, Granting the Request for Continuance, and Sending the Case to the [Commission's] Mediation Unit.

12. On November 22, 2023, the Commission issued a Hearing Cancellation Notice, cancelling the December 12, 2023 Evidentiary Hearing for the Complaints.

13. On December 8, 2023, the Commission issued a Mediation Notice in the Complaints proceeding.

14. On February 1, 2024, the Commission issued a Teams Virtual Mediation Sessions Notice.

15. On March 7, 2024, the Company and Complainant participated in a virtual Mediation session presided over by Mediator Teri-Lee Rhoades ("Mediator").

16. On June 12, 2024, the Commission issued a Telephonic Hearing Notice, setting a Hearing date of July 23, 2024, for the Complaints.

17. The 2024 Base Rate Case was initiated on May 23, 2024, when Aqua PA filed on a consolidated basis Tariff Water – Pa. P.U.C. No. 4 ("Tariff Water No. 4") and Tariff Sewer – Pa. P.U.C. No. 4 ("Tariff Sewer No. 4") with the Commission to be effective for service rendered on or after July 22, 2024.

18. On June 13, 2024, the Commission issued an Order suspending Tariff Water No. 4 and Tariff Sewer No. 4 until February 22, 2024, unless otherwise permitted by Commission Order to become effective at an earlier date ("Suspension Order").

19. On July 1, 2024, a Prehearing Conference was held in the 2024 Base Rate Case.

II. MOTION TO CONSOLIDATE

20. Aqua PA WW herein respectfully requests that the 2024 Base Rate Case at Docket Nos. R-2024-3047824, *et al.*, and the Complaints at Docket Nos. C-2023-3043108 and C-2023-3043109 be consolidated for disposition because the 2024 Base Rate Case and the Complaints are interrelated and raise common issues of law in fact.

21. All of the above-captioned proceedings involve consideration of the base rates for wastewater service applicable to New Garden ratepayers.

22. Each of the Complaints seeks to challenge specific components of the Company's *Compliance Filing*, which established rates applicable to New Garden wastewater operations as a part of the 2021 Base Rate Case

23. The 2024 Base Rate Case seeks Commission approval to change (i.e., **decrease**) the rates applicable to New Garden wastewater operations that were established through the 2021 Base Rate Case.

24. Additionally, pursuant to the June 13, 2024 Suspension Order, the 2024 Base Rate Case shall include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules and regulations of Aqua PA WW, which the Complainant is challenging. *See* Suspension Order, Ordering ¶ 4.

25. If these cases were to proceed and not be consolidated, the Commission would, in effect, be reviewing the same complex base rate-related issues twice and in parallel.

26. Also, depending on the cases' outcomes, the Commission theoretically could grant relief in the two cases that conflicts or is inconsistent.

27. Therefore, it would be a waste of administrative and judicial resources to litigate these matters separately when they raise wholly overlapping issues of fact and law and involve concerns over Aqua PA WW's existing and proposed rates for New Garden customers which, through the 2024 Base Rate Case, Aqua PA WW seeks to **decrease**.

28. Thus, the consolidation of these proceedings will promote the efficient use of the time and resources of the parties and the Commission.

29. Aqua PA WW has contacted the Complainant via electronic mail to discuss consolidation. Aqua PA WW understands that the Complainant opposes the consolidation request.

30. For these reasons, Aqua PA WW respectfully requests that these proceedings be consolidated for purposes of disposition.

III. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Pennsylvania Public Utility Commission enter an order consolidating the 2024 Base Rate Case at Docket Nos. R-2024-3047824, *et al*., with the consolidated Complaint proceeding at Docket Nos. C-2023-3043108 and C-2023-3043109 for purposes of disposition.

Respectfully submitted,

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Date: July 10, 2024

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