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July 31, 2024

Via Electronic Email

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

Re: PA Public Utility Commission v. Aqua Pennsylvania Wastewater, Inc.
Docket No. R-2024-3047824; and

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find SCH USA, LLC's Answer to Motion to Consolidate and Motion for Stay of Aqua Pennsylvania Wastewater, Inc. in regard to the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

LMB/lww

Enclosure

cc: Hon. John M. Coogan w/enc. (via email)
Hon. Gail M. Chiodo w/enc. (via email)
Hon. Alphonso Arnold III w/enc. (via email)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of SCH USA, LLC's Answer to Motion to Consolidate and Motion to Stay, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: July 31, 2024

Lauren M. Burge

Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2024-3047824
v.	:	
	:	
Aqua Pennsylvania Wastewater, Inc.	:	
	:	
SCH USA, LLC	:	
	:	Docket No. C-2022-3036893
v.	:	Docket No. C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

**ANSWER OF SCH USA, LLC TO
MOTION TO CONSOLIDATE AND MOTION FOR STAY
OF AQUA PENNSYLVANIA WASTEWATER, INC.**

Pursuant to 52 Pa. Code §§ 5.61 and 5.103, SCH USA, LLC (“SCH USA”) submits this Answer to the Motion to Consolidate and Motion to Stay Procedural Schedule filed by Aqua Pennsylvania Wastewater, Inc. (“Aqua”) on July 11, 2024 regarding the above referenced matters. As discussed further below, SCH USA submits that the consolidation request should be denied because of significant customer-specific billing claims raised by SCH USA in the proceedings at Docket Nos. C-2022-3036893 and C-2022-3037118 that cannot be resolved in the rate case proceedings at Docket No. R-2024-3047824. However, while SCH USA seeks to resolve its billing disputes as soon as possible, SCH USA does not object to a limited stay of the procedural schedule in its Formal Complaint proceedings if the Commission deems it necessary.

In support of this Answer, SCH USA submits as follows:

I. BACKGROUND

SCH USA owns and operates a large commercial resort property known as the Split Rock Resort, which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. The Split Rock Resort receives non-residential wastewater service from Aqua in Rate Zone 4. Additionally, as an unmetered customer, SCH USA is currently billed by Aqua on a per Equivalent Dwelling Unit (“EDU”) basis.

On November 21, 2022 and November 29, 2022, SCH USA filed Formal Complaints with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) at Docket Nos. C-2022-3036893 and C-2022-3037118, respectively, regarding billing issues with SCH USA’s four wastewater accounts through which it is served by Aqua (the “Formal Complaints”). As discussed in detail in SCH USA’s Direct Testimony submitted in the consolidated Formal Complaint dockets,¹ the issues raised by SCH USA in the Formal Complaint proceedings include, *inter alia*,² that: (1) Aqua’s billing methodology is unreasonable as applied to SCH USA; (2) Aqua’s calculation of the EDUs used to bill SCH USA for wastewater service do not reflect actual usage or occupancy at the property; and (3) the adjustments required to the EDUs billed to SCH USA by Aqua since October 29, 2020 which have not and are not calculated consistent with Aqua’s own current tariff language.

As relief in the Formal Complaint proceedings, SCH USA is seeking to pay rates that are just and reasonable and based on the actual wastewater service being provided. This could be accomplished by: (1) measuring actual water consumption (with appropriate deductions for the

¹ SCH USA St. No. 1, Direct Testimony of Carlos Padilla; SCH USA St. No. 2, Direct Testimony of Ronald Carrier; and SCH USA St. No. 3, Direct Testimony of Frank Lacey, each dated April 3, 2024.

² The list of SCH USA’s issues in the Formal Complaint proceeding provided herein is only intended as a summary for purposes of this Answer. SCH USA’s written testimony and other pleadings in that proceeding provide a complete discussion of its positions and speak for themselves.

waterpark and pools); (2) measuring actual wastewater discharges to Aqua’s system; (3) adjusting/correcting the EDUs used for billing purposes to better reflect actual occupancy; or (4) assigning a different proxy that more accurately reflects actual occupancy at the resort. SCH USA also seeks adjustment of prior bills since October 29, 2020 to reflect these corrections.³

On May 23, 2024, Aqua filed Original Tariff Sewer – PA P.U.C. No. 4 (“Tariff No. 4”) with the Commission to become effective July 22, 2024. Through the tariff filing, Aqua proposes to increase its total wastewater annual operating revenues by approximately \$14.6 million, or 20.1%. On June 27, 2024, SCH USA filed a Petition to Intervene in Aqua’s rate case, which was subsequently granted.⁴

On July 11, 2024, Aqua filed a Motion to Stay Procedural Schedule in the Formal Complaint proceedings, and also filed a Motion to Consolidate at both the rate case and Formal Complaint dockets.⁵ SCH USA now submits this Answer to both the Motion to Stay and the Motion to Consolidate.

II. ANSWER

A. Answer to Aqua’s Motion to Consolidate

SCH USA submits that the Motion to Consolidate should be denied. While there may be some common issues between the Formal Complaints and the rate case,⁶ a number of the issues raised in the Formal Complaint proceedings are specific to SCH USA and its wastewater accounts, billings and, ultimately, adjustments required to correct overcharges by Aqua since October 29, 2020. In particular, issues raised by SCH USA regarding how Aqua has incorrectly calculated the

³ *Id.*

⁴ Scheduling Order dated July 12, 2024, at Ordering ¶ 1.

⁵ Note that Aqua did not serve all parties at the rate case docket, but rather only served counsel for SCH USA and the Administrative Law Judges in the Formal Complaint and rate case proceedings.

⁶ SCH USA is still developing its position(s) regarding Aqua’s rate filing and reserves the right to raise issues at the appropriate time in this proceeding.

EDUs billed to SCH USA under Aqua's current Commission approved tariff are individual billing issues which are not appropriately addressed in the base rate proceeding. Importantly, in the Formal Complaint proceedings, SCH USA is not challenging Aqua's tariff itself, but rather how the tariff is being applied to SCH USA as a customer. The individual account and billing issues raised in SCH USA's Formal Complaints are not appropriately addressed in a base rate proceeding, and therefore these two matters should not be consolidated. Further, if the Motion to Consolidate is granted, this will interfere with SCH USA's ability to address these individual billing issues which do not impact any other Aqua customer, and would violate SCH USA's due process rights. Indeed, a base rate case is not the proper proceeding for adjudicating or granting SCH USA's requested relief and billing adjustments for overcharges dating back to October 29, 2020.

The Commission's regulations and prior precedent recognize the need to balance various factors in determining whether consolidation is appropriate. In this instance, the factors clearly weigh against consolidation of the Formal Complaints with Aqua's current base rate proceeding. Section 5.81(a) of the Commission's regulations provides that "[t]he Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated." 52 Pa. Code § 5.81(a). Other considerations in ruling on a consolidation include the following: (a) whether additional issues exist that could cloud the determination of common issues; (b) whether consolidation will reduce litigation costs and decision-making for the parties and the Commission; (c) whether the issues in one proceeding go to the heart of an issue in the other proceeding; (d) whether consolidation will unduly protract a hearing or produce a disorderly or unwieldy record; (e) whether different statutory and legal issues are involved; (f) whether the party with the burden of proof differs in the proceedings; (g) whether consolidation will unduly delay the resolution of one of the proceedings; and (h) whether supporting data in both

proceedings will be repetitive.⁷ No single consideration, nor group of these considerations, is dispositive of consolidation. Rather, all factors must be evaluated, and a balancing of those favoring and disfavoring consolidation is required.⁸

While there may be some overlap between the issues raised in SCH USA's Formal Complaints and the issues SCH USA may address in Aqua's rate case, the issues are not identical and SCH USA's issues regarding the application of Aqua's tariff could cloud the determination of common issues in the rate proceeding. There are different legal and factual considerations that apply in Aqua's base rate case as opposed to the individual complaint proceedings, and the issues raised by SCH USA in the complaint proceedings do not go to the heart of an issue in the rate proceeding. The burdens of proof also differs in these proceedings, as SCH USA has the burden of proof in the Formal Complaint matters while Aqua has the burden of proof in the rate case.

Further, as discussed above, consolidation of these proceedings will likely prevent, or significantly impede, SCH USA's ability to address its individual billing issues, which would violate SCH USA's due process rights. Given that SCH USA's Formal Complaints have been pending since late 2022, it is particularly important that SCH USA maintain the ability to reach a resolution on these substantial financial issues as soon as possible. Therefore, a review of the factors described above weighs strongly against Aqua's Motion to Consolidate.

For these reasons, consolidation is not appropriate and Aqua's Motion to Consolidate should be denied.

⁷ See *PUC v. City of Lancaster Sewer Fund*, Docket No. R-2012-2310366, Second Prehearing Order at 3-4 (Nov. 26, 2012) ("*Lancaster Sewer Fund Prehearing Order*").

⁸ *Id.* at 3.

B. Answer to Aqua’s Motion to Stay Procedural Schedule

While SCH USA strongly believes that consolidation is not appropriate here, it recognizes that the Formal Complaints and the rate case are currently on a similar litigation schedule. It is also worth noting that SCH USA filed its complaints in November of 2022, seeking an adjustment for improper billing from October 2020, and Aqua’s applicable Original Tariff Sewer – PA P.U.C. No. 4 (“Tariff No. 4”) was only filed on May 23, 2024. As a result, SCH USA submits that Aqua has already had ample time to address and fully resolve issues raised in the complaints before the filing of its rate case. Nevertheless, if the Commission deems it necessary, SCH USA would not oppose a limited stay of the procedural schedule in the Formal Complaint proceedings. This would allow SCH USA and Aqua to address any general issues that are appropriate in the rate case proceeding, and at the conclusion of the stay, the parties can attempt to resolve, or litigate, the SCH USA specific billing issues based upon the record created in the Formal Complaint proceedings.

III. CONCLUSION

WHEREFORE, SCH USA respectfully requests that Aqua's Motion to Consolidate SCH USA's Formal Complaint proceeding with Aqua's base rate case be denied. However, SCH USA does not oppose a limited stay of the procedural schedule in the Formal Complaint proceedings, as necessary, so that any issues specific to SCH USA may be addressed in the Formal Complaint proceeding based upon the specific record evidence presented in those proceedings.

Respectfully submitted,

/s/ Lauren M. Burge

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Dated: July 31, 2024

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