

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ORDER**  
**DENYING MOTION TO CONSOLIDATE AND**  
**MOTION TO STAY**

On November 21, 2022, SCH USA, LLC (SCH or Complainant) filed a Formal Complaint against Aqua Pennsylvania Wastewater, Inc. (Aqua Wastewater or Respondent) at Docket Number C-2022-3036893 concerning unmetered wastewater service to three separate accounts at three separate service locations. On November 29, 2022, SCH filed a Formal Complaint against Aqua Wastewater at Docket Number C-2022-3037118 concerning unmetered wastewater service to one account at one service location. The Formal Complaint at Docket Number C-2022-3037118 was served on Aqua Wastewater on December 7, 2022. In both Formal Complaints, Complainant is alleging Aqua Wastewater is threatening to shut off its service and is incorrectly charging it for unmetered wastewater service. SCH claims it is being incorrectly charged because it is being charged pursuant to a settlement agreement that neither it nor Aqua Wastewater were party to, and its actual wastewater usage is far less than the volume reflected in the unmetered rate. Complainant requests a payment arrangement and that it be charged on a metered basis going forward.

On December 12, 2022, Aqua Wastewater filed an answer and new matter to the Formal Complaint filed at Docket Number C-2022-3036893. On December 27, 2022, Aqua Wastewater filed an answer and new matter to the Formal Complaint filed at Docket Number C-2022-3037118. In both answers Aqua Wastewater avers SCH is billed pursuant to the Commission-approved Rate Zone 4 tariff and denies there are any incorrect charges on the

accounts. Aqua Wastewater denies that the Commission can direct a payment arrangement for SCH. In both new matters Aqua Wastewater avers Complainant does not allege Respondent has violated the Public Utility Code, Pennsylvania Public Utility Commission regulations or orders, or its Commission-approved tariff.

On December 29, 2022, SCH filed a reply to new matter at both dockets. In both replies to new matters, although SCH admits it is being billed pursuant to Aqua Wastewater's Rate Zone 4 tariff, SCH alleges that it is being incorrectly charged based on a number of Equivalent Dwelling Units (EDU) included in a settlement agreement rather than applying the definition of EDU contained in Aqua Wastewater's tariff.

On January 4, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for Friday, March 17, 2023 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a consolidation and prehearing order on January 6, 2023, setting forth various rules that would govern the March 17, 2023 evidentiary hearing, as well as consolidating hearing of the two Formal Complaints.

On March 10, 2023, I issued an order, converting the March 17, 2023 evidentiary hearing to a prehearing conference. Also on March 10, 2023, a notice converting the evidentiary hearing to a prehearing conference was issued. Pursuant to the March 10, 2023 order, parties were to file prehearing memoranda by March 8, 2023. Both SCH and Aqua Wastewater filed a prehearing memorandum on March 8, 2023.

A prehearing conference was held on March 17, 2023. Counsel for both parties appeared. During the prehearing conference, parties discussed settlement, witnesses, presently identified issues, and a litigation schedule. Consistent with its prehearing memorandum, Aqua Wastewater raised issues it asserted should be resolved prior to scheduling an evidentiary hearing. On March 10, 2023, I issued a scheduling order, setting April 17, 2023 as the date by which Aqua Wastewater should file a motion regarding issues it wishes to resolve prior to scheduling an evidentiary hearing, and May 8, 2023 as the date by which SCH should file a

response to any motion filed by Aqua Wastewater. On April 17, 2023, Aqua Wastewater filed a motion for judgment on the pleadings. On May 8, 2023, SCH filed an answer to the motion for judgment on the pleadings. On May 22, 2023, I issued an order, denying Aqua Wastewater's motion for judgment on the pleadings.

On May 31, 2023, I issued an order staying this proceeding, and directing each party to provide a status report by June 30, 2023. Subsequent to the May 31, 2023 order, parties continued to engage in settlement discussions and provided me several status reports by e-mail indicating that settlement discussions were ongoing. On January 11, 2024, I issued an order memorializing the litigation schedule agreed to by the parties and provided further instructions regarding this proceeding. On June 5, 2024, I issued an order setting a new litigation schedule as agreed to by the parties.

On July 11, 2024, Aqua Wastewater filed a Motion to Consolidate the Formal Complaints of SCH USA, LLC at Docket Nos. C-2022-3036893 and C-2022-3037118 with Aqua Wastewater's pending base rate proceeding for its wastewater service at Docket No. R-2024-3047824. In its Motion to Consolidate, Aqua Wastewater asserted that the consolidation was appropriate because the proceedings raise common issues of fact and law.<sup>1</sup> Specifically, Aqua Wastewater states that the Formal Complaints involve the existing rates of Aqua Wastewater applicable to the Lake Harmony wastewater operations under Rate Zone 4. Therefore, Aqua Wastewater avers that the rates challenged in the Formal Complaints are now subject to the pending base rate case, and, in the interests of administrative efficiency and judicial economy, the Formal Complaint and base rate proceedings should be consolidated because there is substantial factual and legal overlap. Aqua Wastewater further argues that if the 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, which could result in relief in two cases that is in conflict or inconsistent. Also on July 11, 2024, Aqua Wastewater filed a Motion to Stay the Procedural Schedule in the Formal Complaint proceedings (Motion to Stay) because of its pending Motion to Consolidate described above.

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<sup>1</sup> In its Motion to Consolidate, Aqua Wastewater noted that the motion was also being served on the ALJs assigned to the base rate proceeding.

On July 31, 2024, SCH filed an answer to Aqua Wastewater's Motion to Consolidate and Motion to Stay. In its answer, SCH objects to Aqua Wastewater's Motion to Consolidate, averring that significant customer-specific billing claims raised by SCH in the Formal Complaint proceedings cannot be resolved in the base rate proceeding. SCH states that the issues raised by its Formal Complaints include: (1) Aqua Wastewater's billing methodology is unreasonable as applied to SCH USA; (2) Aqua Wastewater'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 Wastewater since October 29, 2020 which have not and are not calculated consistent with Aqua Wastewater's own current tariff language. As relief, in addition to seeking to pay rates that SCH claims would be just and reasonable and based on actual wastewater service being provided, SCH seeks adjustment of prior bills since October 29, 2020 to reflect the corrections that SCH asserts are needed. SCH states that, while there may be some common issues between the proceedings, the Formal Complaint raises issues specific to SCH, including adjustments SCH asserts are requested to correct overcharges by Aqua Wastewater since October 29, 2020. Regarding Aqua Wastewater's Motion to Stay, SCH states that, if the Commission deems it necessary, SCH would not oppose a limited stay of the procedural schedule in the Formal Complaint proceedings.

The Commission's regulation pertaining to Consolidation appears at 52 Pa. Code § 5.81, and states in relevant part:

**§ 5.81. Consolidation**

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

52 Pa. Code § 5.81(a).

As stated in its answer to Aqua Wastewater's Motion to Consolidate, SCH is seeking to pay rates to Aqua Wastewater that it claims are just and reasonable. The Commission's order entered at Docket Number R-2024-3047824 on June 13, 2024 states that Aqua Wastewater's pending base rate proceeding includes examination of both its existing and proposed wastewater tariffs. Therefore, I agree with both Aqua Wastewater and SCH that the Formal Complaints include some common issues of fact and law with the issues raised in Aqua Wastewater's pending base rate proceeding. However, I agree with SCH that Aqua Wastewater's Motion to Consolidate should be denied because the issues raised by SCH's Formal Complaints also implicate matters related to individual account and billing issues that may not be adequately addressed in a base rate proceeding. For instance, SCH states that it seeks adjustments to claimed overcharges by Aqua Wastewater since October 29, 2020. These claims may not be adequately addressed in Aqua Wastewater's base rate proceeding, and administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

In its answer to Aqua Wastewater's Motion to Stay, SCH states that it does not oppose a limited stay of the procedural schedule in the Formal Complaint proceedings. It is not immediately apparent why a limited stay of the procedural schedule in these Formal Complaint proceedings is either necessary or preferable. Because Aqua Wastewater's Motion to Consolidate is denied and SCH's Formal Complaints will not be consolidated with Aqua Wastewater's base rate case, I find no reason to delay the Formal Complaint proceedings. Therefore, Aqua Wastewater's Motion to Stay is denied. However, if parties agree to a stay to this proceeding for any reason, they may present their proposal for a stay to the undersigned for my consideration.<sup>2</sup>

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<sup>2</sup> SCH's written surrebuttal is due to be submitted by August 23, 2024. I will be unavailable from August 19 through August 23, 2024.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Consolidate filed by Aqua Pennsylvania Wastewater, Inc. at Docket Numbers C-2022-3036893 and C-2022-3037118 on July 11, 2024 is denied;

2. That the Motion to Stay filed by Aqua Pennsylvania Wastewater, Inc. at Docket Numbers C-2022-3036893 and C-2022-3037118 on July 11, 2024 is denied.

Date: August 12, 2024

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/s/  
John M. Coogan  
Administrative Law Judge

**C-2022-3036893 - SCH USA, LLC v. AQUA PENNSYLVANIA WASTEWATER, INC.**

*Updated 03/16/23*

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