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28 October 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v. Aqua PA
Docket Nos.

R-2024-3047822 (water)

R-2024-3047824 (wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Main Brief of Lake Harmony homeowner John Day, in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ John Day
john@johnday.us

Enclosures:

Cc: The Honorable Gail Chiodo (email only: gchiodo@pa.gov)
The Honorable Alphonso Arnold (email only: alphonarno@pa.gov)

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	Docket No.
	:	
v.	:	R-2024-3047822 (water)
	:	R-2024-3047824 (wastewater)
Aqua PA	:	
	:	
	:	

I hereby certify that I have this day served a true copy of the following document, the Main Brief of John Day upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission’s electronic filing system.

/s/ John Day
28th October 2028

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No.
	:	
v.	:	
	:	R-2024-3047822 (water)
Aqua PA	:	R-2024-3047824 (wastewater)
	:	
	:	

MAIN BRIEF
OF
JOHN DAY
LAKE HARMONY, PA

PUBLIC VERSION
28 October 2024

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I – INTRODUCTION & OVERVIEW

INTRODUCTION

As a private citizen with active-party status in this base rate case, I have participated in this base rate case on behalf of fellow homeowners in Lake Harmony, Pennsylvania who receive their wastewater service from Aqua Pennsylvania (referred herein as Aqua). My participation is driven by a strong commitment to my community and is entirely voluntary. I receive no compensation for my efforts, nor am I aligned with any formal party in this case. With over 25 years of executive program management experience, I balance stakeholders' needs from across the organization, and around the world, daily. I began my career as an industry analyst for the electric utility industry during its period of deregulation. A core lesson from my career is that success comes from meeting customers where they are, not from imposing a model that serves only the provider's convenience. Customer engagement and fairness are essential for long-term viability. For this reason, it is both unethical and financially unjustifiable for Lake Harmony homeowners to bear the disproportionate burdens of Aqua Pennsylvania's ratemaking or to be treated as incidental casualties of the ratemaking process.

This is my first time compiling a legal brief. I have approached the task with great respect for Commission protocols, its charter to uphold the regulatory compact, and a strong commitment to representing the concerns of Lake Harmony homeowners who have shared their concerns and views with me. I trust the court will focus on the substance of my arguments and welcome any guidance on procedural refinements, as this is not my usual area of expertise.

For purposes of this main brief, Kidder Township and Lake Harmony are used interchangeably. References to the 2022 Commission order pertains to the Commission's

directive to Aqua to study and report back to it a rate method more reasonable to systems that do not align with assumptions based on Aqua's systemwide average—such as the situation in the mixed-use and seasonal community of Lake Harmony.

Procedural History

On May 23, 2024, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater Inc. (Aqua or Company) filed Tariff Water-PA P.U.C. No. 4 and Tariff Sewer – PA. P.U.C. No. 4, with the Pennsylvania Public Utility Commission (Commission).

As a private citizen and ratepayer, I have diligently met all procedural obligations set forth by the ALJs in this base rate case. During these proceedings, I have spent months of my own time researching and compiling written testimony and exhibits. I filed a formal complaint through the Commission's e-file system on 29 June 2024, and participated in the pre-hearing conference on 1 July. I subsequently compiled and propounded, on behalf of myself and other concerned homeowners in Lake Harmony, four sets of discovery questions to Aqua, totaling 32 questions. I testified at the telephonic public-input hearing on 14 August, at which time my detailed testimony and exhibits were entered into the evidentiary record without objection from any party. Because of work obligations, I was unable to participate in the evidentiary hearings, but have reviewed hundreds of pages of testimony from the parties in this case. After the public input hearings, I inquired with the Commission about obtaining transcripts, but was informed they were available only at a cost, which I have chosen to forgo. With the permission of two individuals, I have included their written public-input testimony as exhibits to this main brief.

“Black Box” Settlement

On 22 October, the OCA informed several *Pro Se* complainants, including this party, that a potential “black box” settlement had been agreed upon in principle between several other parties in this base rate case. This news came after nearly all this main brief was researched and compiled. The OCA extended an invitation to *Pro Se* consumer complainants who were not part of the settlement to join a conference call on 24 October to review and ask questions about the potential settlement agreement. This party and one other *Pro Se* complainant attended the conference call with legal counsel from OCA and Aqua attending. The ‘Settlement Term Sheet’ was presented, with parties given the opportunity to ask questions. The OCA and Aqua legal representatives stated that the proposed settlement is not final, as the settlement would be reviewed by the administrative law judges and commissioners. Despite being an active party during the proceedings (more active than some parties who were invited to participate in the proposed settlement), Aqua did not extend an invitation to this party to participate in the settlement discussions. This party delivered a prepared statement at the 24 October conference call, a copy of which was subsequently provided to the OCA.

Legal Standards¹

Utility Monopoly Regulation - Utility regulation is a valid exercise of state police power to protect the general welfare of citizens. States can regulate private companies in industries that serve the public interest, such as utilities. The regulation of utility rates and services is essential for public welfare, as affirmed in *Munn v. Illinois*, 94 U.S. 113 (1877), and further supported by *Ark. Elec.*

¹ For purposes of this section, a summary of the applicable legal authorities as presented in the main legal brief of the Pennsylvania Office of Consumer Advocate, in the case *Pennsylvania Public Utilities Commission vs. Pennsylvania American Water Company*, 26 March 2024. These Authorities and more are enumerated in Section IV of this Main Brief.

Coop. Corp. v. Ark. Pub. Serv. Comm'n, 461 U.S. 375 (1983). Pennsylvania's Public Utility Code, which governs monopoly utilities, is a constitutional application of this power, as demonstrated in cases like *Jenkins Twp. v. Pub. Serv. Comm'n*, 1916 Pa. Super. LEXIS 30.

Burden of Proof – In rate increase proceedings, the burden of proof is on Aqua PA to show that the proposed rates are just and reasonable, as per 66 Pa. C.S. § 315(a). The evidence must be substantial and credible, not based on mere suspicion (*Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505; *Lansberry v. Pa. PUC*, 578 A.2d 600). The utility must establish its case by a preponderance of the evidence (*Lansberry*, 602), and this burden remains with the utility throughout the proceeding, even when other parties challenge the rate increase. In *Berner v. Pa. PUC*, 116 A.2d 738, the Pennsylvania Supreme Court emphasized that the utility must demonstrate the necessity and reasonableness of costs, and challengers are not required to prove that costs are improper or unnecessary.

This principle is reinforced in *Pa. PUC v. Pa. American Water Co.* (2004), which held that there is no similar burden on parties proposing adjustments. Similarly, *Pa. PUC v. Equitable Gas Co.* and *Pa. PUC v. PPL Elec. Util. Corp.* reaffirm that the burden of proof does not shift away from the utility during the proceedings.

Just and Reasonable and Not Unduly Discriminatory Rates – A public utility's rates must be just, reasonable, and conform to Commission regulations (66 Pa. C.S. § 1301(a)). Utilities can recover necessary expenses and earn a reasonable return on investment (*City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982). The Commission has broad discretion in determining if rates are reasonable and in balancing consumer charges with investor returns (*Popowsky v. Pa. PUC*, 665 A.2d 808).

Utilities must prove that expenses included in rates are reasonable, and the Commission can exclude expenses deemed unreasonable (*Popowsky v. Pa. PUC*, 674 A.2d 1149). Additionally, rates cannot be unduly discriminatory among customer groups (66 Pa. C.S. § 1304). The Commission can classify services and rates based on factors such as usage patterns and cost of service (*Zucker v. Pa. PUC*, 402 A.2d 1377).

The cost-of-service guides rate decisions, along with considerations of service quality, gradualism, and affordability (*Lloyd v. Pa. PUC*, 904 A.2d 1010).

Due Consideration of the Interest of Consumers – A base rate structure and/or increase in base rates involves a substantial property right, entitling ratepayers to notice and procedural due process (*McCloskey v. Pa. PUC*, 195 A.3d 1055, 1068; *Barasch v. Pa. PUC*, 546 A.2d 1296). Under the U.S. Constitution (Amendment XIV, § 1), and state law, the Commission must consider consumers' interests when reviewing general rate increase requests, as these significantly impact ratepayers (71 P.S. § 309-5). The Commission's actions must balance this with its other statutory responsibilities.

II – SUMMARY OF ARGUMENT

This main brief addresses Aqua Pennsylvania's failure to meet the burden of proof regarding its compliance with a 2022 Commission order, the fairness of its flat-rate billing method for unmetered wastewater customers in Lake Harmony, and its transparency around material costs and cost causality in consumer billing as related to Section 1329 findings.

Non-Compliance with the 2022 Commission Order – In 2022, the Pennsylvania Public Utility Commission, recognizing the obvious and significant inequity of Aqua's methodology, issued a clear directive requiring Aqua to study and report on rate structures more suitable for the Lake Harmony community. This was a crucial step toward addressing the inherent unfairness of Aqua's flat-rate billing system for unmetered customers, many of whom consume far less water than the system-wide average. However, Aqua has failed to comply with this directive, providing only a cursory response that falls far short of the Commission's mandate.

Aqua's non-compliance with this order has a direct and significant impact on the fairness and justness of the rates it proposes. By failing to fulfill the Commission's directive, Aqua has neglected its responsibility to provide evidence that its current flat-rate structure is reasonable for Lake Harmony's seasonal community. This failure undermines the core principles of rate-setting under Pennsylvania law, which require that rates be based on actual usage and not unduly discriminatory (66 Pa. C.S. § 1301). Aqua's flat-rate system forces part-time residents, who use substantially less water, to subsidize full-time residents—a practice that contravenes the principle of cost causation and violates the Commission's directive to explore fairer alternatives.

Without a comprehensive study addressing the unique needs of seasonal communities, Aqua cannot demonstrate that its current rate structure is just and reasonable. Its refusal to provide an adequate analysis leaves the Commission without the necessary data to evaluate

whether the proposed rates align with actual usage patterns, particularly in communities like Lake Harmony where water consumption is far below the assumed average.

Aqua's failure to explore alternatives has prolonged the financial burden on unmetered customers in Lake Harmony, who continue to pay inflated rates based on assumptions of full-time occupancy. This perpetuates an inequitable rate structure that penalizes part-time residents, despite their lower water consumption and full-time residents in an economically challenged region of the Commonwealth. The injustice of this system is compounded by Aqua's continued reliance on system-wide averages that have no relevance to the unique seasonal nature of Lake Harmony, paying rates among the highest in Aqua's service territory.

The Office of Consumer Advocate (OCA) has recognized this issue and recommended denying Aqua's proposed rate increase until it complies with the 2022 Commission order. OCA's expert witness, Mr. Mierzwa, with concurrence by OCA's Ms. Hoover, testified that Aqua's failure to provide a meaningful report renders any proposed rate increase unjustifiable. (OCA St. 5 at 7, 39; OCA St. 1, Supp Direct at 9) This position underscores the critical need for Aqua to meet its regulatory obligations before imposing further financial burdens on ratepayers.

Aqua's failure to comply with the 2022 Commission order has deprived the Commission of critical information needed to ensure that rates are just, reasonable, and reflective of actual usage. This non-compliance, paired with Aqua's reliance on an outdated and inequitable flat-rate system, demands immediate corrective action. The Commission should deny Aqua's proposed rate design for Lake Harmony, deny any increases proposed in this base rate case, and require a full study of alternative rate structures before any further rate changes are approved. Only then can the interests of seasonal customers be properly protected, and the principles of fair and equitable rate-setting be upheld across the Aqua system.

Rate Structure & Rate Design – The Commission endeavors to gather all relevant facts to make a fair decision. Aqua does not factor into its rate design critical data on Lake Harmony's mixed-use and seasonal nature, which has been researched and presented to the Commission for the first time during these proceedings. The data clearly shows Lake Harmony is a mixed-use, seasonal community with a service demand profile and demographics that differ from Aqua's systemwide and Commonwealth averages. Over 50% of Lake Harmony homeowners have out-of-town mailing addresses, and 35% of homes are used for short-term rentals with an average occupancy rate of 38% (Day Testimony, Exhib. 1 at 9). The Kidder/Splitrock wastewater plant operated, on average, at just 61% of its daily capacity over a 5-year period, even accounting for inflow and infiltration (Day Testimony, Exhib 4). Despite this, Aqua's wastewater rates assume 100% home occupancy and are based on Aqua's system-wide average of 3,870 gallons of water consumption per month. Total volumetric processing at the Kidder/Splitrock wastewater plant fell by 16.5% between 2019 and 2023 (Day Testimony, Exhib. 4), during the same period wastewater rates in Lake Harmony as part of Rate Zone 4 increased by 100% (Day Testimony, Exhib 1 at 15).

As per demographics, census data shows that Kidder Township has an older population (33.4% are 65+) and a poverty rate (22.5%) significantly higher than the state average. (Tr. 620-633, Day Main Brief Exhib. A) Meanwhile, Aqua's wastewater rates are over 30%+ higher than the average across its system, further straining those with fixed and limited incomes.

Aqua's flat-rate wastewater billing system disproportionately impacts part-time homeowners in Lake Harmony, violating the principles of fairness established by Pennsylvania law. Aqua's rate structure assumes an average water consumption of 3,870 gallons per month, forcing seasonal residents who use much less water to pay the same rate as full-time residents. As an example, unmetered homeowners consuming 1,000 gallons per month of water in Lake

Harmony pay \$437 per year more than their metered counterparts in the same rate zone. (Day Testimony, Exhib 1 at 17)

Legal precedents emphasize fairness in utility rate-setting, notably *McCloskey v. PUC* (2017) and precepts from *Lloyd v. PUC* (2006), which reinforce that rates must align with actual costs and usage. Aqua's reliance on fixed costs and regionalization policies to justify its rate structure is insufficient. The Pennsylvania Public Utility Code (66 Pa.C.S. § 1301) mandates that rates be just and reasonable, and Aqua has not demonstrated why part-time residents should bear the same financial burden as full-time users.

The Commission previously directed Aqua to explore an alternative rate method more reasonable to a seasonal community, yet the company has failed to propose one; rather, it proffers the same rate design. This neglect, combined with misallocation of costs, calls for heightened scrutiny and rate adjustments to reflect actual usage in seasonal communities.

Small businesses in Lake Harmony are also participating in this rate case, which speaks to the larger economic impact of Aqua's flat rates (See Section V of this Main Brief). For small businesses, such as the Westwood Condominium Association, Aqua's use of Equivalent Dwelling Units (EDUs) results in charges that do not align with its current operations. (Tr. 1040-1048, Day Main Brief Exhibit B) Despite only 25% occupancy, Westwood pays for all 90 units, placing an unreasonable financial burden on the operation. Split Rock Resort, an active party in this rate case, testifies similarly. The Pennsylvania court's decision in *Popowsky v. Pennsylvania Public Utility Commission* (937 A.2d 1040) emphasizes that billing should reflect actual usage, raising legitimate concerns about Aqua's practices meeting regulatory fairness standards. To address the impact of Aqua's current rate design on its captive ratepayers, the Commission must also scrutinize Aqua's EDU rate-making practices in Lake Harmony to ensure they do not unfairly disadvantage seasonal businesses on which the local economy depends.

Billing Transparency and Deceptive Practices — Consumer financial underwriting of Aqua’s expansion has grown rapidly over the past 15 years, with captive ratepayers being collateralized through Section 1329 filings to secure the Company’s acquisitions. OCA’s Ms. Hoover has testified on Aqua’s history of rate increases, noting that since 2009, the Commission has approved \$137.8 million in rate hikes, with 71% of that amount occurring since 2021 (OCA St. 1 at 17). Despite this, with rates rising to unprecedented levels, Aqua’s customers remain unaware of how much of their monthly utility bill subsidizes the Company’s acquisitions — a cost that was not caused by consumers.

Aqua’s billing practices lack transparency regarding how acquisition costs are integrated into consumer rates, raising legal questions under the Pennsylvania Consumer Protection Law (73 P.S. § 201-1 et seq.), which mandates clear communication in billing practices. Aqua notifies customers of potential rate increases tied to system acquisitions before approval yet fails to clearly communicate these costs individually or in their aggregate once the acquisitions are finalized. This lack of clarity between operational costs and acquisition-related expenses undermines consumer understanding and constitutes deceptive billing practices.

The case *Delaware Valley Citizens' Council for Clean Water v. Pa. P.U.C.* stresses the importance of transparency in rate structures. The Pennsylvania Public Utility Code (66 Pa.C.S. § 1301) further suggests that Aqua’s billing practices may be unreasonable if material costs tied to acquisitions are not properly disclosed. Including a line item on zone tariffs and consumer bills for the aggregate dollar amount associated with system acquisitions would enhance transparency, improve consumer understanding of the cost drivers behind their water and wastewater bills, and assist with regulatory compliance.

III – OVERALL POSITION ON RATE CASE

A. AQUA DID NOT FULFILL THE 2022 COMMISSION ORDER

In 2022, the Commission issued a clear directive requiring Aqua to study and report on flat rate methods more reasonable to unmetered mixed-use communities. Despite the passage of more than two years, Aqua has failed to submit the required report, thereby disregarding the Commission's explicit order.

This failure constitutes a violation of the Public Utility Code (66 Pa.C.S. § 501), which grants the Commission the authority to issue binding orders to regulated utilities. When a utility is ordered by the Commission to investigate and propose solutions for inequities in its rate structure, as Aqua was in this case, the utility is legally obligated to comply. Aqua's inaction amounts to a failure to meet this obligation and undermines the regulatory process designed to ensure that rates are just and reasonable.

In *Barasch v. Pa. PUC*, 546 A.2d 1296 (Pa. Cmwlth. 1988), the Commonwealth Court held that a utility's failure to follow a Commission directive constitutes a failure to meet its burden of proof in subsequent rate cases. Aqua's non-compliance with the 2022 Commission order directly calls into question its justification for maintaining the current unmetered flat rate for Lake Harmony, or any increases. The Court's decision in *Barasch* emphasizes that a utility cannot reasonably expect rate increases when it has failed to take mandated steps toward resolving ongoing rate inequities. Aqua's disregard for the 2022 order is therefore grounds for rejecting its proposed rate method and rate increase until it complies with the Commission's directive.

Additionally, Aqua's failure to fulfill the order exacerbates the inequities faced by unmetered customers in Lake Harmony, who continue to pay flat rates that do not reflect their

actual water usage. This issue was acknowledged in the 2022 Commission order, and Aqua's delay in addressing it has prolonged the financial burden on customers who consume far less water than the systemwide average on which they are billed.

In *Popowsky v. PUC*, 683 A.2d 958 (Pa. Cmwlth. 1996), the Court reaffirmed that utility rates must be proportionate to the service rendered. By ignoring the 2022 Commission's directive to explore alternative rate structures, Aqua has continued to propose rates that are unjust and unreasonable for most Lake Harmony customers.

Aqua's failure to comply with the 2022 Commission order not only constitutes a violation of its regulatory obligations but also perpetuates inequitable and unjust rates for many customers in a seasonal community. Accordingly, the proposed rate method for Lake Harmony and any proposed rate increases should be denied.

B. AQUA HAS FAILED TO ADDRESS THE FUNDAMENTAL UNJUST PRACTICE OF FLAT UNMETERED RATES FOR CAPTIVE CONSUMERS IN THE SEASONAL AND MIXED-USE COMMUNITY OF KIDDER TOWNSHIP / LAKE HARMONY

Aqua Pennsylvania's flat-rate billing structure raises significant legal and policy concerns, particularly in seasonal communities like Lake Harmony. Unmetered customers pay substantially more than their metered counterparts for the same level of service, despite lower water consumption. This disparity, coupled with Aqua's failure to address alternative rate methods, defies fairness of its rate-setting practices and its compliance with public utility principles. As discussed in more detail below, this party has shown that Aqua has not met its affirmative burden of proof on several fronts.

Discrepancy Between Metered and Unmetered Rates — Aqua has not adequately explained the disparity between metered and unmetered rates. Homeowners in Lake Harmony, who — for example — use 1,000 gallons of water per month (8 days of use), are charged \$437 more annually

than their metered counterparts in Rate Zone 4 for the same level of wastewater service. (Day Testimony, Exhib. 1 at 13; Day Main Brief, Exhib. 3) This stark difference raises serious questions and legal concerns about Aqua's methods for calculating flat rates that are fair and reasonable for homeowners in seasonal communities. This methodological deficiency stems from Aqua's reliance on system-wide averages for a commodity (water) that is not measured in the provisioning of local wastewater service.

Regionalization and Single Tariff Pricing Are Not Licenses to Exploit — While regionalization aims to streamline operations, Aqua's implementation disregards critical differences in water consumption between full-time and seasonal communities. While a single tariff simplifies administration, it fails to account for differing levels of wastewater service utilization within a rate zone. Aqua bills Lake Harmony residents based on system-wide averages, assuming full-time occupancy, without an adequate justification why customers should pay for a service level they do not use.

While it's true that wastewater systems have fixed costs, Aqua's flat-rate structure misrepresents how these costs are distributed. Metered customers, who pay based on actual usage, contribute to these fixed costs but pay significantly less than unmetered customers in Lake Harmony for the same consumption (e.g., 1,000 gallons). (Day Testimony, Exhib. 1 at 13) A metering system or alternative flat rate method more closely aligned with actual usage would provide a fairer reflection of individual wastewater service utilization. Aqua has yet to address why flat-rate unmetered customers—who use even less water—are paying more toward fixed costs than those who are metered. This discrepancy violates the principle of cost causation and raises concerns about Aqua's commitment to fair billing practices. In short, efficiency for the monopoly does not supersede principles of equitable ratemaking. Accordingly, the proposed rate method for Lake Harmony and any proposed rate increases should be denied.

C. AQUA HAS NOT MET THE BURDEN OF PROOF; THEREFORE, ITS PRESENT UNMETERED, FLAT RATE METHOD FOR LAKE HARMONY IS UNJUST AND UNREASONABLE

In accordance with Pennsylvania law, a public utility seeking a rate increase bears the burden of proving that the proposed rates are just, reasonable, and lawful under the Public Utility Code (66 Pa.C.S. § 315(a)). Aqua has failed to meet this burden with respect to its unmetered flat rate method for Lake Harmony wastewater customers and, by extension, any proposed rate increase. Not only has Aqua failed to justify the imposition of a flat rate that does not account for actual usage, but it has also failed to provide evidence that this method is equitable for a largely mixed-use and seasonal community.

As established in *Popowsky v. PUC*, 683 A.2d 958 (Pa. Cmwlth. 1996), rates must be “just and reasonable,” which requires consideration of the varying usage patterns of customers. In that case, the Court emphasized the importance of ensuring rates are proportionate to the service received by different customer groups. Here, Aqua’s flat rate disproportionately impacts Lake Harmony’s part-time residents, who use significantly less water than the systemwide average, as demonstrated by my detailed testimony and exhibits. The evidence clearly shows that Aqua’s current flat rate system imposes undue financial burdens on customers who consume fewer services, contravening the principle of rate proportionality upheld in *Popowsky*.

Additionally, Aqua’s defense of its flat rate system as a method of recovering fixed costs fails to address the disproportionate impact on part-time residents in Lake Harmony. Akin to the rationale in *Lloyd v. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), the Court found that utilities cannot over-recover costs from a subset of customers merely to subsidize other customer classes. Aqua’s flat rate for wastewater service—based on an assumed average water usage level of full-

time residency—results in significant overcharging for customers who use far less water, violating the principles of equity akin to those set forth in *Lloyd*.

Furthermore, Aqua’s continued reliance on system wide averages to set wastewater rates for Lake Harmony ignores the Commission’s 2022 order. In that proceeding, the Commission explicitly ordered Aqua to explore rate methods more reasonable for unmetered customers, recognizing the unique circumstances of communities like Lake Harmony may not align to the use of Aqua’s system wide average for water consumption. To date, Aqua has failed to submit the required report or adequately explore unmetered alternatives befitting Lake Harmony’s mixed-use and seasonal nature. Without this analysis, Aqua cannot claim that its present rate structure is reasonable. The Commonwealth Court has held in *Barasch v. Pa. PUC*, 546 A.2d 1296 (Pa. Cmwlth. 1988), that a utility’s failure to follow the Commission’s orders constitutes a failure to meet its burden of proof. Aqua’s inaction in this regard is a clear violation of that precedent.

For these reasons, Aqua has not met the burden of proof required to justify its flat-rate method for Lake Harmony. The rate structure, as currently designed, is unjust and unreasonable for a mixed-use and seasonal community and must be modified to better reflect usage patterns and the requirements imposed by the Commission in its prior orders. Accordingly, the proposed rate method for Lake Harmony and any proposed rate increases should be denied.

D. CONSUMER BILLING REQUIRES INCREASED TRANSPARENCY AROUND SECTION 1329 EXPENSES, ITS ABSENCE A DECEPTIVE BUSINESS PRACTICE

Consumers shouldn’t need to be mystics to understand the cost drivers of their wastewater bills; instead, they deserve clear and transparent information that explains the charges they incur.

While Aqua provides pre-notification before acquisitions with general estimates of potential cost increases, these notices lack the specificity needed for customers to understand the true impact once acquisition-related costs are embedded in their bills. This opacity in billing

practice undermines the principle that costs should be borne by those who cause them. However, acquisitions are an expense consumer don't cause. Embedding acquisition-related expenses within the base rate without explicit disclosure is not just confusing—it undermines consumer trust and violates established regulatory principles, especially the principle of cost causality. By concealing acquisition costs in general rate tariffs, Aqua prevents customers from discerning whether their rate increases were due to operational needs or acquisition-driven expenses.

Aqua's lack of transparency raises concerns under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-2). By failing to clearly delineate the origin of acquisition-related charges, Aqua risks misleading customers and engaging in deceptive practices. This lack of transparency damages consumer trust and undermines public confidence in the regulatory process. The principle of cost causality—requiring that those who cause costs bear those costs—has been upheld by the Commission and the courts. With system acquisitions, however, it is Aqua with Commission approval that is the progenitor of the costs. In *Popowsky v. PUC*, 683 A.2d 958 (Pa. Cmwlth. 1996), the court reaffirmed that rates must not only be just in total but also reflect the true cost drivers. This was further emphasized in *Barasch v. Pa. PUC*, 493 A.2d 653 (Pa. 1985), where the Pennsylvania Supreme Court held that utilities must present their rate structures in a clear and understandable manner. Accordingly, Aqua's present billing transparency around Section 1329 acquisition expenses needs to be fundamentally transformed.

IV – RATE STRUCTURE AND RATE DESIGN

A. FACTUAL BACKGROUND

The Kidder Township / Lake Harmony system was acquired by Aqua in 2012.

Over the previous two base rate cases, the wastewater rate for unmetered customers in Rate Zone 4 (including Lake Harmony) has increased by 100%. (Day Testimony Exhibit 1 at 15)

Aqua's rate method for unmetered residential customers in Lake Harmony applies a flat-rate, based on an assumed average water consumption of 3,870 gallons per month (127 gallons per day) for calculating wastewater charges. (Day Testimony Exhib. 1 at 17) This flat-rate method applies uniformly, regardless of the varying water consumption patterns in Lake Harmony, where many homeowners are part-time residents who use significantly less water than the systemwide average.

Data from the Kidder/SplitRock Wastewater Treatment Plant indicates that the facility operated, on average, at 61% of its daily design capacity over a 60-month period from 2019 to 2024, inclusive of inflow and infiltration, showing that actual residential and commercial usage is even lower than reported. During this five-year period, total treatment volume at the plant declined by 16.5%. (Day Testimony Exhibit 4; Main Brief Exhibit 4)

Lake Harmony, a mixed-use seasonal community in the Commonwealth's Poconos Mountains, is assigned to Aqua's Rate Zone 4, and billed using a flat unmetered wastewater rates method. According to the Kidder Township municipal office, it mails over 50% of its property tax bills to

addresses outside the township. (Day Testimony Exhib. 1 at 15) This demographic information highlights the community's seasonal nature and underscores the fact that many part-time homeowners use far less water than the typical Aqua customer. For example, a homeowner consuming 1,000 gallons of water monthly (8 days of use) would pay \$135.20 under Aqua's proposed flat-rate structure, compared to \$98.90 for a metered customer using the same water volume in the same rate zone. (Day Testimony Exhib. 1 at 13)

In Aqua's 2021 base rate case, following a formal complaint and intervention by the Office of Consumer Advocate, the Commission ruled in 2022 that Aqua must study and report on rate methods that would be more reasonable for a mixed-use community like Lake Harmony. However, the report, submitted only after the discovery process began, proposed no new rate design options, despite the Commission's directive for more reasonable alternatives.

B. LEGAL ARGUMENT

Aqua's justification for the flat-rate system rests on regionalization and system consolidation policies, which they argue benefit all customers (Aqua St. R-11 at 18). However, Aqua has failed to demonstrate how these corporate goals justify charging part-time homeowners as though they are year-round residents. Aqua's witness, Mr. Duerr, defends the flat-rate structure, citing fixed costs (Aqua St. 11-R at 15). While fixed costs are inherent to wastewater service, their distribution should be proportionate to actual usage. Metered customers pay based on their water consumption, a more equitable approach than forcing part-time residents to subsidize full-time residents through flat-rate billing.

Unjust Treatment of Part-Time Residents – The application of systemwide averages for water consumption does not reflect the reality of part-time occupancy in Lake Harmony, where many

homeowners occupy their homes only a few days per month. Aqua's flat-rate system unjustly burdens these homeowners, violating the principle of cost causation, which dictates that customers should pay rates based on the costs they impose on the system. The current structure forces part-time residents, who contribute less to the system, to pay for services they do not use.

Disregard for Fairness in Rate Design – Under Pennsylvania law, utility rates must be just and reasonable. The Commission has repeatedly emphasized that rates should not disproportionately affect specific customer groups without sufficient justification (66 Pa.C.S. § 1301). Aqua's reliance on regionalization, single-price tariffs, and fixed costs to defend the flat-rate system disregards this principle. Moreover, Aqua has not provided evidence that similar utilities across Pennsylvania rely on system wide averages in seasonal communities where wastewater rates are 30%+ higher than its average across rate zones.

Failure to Explore Alternatives – Despite the Commission's 2022 order for Aqua to investigate alternative rate methods for seasonal communities, Aqua has not delivered a rate method to this base rate case that is any different than the previous base rate case (Day Interrog. IV-1). Aqua's failure to comply with this order further exacerbates the inequity faced by Lake Harmony residents.

Misapplication of Consumer Case Decision – In Aqua's rebuttal, the Company recited four paragraphs of Commission ALJ Judge Cheskis' decision from a 2021 consumer complaint case as "background" in this 2024 base rate proceeding (Aqua St. 3 at 27; Aqua St. 11-R at 14-15; reference by SCH-USA 3-SR at 4).² While that decision was appropriate for a consumer complaint case, the legal standards for utility base rate cases are different.³

² *John Day v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. C-2021-3026213, November 30, 2021

³ See Main Brief Appendix B for more detailed discussion.

C. RELEVANT CASE LAW

Aqua's flat-rate billing system contradicts established legal precedents that emphasize the importance of fairness in utility rate-setting. Several key cases support the argument that Aqua's rate design is unjust for Lake Harmony homeowners:

McCloskey v. Pennsylvania Public Utility Commission (2017) – In *McCloskey*, the Court upheld the Pennsylvania Public Utility Commission's (PUC) discretion in determining ratemaking methodologies but reaffirmed that utilities must justify the fairness and reasonableness of their proposed rates through compliance with statutory requirements. The case underscored the Commission's role in balancing the interests of both consumers and utility shareholders when setting rates, with the Court noting that Commission decisions must account for the equitable treatment of different customer classes. Applying this to Lake Harmony, the unmetered flat-rate structure Aqua Pennsylvania imposes does not account for the unique seasonal usage patterns in the community. This is particularly troubling when viewed in light of the *McCloskey* decision, which affirmed the principle that utility rate structures must be grounded in reasonableness and fairness. Aqua's failure to adapt its rate design to the seasonal nature of Lake Harmony—despite evidence that such a community has lower average usage—raises serious questions about whether Aqua has met the burden of proof for just and reasonable rates in this case.

Furthermore, while *McCloskey* supports the Commission's discretion in ratemaking, it also makes clear that utilities cannot rely on rigid formulas or methods that do not reflect actual service usage. The flat-rate system, as applied to unmetered customers in Lake Harmony, imposes a disproportionate burden on residents who do not use the system year-round, similar to how the complainant in *McCloskey* challenged the overreaching methodologies used to calculate rates in

that case. Aqua Pennsylvania's failure to address the specific needs and characteristics of Lake Harmony's seasonal community undermines its justification for the proposed rates. This is in direct contrast to the principles set forth in *McCloskey*, which emphasized the need for fair and equitable treatment of customers under the Commission's regulatory authority.

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. (2012) – In this decision, the PUC rejected a proposed rate increase that unfairly impacted low-income customers. The Commission held that Columbia Gas failed to justify why its rate proposal was fair for all customer classes. Similarly, Aqua has not sufficiently justified its reliance on system wide averages for calculating wastewater rates in a seasonal community. The unmetered flat-rate structure disproportionately affects part-time homeowners, who use far less water than full-time residents. Furthermore, the exceptionally high wastewater rates of Lake Harmony (in Rate Zone 4) disproportionately affect vulnerable populations with lower economic means.

Popowsky v. Pennsylvania Public Utility Commission (2007) – In this case, the Commonwealth Court ruled that the Commission must ensure that rates are designed in a way that reflects the cost of service and does not disproportionately impact any one customer class. *Popowsky* reinforced the principle that rate structures should not unfairly burden one group of customers over another. Aqua's flat-rate system disproportionately affects part-time residents of Lake Harmony, who bear the same financial burden as full-time residents despite their lower usage. This is inconsistent with the *Popowsky* ruling, which requires a careful balancing of the impact on different customer classes.

Lloyd v. Pennsylvania Public Utility Commission (2006) – The Pennsylvania Supreme Court ruled that utility rates must not discriminate unfairly between different classes of customers. The court emphasized the importance of balancing utility goals with the needs of its customers. Akin to the

rationale in *Lloyd*, Aqua's flat-rate system fails this test, as it forces part-time homeowners to subsidize full-time residents. Seasonal residents should not bear the burden of Aqua's regionalization goals at the expense of fairness.

Barasch v. Pennsylvania Public Utility Commission (1988) – the Commonwealth Court held that "a utility's failure to comply with a Commission directive in a prior case is, as a matter of law, a failure to meet its burden of proof in a subsequent rate case" (546 A.2d at 1305). This principle is highly relevant to the current base rate case involving Aqua and the residents of Lake Harmony. In this proceeding, Aqua failed to meet a critical 2022 order issued by the Commission. Specifically, the Commission ordered Aqua to study and submit a report on a flat rate method for billing unmetered customers, such as those in Lake Harmony, to address concerns about the fairness of flat-rate billing structures. To date, Aqua has not provided the required report. The utility has not demonstrated that it has adequately explored alternative rate structures or provided the necessary evidence to support the reasonableness of continuing the existing flat-rate method. The absence of this report makes it impossible for Aqua to claim that it has met its burden of proof regarding the fairness and reasonableness of its proposed rates for unmetered customers in Lake Harmony.

Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission (1984) – The Commonwealth Court held that a utility must justify its rates by demonstrating that they are based on the cost of providing service to each customer class. In the context of Aqua's flat-rate structure, this case is significant because the utility has not provided sufficient evidence that the flat-rate billing for Lake Harmony residents reflects their actual usage or cost of service. The decision underscores the requirement that rates must align with actual service provision, something Aqua has failed to do in this case by applying system wide averages to a seasonal community.

City of Lancaster (Water) v. Pennsylvania Public Utility Commission (1980) – The court held that utilities must design rates that reflect the specific characteristics of the service provided. Applying a systemwide average to part-time residents in a seasonal community like Lake Harmony is inappropriate. Aqua’s use of this method, which does not account for the unique water usage patterns of part-time homeowners, is inconsistent with the principle that rates should be tailored to meet the needs of specific customer groups.

Zucker v. Pennsylvania Public Utility Commission (1979) – The Zucker decision grants the Commission broad discretion to set rates based on usage patterns and the cost of service for different customer classes. This ruling is the cornerstone of the argument that the Commission can and should modify Aqua’s flat-rate billing system to account for the lower water usage by seasonal residents in Lake Harmony. By relying on system-wide averages, Aqua fails to meet the *Zucker* standard of fairness, as the rates are neither equitable nor reflective of the actual cost of service for part-time customers. The second key principle in *Zucker* is that rates must be reasonably related to the cost of providing service. The current flat-rate structure for unmetered customers in Lake Harmony does not align with the cost of serving part-time residents and seasonal businesses. These customers impose lower demands on Aqua’s infrastructure and operations, yet they are charged the same rate as full-time residents.

Armstrong v. United States, 364 U.S. 40 (1960) – The U.S. Supreme Court held that a "taking" occurs not only when property is physically seized but also when financial or regulatory actions disproportionately burden property owners. In the context of Aqua’s rate structure in Lake Harmony, this principle is relevant because the flat-rate billing system imposes an excessive financial burden on seasonal residents, who use far less water than full-time residents. Aqua’s uniform rates, without accounting for actual usage, effectively diminish the value of part-time homeowners’ properties by forcing them to pay more than what is just and reasonable for the

service they receive. This is analogous to the financial encumbrances recognized in *Armstrong*, which can constitute an unfair "taking" under the law.⁴

United States v. Public Utilities Commission of California, 345 U.S. 295 (1953) – The U.S. Supreme Court emphasized that rate structures must not result in undue discrimination among customers. In the context of Aqua's flat-rate structure, the rates imposed on Lake Harmony's part-time residents, compared to full-time residents, create a form of discrimination based on usage patterns. This decision reinforces the principle that utility rates should reflect the specific circumstances of different customer groups to avoid disproportionately impacting any one group unfairly.

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) – The United States Supreme Court established critical guiding principles in the regulation of utility rates. These principles are directly applicable to the case at hand, specifically Aqua Pennsylvania's imposition of flat unmetered wastewater rates in the Lake Harmony community. The *Hope* decision provides that the rate-making process must balance the interests of investors and consumers, with an overarching goal of ensuring that rates are just and reasonable. Furthermore, *Hope* clarified that while utilities are entitled to a fair return on investment, there is no guarantee of specific revenues. The Court noted, "the company cannot properly claim confiscation merely because it is restricted to the recovery of the amounts which are a part of the 'cost' of service" (320 U.S. at 602). Aqua's reliance on standard industry practice, regionalism, single price tariff, and/or fixed costs to justify the flat-rate method in Lake Harmony ignores this critical distinction.

Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) – The U.S. Supreme Court in Bluefield emphasized that utilities are entitled to a reasonable return on investment, but rates must also be fair to consumers. This case reinforces

⁴ See Section VIII of this Main Brief, 'Shareholder Returns and Ratepayer Rights,' for more detailed discussion.

the argument that Aqua's rates, while designed to ensure a return for shareholders, must also be balanced to prevent overburdening customers, particularly those in a seasonal community like Lake Harmony. Aqua's reliance on flat-rate billing without accounting for the reduced demand in such communities does not meet the standard of fairness articulated in Bluefield.

V. AQUA'S ARGUMENT LACKS MERIT

Aqua argues that its flat-rate billing structure and broader policy of consolidation and regionalization align with public utility objectives, suggesting that this party's concerns are "counter to this policy" (Aqua St. R-11 at 18). However, Aqua's argument oversimplifies the goals of regionalization and mischaracterizes the purpose of utility regulation. While regionalization can offer efficiencies in service delivery, it cannot be used to justify inequitable rate designs that disproportionately burden one group of customers—notably part-time residents billed a flat rate—without a fair distribution of costs.

Unjust Impact on Part-Time Homeowners – Homeowners in Lake Harmony are assigned to one of the highest wastewater rate zones in Aqua's system, enduring persistent rate shock that doesn't dissipate over time. Aqua's flat-rate billing structure is based on an assumed average water consumption of 3,870 gallons per month or 127 gallons per day (Day Interrog. II-3). This one-size-fits-all approach is particularly detrimental to part-time homeowners in Lake Harmony, many of whom occupy their homes for only a few days each month.⁵ These homeowners, who consume significantly less water than the system-wide average, are nonetheless charged as though they are full-time residents. This systemic inequity is compounded by wastewater rate

⁵ This fact contravenes Aqua witness Herbert's justification for maintaining the same flat rate structure. Witness Herbert asserts, "all flat rate customers will be charged the same rate for the same service provided regardless of the premise's location..." (Day Interrog. IV-1) In a seasonal community such as Lake Harmony, the same level of service is not being delivered for the same rate, hence the impetus for the Commission's 2022 order.

increases in Rate Zone 4, which have risen by 100% over the past two rate cases (Day Interrog. III-7).

While Aqua's witness Manning claims that the company "mitigated" the proposed rate increase from \$133.35 to \$135.20 (Aqua St. R-3 at 24), this adjustment is superficial for many homeowners in Lake Harmony because it fails to address the underlying structural inequities of the flat-rate system and the larger Aqua system – not to mention wastewater rates in Rate Zone 4 are already among the highest in the Aqua system. Simply reducing the size of an increase does not resolve the core issue: part-time residents continue to pay for services they seldom use, shouldering a disproportionate financial burden—a burden the Bureau of Investigation and Enforcement (I&E) would exacerbate through a proposed 7.8% rate increase to \$147.73 per month. (I&E St. 3 at 26). This 7.8% rate increase is on top of a 100% residential rate increase that has occurred over the past four years for customers in Rate Zone 4 and is counter to the economies of scale argument Aqua's Mr. Moul makes. (Aqua St. 7 at 4)

In responding to I&E's challenge to Aqua's proposed rate method for new zones serving recent Section 1329 acquisitions, Aqua's Ms. Heppenstall replies:

“The Company does not need basis or support for an average monthly wastewater bill of \$100 except for keeping the interests of its customers in the forefront.” (Aqua St. 5-RJ at 4)

The reality for Lake Harmony homeowners, however, tells a different story. If Aqua truly doesn't need basis or support for average rates except for keeping customer interests at the forefront, why is the Company proposing the same flat rate method for unmetered customers in mixed-use and seasonal communities, despite the 2022 Commission order to the contrary?

Misallocation of Fixed Costs – In Aqua's rebuttal, Mr. Duerr avers that the company's fixed costs justify the flat wastewater rates imposed on Lake Harmony residents (Aqua St. 11-R at 15). While

fixed costs are inevitable in any utility, Aqua's reliance on this argument ignores a critical distinction: the method of allocating those costs. Aqua's flat-rate system unfairly forces part-time residents, who consume less water and place lower demands on the system, to subsidize full-time residents—be it in Rate Zone 4 or across the Aqua system. As a result, part-time homeowners bear a disproportionate share of the financial burden for services they rarely use, which undermines the principle of equitable rate structures.

The principle of cost causation, central to utility rate design, dictates that rates should be based on the costs a customer imposes on the system. In *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), the court ruled that utility rates must be "reasonably related" to the cost of serving customers. Aqua's flat-rate system, which disregards actual water usage, clearly violates this principle. Part-time residents, by definition, impose lower costs on the system than full-time residents, yet they are charged as though their usage is identical. This not only contradicts cost causation but also undermines the regulatory objective of ensuring equitable rates.

Deficient Industry Comparisons – Aqua justifies its flat-rate system by claiming that similar practices are common among utilities in Pennsylvania and the broader industry. (Aqua St. 11-R at 16; Aqua St. 5-SR at 6-7). However, this generalization lacks substantive evidence, as Aqua has not demonstrated how many utilities use system-wide averages to calculate wastewater rates in seasonal communities where wastewater rates are 30%+ higher than the average of wastewater rates across the utility system.

Ms. Happenstall testifies about assumptions related to the use of averages, i.e., that using the system-wide average for water consumption to determine flat rates means some customers will consume more than the average, while others will consume less (Aqua St. 5-SR at 6). However, new facts presented to the Commission in this base rate case refutes this assumption

in the context of Lake Harmony. In the absence of water metering data, volumetric treatment data of the Kidder/Split Rock Wastewater Plants serves as a legitimate proxy. There, hard data supplied by Aqua show that the treatment demand of Lake Harmony, residential and commercial consumers combined was, on average, only 61% of the plant's daily design capacity between 2019 and 2023—and this figure includes infiltration and inflow, indicating that the actual waste generated by consumers is even lower. (Day Testimony Exhib. 4)⁶ Moreover, the total wastewater treatment demand at the plant fell by 16.5% between 2019 and 2023 — while wastewater rates in Rate Zone 4, Lake Harmony homeowners in tow, increased by 100% (Day Testimony Exhib. 4 at 2; Day Exhib. 1 at 15).

The under-demand on the wastewater plant corroborates data from Kidder Township, which shows that over 50% of homeowners have their property tax statements mailed to an address outside the township, another indicator of a seasonal community with part-time occupancy. (Day Ex. 1 at 9) Separately, public input testimony from Mr. DelRosso reveals that the Westwood Condominium Association operates at approximately 25% occupancy. (Tr. 1040-1048, Main Brief Exhibit B)

By relying on 'standard industry practice' in an outlier situation, Aqua forces consumers in Lake Harmony to pay rates that assume 100% occupancy, even though actual demand is significantly lower. This creates substantial inequity, as part-time residents and seasonal businesses are charged for services they do not fully utilize.⁷ Aqua's defense of using standard industry averages in a seasonal community like Lake Harmony ultimately fails to account for the

⁶ See Main Brief Exhibit 4, or Day Testimony Exhibit 4, pages 4-5, which details the monthly volume of wastewater treated over a 60-month period compared to the plant's design capacity of 400,000 gallons per day. In only 3 of those 60 months did the treatment plant's volume exceed its design capacity, with Aqua attributed those 2021 instances to weather-related inflow. (Day Interrog. IV-4). Charts and tables from this exhibit are also provided in this document as a Main Brief Exhibit D.

⁷ As noted in Day Testimony Exhib 3 at 1, statistical averages are often used to summarize data, but relying on averages to drive outcomes is a misleading and inappropriate method for outlier situations. Similarly, standard industry practices built on system wide averages and designed for typical scenarios falter when applied rigidly to non-standard situations.

unique consumption patterns and reduced demand, resulting in rates that are neither just nor reasonable for the affected consumers.

The False Dilemma of Burdening Other Customers – Aqua defends its flat-rate billing structure in Lake Harmony by testifying that reducing rates for about 1,200 customers would necessitate increasing rates for other customers (Aqua St. 10-R at 10; Aqua St. 5-SR at 7). This cost-shifting argument exemplifies monopoly thinking it frames the issue in zero-sum terms, suggesting that any adjustment to one part of the system’s customers must come at the expense of another.

This argument is also a red herring, distracting from the real issue of rate equity. While utility rate-setting often requires balancing interests among different customer groups, this balance must be based on principles of fairness and cost justification. Aqua’s defense ignores the reality that the current flat-rate structure already places an undue burden on part-time homeowners in Lake Harmony, effectively forcing them to subsidize the costs of full-time residents across the Aqua system who use more wastewater service. The argument that adjusting rates for part-time homeowners would unfairly increase costs for others is misleading because the existing rate structure itself is inherently inequitable.

Most critically, Aqua’s argument neglects to address the role of its shareholders in this arrangement. Shareholders benefit directly from the Company’s rate structure, yet Aqua has provided no indication that they would absorb any portion of the financial burden should rates be adjusted for Lake Harmony homeowners. By focusing exclusively on customers, Aqua effectively shields its shareholders from any responsibility, suggesting that only ratepayers should bear the financial cost. This is an incomplete and unjust analysis of how financial responsibilities should be allocated.

At the heart of this issue is the question of entitlement. In *Popowsky v. Pennsylvania Public Utility Commission*, 665 A.2d 808 (Pa. Cmwlth. 1995), the Commonwealth Court underscored

that both shareholders and ratepayers should share equitably in the financial consequences of regulatory decisions. Aqua has provided no evidence demonstrating its shareholders are more entitled to guaranteed investment returns than the company's captive customers are to retain their financial earnings. Aqua has, in fact, done the exact opposite, proposing to reward its shareholders with a 10.95% rate of return on equity. (Aqua St. 7 at 1)

In the *Delaware Valley Citizens' Council for Clean Water v. Pennsylvania Public Utility Commission* (1978), the Pennsylvania Commonwealth Court ruled that ROEs must align with the actual risk utilities face, rejecting claims for excessively high returns. The Court made it clear that ROEs should reflect economic conditions and not result in a windfall for shareholders at the expense of captive ratepayers. Similarly, in *Middletown Township v. Pennsylvania PUC*, 482 A.2d 674 (Pa. Cmwlth. 1984), the court held that while utilities are entitled to a fair return, rate increases must not unduly burden customers, further reinforcing the principle that customers should not be disproportionately affected by a rate structure that primarily benefits shareholders.

Ratepayers, particularly in a regulated monopoly where they have no choice but to pay the imposed rates, should not be forced to sacrifice their own financial resources—money they could otherwise invest in retirement, education, or other personal goals—to subsidize the returns of shareholders. The *Delaware Valley Citizens' Council for Clean Water v. Pennsylvania PUC*, 572 A.2d 597 (Pa. Cmwlth. 1990), decision reinforces the need for fairness in distributing financial burdens between shareholders and customers, with the court cautioning that rates should reflect an equitable sharing of costs. The notion that captive customers must continue to subsidize shareholder returns through inflated rates, especially for part-time homeowners in Lake Harmony, is inequitable and unreasonable.

The United States Supreme Court addressed the issue of fair rate of return in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); the Court emphasized that

the rate-making process requires balancing the interests of investors and consumers — and does not guarantee that a business will generate specific revenues. (OCA St. 1 at 24)

In sum, Aqua's assertions that reducing rates for Lake Harmony homeowners would necessarily result in rate increases for other consumers are a false dilemma, red herring, and unjust allocation of financial responsibility. There is no valid reason to prioritize shareholder returns over the financial well-being of captive customers, especially when those customers are already bearing an inequitable burden under the current rate structure. The Commission should reject Aqua's cost-shifting defense and ensure that rate adjustments for Lake Harmony customers reflect the principles of fairness, equity, and shared financial responsibility.

VI. CONCLUSION

Aqua's flat-rate billing method for wastewater services in Lake Harmony is unjust, disproportionately burdening part-time homeowners who use far less water than full-time residents. The use of system-wide averages to calculate unmetered rates overlooks the unique characteristics of Lake Harmony and violates Pennsylvania's legal principles of fairness and cost causation. Aqua's justifications for this structure are weak under both regulatory and legal standards. Furthermore, Aqua's refusal to explore alternative rate-setting methods, such as alternative flat rate methods, self-metering, seasonal adjustments, shows non-compliance with its obligations under the Pennsylvania Public Utility Code. This is further evidenced by its failure to adhere to the Commission's 2022 order to investigate and report on more reasonable ratemaking methods for unmetered properties in seasonal communities like Lake Harmony.

Aqua witness Duerr's defense of the flat-rate billing method (Aqua St. 11-R at 15) exposes both ethical and statutory flaws. Ethically, the focus on "process efficiency" prioritizes a monopoly's administrative convenience over the just and reasonable treatment of consumers, disregarding the burden on part-time homeowners and seasonal businesses that use significantly

less than the assumed rate. This rigid reliance on “standard practices,” despite clear evidence of lower usage, fails to equitably distribute costs, effectively charging for services that aren't fully used. Statutorily, the use of systemwide or regional averages without considering community circumstances violates the Public Utility Code’s mandate for “just and reasonable” rates and raises questions about infringement of the ‘Takings Clause’ of the Fifth Amendment to the U.S. Constitution.⁸ Aqua’s approach thus falls short of ensuring fair, consumption-based rates for all customers.

⁸ The U.S. Constitution's ‘Takings Clause’ prohibits the government or entities operating under its authority from taking private property for public use without just compensation. While utilities are permitted to recover reasonable costs and earn a return on investment, Aqua’s practice of passing on disproportionate costs to a subset of ratepayers in Lake Harmony without clear, direct benefits to those customers may constitute an unjust taking. In *Armstrong v. United States*, 364 U.S. 40 (1960), the Supreme Court held that a “taking” occurs not only when property is physically seized but also when regulatory or financial encumbrances disproportionately burden property owners. Section VIII of this Main Brief discusses in more detail.

V – COMMUNITY ECONOMIC BURDEN

Aqua’s flat-rate structure raises serious concerns about economic hardship on two fronts: (1) full-time residents with limited financial means, and (2) the viability of small businesses in Kidder Township.

Economic Hardship – At public input hearings, Lake Harmony homeowner Erika Spott provided key data from the 2020 U.S. Census. She revealed that the median age in Kidder Township is 60.5 years—much higher than the statewide median of 40.9 years. (Tr. 620-633, Day Main Brief Exhib. A) With 33.4% of residents aged 65 or older, many live on fixed incomes and are vulnerable to economic changes. Spott also highlighted that 22.5% of the population lives in poverty, nearly double the statewide poverty rate of 11.8%, and that the employment rate is only 45.8%, compared to the Commonwealth’s 60.1%. These residents are already facing significant economic challenges, and Aqua’s flat-rate structure exacerbates this burden by imposing high wastewater rates—some of the highest in Aqua’s system—on residents least able to afford them. This flat-rate system fails to account for the unique economic realities of Kidder Township, further straining a population already dealing with financial hardship. Residents are not only grappling with financial pressures but are disproportionately subsidizing the costs of Aqua’s broader system without a fair correlation to their actual usage.

Economic Burden on Small Businesses – Aqua’s flat-rate billing method disproportionately affects small businesses, critical to Lake Harmony’s local economy. For instance, the Westwood Condominium Association, as testified by Mr. Louis DelRosso, is charged based on Equivalent Dwelling Units (EDUs), with no regard for actual occupancy. (Tr. 1040-1048, Day Main Brief Exhibit B) Despite only 25% annual occupancy, the Association is billed for full capacity year-

round, resulting in inflated costs disconnected from actual water usage. This imposes an unreasonable financial burden, limiting their ability to manage costs and remain competitive. As DelRosso explains:

“To assign a fixed EDU, based on expected or historical availability and occupancy, without addressing decreases in either, is neither fair nor equitable. This creates an unreasonable burden on the property owner and an unearned windfall for the utility... Over the years, Aqua has never reviewed or validated the appropriateness of the EDUs assigned to Westwood, nor investigated occupancy or flow. There was no incentive for them to do so.” (Tr. 1040-1048, Day Main Brief Exhibit B)

Seasonal businesses like vacation rentals and resorts face similar challenges. These businesses, operating below full capacity for much of the year, are forced to pay for full-time water consumption, creating a stifling cost burden. As DelRosso testified, the EDU method disregards seasonal fluctuations, generating inflated costs that penalize small businesses. "Over the years, Aqua has never reviewed or validated the appropriateness of the EDUs assigned to Westwood, nor investigated occupancy or flow," DelRosso stated, highlighting the inequity of Aqua's billing structure. (Tr. 1040-1048, Day Main Brief Exhib. B)

In the case of Splitrock Resort, Aqua's refusal to explore alternatives such as self-metering exacerbates the issue. Aqua witness Herbert argues that self-metering could lead to underreporting water usage, asserting:

“In situations where an independent entity provides water service and bills a customer for this service, the entity has an incentive to correctly meter a customer's usage. However, for SCH USA, who provides water service for itself through private wells has less incentive to accurately measure water usage.” (Aqua St. 10-R at 9)

This argument, however, is in stark contrast to Aqua’s own practice of charging consumers in Lake Harmony more per year under its unmetered flat-rate method than their metered counterparts for the same level of service. (Day Exhib. 1, at 13). Aqua’s reasoning—that self-metering could lead to underreporting—implies a lack of trust in its own customer base. Yet, simultaneously, the company expects customers to trust the current method that charges higher rates for the same level of service simply because the customer is unmetered. This selective application of trust highlights how Aqua entrenches its practices or, alternatively, guides its captive customers toward a regulatory remedy process that is onerous for them to navigate.

Aqua’s current application of EDUs in Lake Harmony raises concerns about the principles of equitable ratemaking, particularly as it applies to commercial businesses. While the flat-rate billing structure does not necessarily disadvantage every commercial enterprise, there are reasonable concerns—particularly for seasonal businesses operating below full capacity—that warrant further scrutiny. This disparity arises because the flat-rate structure fails to account for actual usage, resulting in inflated costs for businesses like Westwood or Split Rock Resort that do not operate year-round at full capacity.⁹

Impact on Tourism and Seasonal Economy – Lake Harmony’s economy thrives on seasonal tourism. However, Aqua’s flat-rate structure undermines the viability of this economy by imposing year-round costs that do not align with actual usage. Short-term rental properties, for instance, are billed as though they are fully occupied year-round, despite having average occupancy rates as low as 38%. (Day Exhibit 1 at 9) These inflated costs reduce profitability and deter investment in the tourism sector, which is essential for the area’s economic health. As fewer tourists visit and fewer rental properties are available, local businesses experience reduced revenue, leading to job losses and diminished tax revenues for the township and state. This economic contraction is

⁹ Split Rock Resort is a formal complaint with active party status in this base rate case.

exacerbated by Aqua's rigid, flat rate method, which discourages the reinvestment needed to support a vibrant, sustainable tourism industry.

Local Employment and Economic Stability – As businesses allocate larger portions of their budgets to inflated utility bills, less capital is available to invest in workforce growth, wages, or job creation. In a community with a 22.5% poverty rate and an aging population living on fixed incomes, this added financial burden compounds existing vulnerabilities. Fewer employment opportunities and stagnant wages create a cycle of economic stagnation, reducing overall local spending and investment. The economic strain caused by Aqua's billing method makes it difficult for the community to rebound. As small businesses struggle under excessive costs, the local economy suffers from reduced job growth and lower revenues, further limiting the township's financial stability.

Public Interest and Economic Growth – The Pennsylvania Public Utility Code mandates that rates be "just and reasonable," a principle that extends beyond individual fairness to include broader economic considerations. Aqua's rate structure, by imposing an unjust burden on seasonal businesses and households, disproportionately burdens the economic growth necessary for Lake Harmony to thrive. It is important to clarify that this concern is not a blanket statement regarding all businesses using an EDU method but rather a call for a more nuanced assessment of how seasonal business models interact with Aqua's flat-rate method of billing. Ultimately, this issue warrants thorough scrutiny by the Commission to ensure that Aqua's EDU rate method and assignment does not unintentionally favor businesses in lower-cost rate zones or result in unfair burdens for seasonal businesses, which are crucial to the local economy in Lake Harmony.

The Commission should be concerned that utility rates enable, rather than hinder, economic growth. Adjusting Aqua's rates methods to reflect actual usage patterns would alleviate the

financial burden on seasonal businesses and help promote long-term economic stability. A more equitable rate structure would allow small businesses to allocate their resources to growth, job creation, and reinvestment in the community.

VI – NON-COMPLIANCE WITH 2022 COMMISSION ORDER

In 2022, the Commission ordered Aqua to explore and report on alternative rate structures for unmetered customers more reasonable for a mixed-use and seasonal community, such as Lake Harmony. Aqua has not fulfilled this order, and both my public input and detailed written testimony asserted that Aqua's response to the Commission was inadequate. From this party's detailed, public input testimony:

“It's astonishing and disappointing that Aqua's study and report to the 2022 Commission Order consisted of merely a single paragraph and an Excel table. While this complainant—on his own time—has participated in the rigor and protocols of active-party status, compounded and served four sets of interrogatory questions, researched and compiled 25 pages of detailed testimony, and assembled highly informative and annotated exhibits. This stark contrast of effort highlights a profound disregard for the Commission's public policy mission and regulatory authority in the Commonwealth. In a utility base rate case, the burden of proof falls on the utility to justify its rates. In actuality, the burden of proof has fallen upon this complainant to demonstrate a flawed rate structure—flat rates based on assumptions that are flat wrong.” (Day Testimony Exhibit 1 at 3)

Echoing this concern, Lake Harmony homeowner Ms. Erika Spott testified at the public input hearings:

“Aqua has now had several years to undertake the study and report (which to the best of my knowledge has not been done), and in the meantime, [Kidder Township] homeowners have continued to pay unmetered flat rates based on assumptions that have no rational relationship whatsoever to a fair and reasonable rate that is representative of the community profile.” (Tr. 620-633; Main Brief Exhibit 1)

Simply put, Aqua did not deliver the report it was ordered to produce. Rather than studying the seasonal nature of the community and its customers' unique usage patterns, Aqua studied rate spreadsheets that assume full-time occupancy (Aqua St. 3-R at 24). The Company's comparison of average water consumption across its system compared to the average in Rate Zones entirely misses the point, along with the corresponding spuddle about affixing Lake Harmony's flat wastewater rates to 3,870 gallons per month or 3,835—an irrelevant assessment for a community of seasonal, not full-time, residents.

When asked in discovery to clarify the relevance of comparing system-wide versus zone averages to determine a flat unmetered wastewater method for Lake Harmony, Aqua's response further exemplified its disconnect with the Commission's 2022 order. Aqua witness Herbert replied:

“It is more relevant to use statewide averages to calculate flat unmetered rates for the sake of moving toward the Company's goal of single tariff pricing. Under a consolidated water or wastewater base rate, all flat-rate customers will be charged the same rate for the same service, regardless of the premise's location in the Company's service areas scattered throughout the Commonwealth” (Day Interrog. IV-1A)

However, the Commission's 2022 order neither directed nor required Aqua to align an alternative flat rate method with system wide averages or the goal of single tariff pricing. The directive was to research and deliver a report on a flat rate method more reasonable for systems that may not align with Aqua's system-wide average.

Moreover, Aqua failed to file this report with the base rate filing, citing it as an “oversight.” Instead, an excel table was produced after the OCA inquired about the status of the Commission order. (Aqua St. 3 at 25). Aqua's “report” merely reiterated the same flat-rate method for a seasonal community like Lake Harmony that the Commission previously found unconvincing.

Meanwhile, since the 2022 Commission order, the homeowners of Lake Harmony have upheld their end of the regulatory compact by paying Aqua's increased rates.

OCA witness Mierzwa independently testified that Aqua did not fulfill the Commission's 2022 order, recommending that Aqua's rate increase be denied until it complies with this order (OCA St. 5 at 7, 39). Mr. Mierzwa elaborated:

“Exhibit CEH-2-R is a two-page document and analysis which includes no discussion of the details of the analysis prepared by the Company. This two-page document does not qualify as a study or report, and presenting the document as a data request does not meet the Commission's directive of presenting a study or report in this proceeding.” (OCA St. 5-SR at 6)

OCA's Ms. Hoover concurs with Mr. Mierzwa's assessment and recommends that Aqua complete the required study by February 22, 2025, sharing it with the Commission, involved parties, and the public (OCA St. 1, Supp Direct at 9).¹⁰

In surrebuttal testimony, Aqua witness Happenstall recommends the Commission reject Hoover's proposal for expanded community engagement by citing the number of testimonies given at public input hearings (Aqua St. 5-SR at 7). Ms. Happenstall's argument lacks merit, as the number of individuals testifying at a public hearing does not diminish the inequity that is intrinsic to Aqua's flat-rate structure in Lake Harmony, where many homeowners pay significantly more annually compared to their metered counterparts in the same rate zone for the same level of service. This discrepancy highlights the unfair burden on unmetered customers, regardless of participation in public testimony. Additionally, during the discovery phase of this proceeding, this party compiled into questions the concerns of other homeowners, reducing their need to testify

¹⁰ Additionally, Ms. Hoover suggests allowing 60 days for review of the study, during which the case can be reopened or a working group formed to address customer issues. Aqua would then file a report summarizing the meetings and any agreed-upon changes, followed by a 60-day public comment period.

individually.¹¹ Furthermore, public input hearings are just one of several avenues through which customers are voicing concerns in this base rate case, and the extent of participation at input hearings does not fully capture the public's outcry related to Aqua's rates.¹² While Aqua operates a monopoly over its customers, that control does not extend to constraining consumer-inclusive public policy. The hard-earned income, retirement savings, and taxes of consumers—captive with no choice in the marketplace for wastewater service—significantly underwrites Aqua's finances, bankrolls its expert witnesses, and pays for the regulatory framework meant to protect consumers.

This party supports OCA Ms. Hoover's recommendation for increased community engagement between Aqua and the affected communities. However, working group sessions, should they happen, would not likely address the inequity of residential wastewater rates in Lake Harmony in the near-term.¹³

The Commission approved Aqua's flat-rate structure for Lake Harmony in 2022 with the expectation that the utility would conduct a study and report on a more reasonable rate method for systems that don't align with the Company's system-wide average for water consumption – which it has not fulfilled.

¹¹ Ms. Happenstall may not have received the cover letters accompanying the four sets of discovery questions this party served on Aqua. Each cover letter, for example, stated: *'Enclosed you will find Interrogatories... of John Day, on behalf of himself and other Lake Harmony homeowners. The questions are compiled in this consolidated set in the spirit of procedural efficiency and the elimination of duplicative questions.'* (John Day to Michael Hassel, Garrett Lent, Nicholas Stobbe - Post & Schell, various dates).

¹² Customers also express their concerns and complaints through State Representatives and letters sent directly to the Commission. In its rate increase announcements, Aqua provides instructions for public participation, including an option to "send a letter to the PUC." While this information is consistent with what appears on the Commission's website, it does not explain that letters sent to the Commission are not entered into the evidentiary record—only statements made during public input hearings are. This lack of clarity creates the potential for confusion, as customers may mistakenly believe that submitting letters is sufficient and that attending public input hearings is unnecessary.

¹³ In light of uncertainty around when consensus will be achieved through the OCA's recommendation for a working group, coupled with Aqua's non-compliance with the 2022 Commission order after a 2-year window to study, a request for temporary, immediate rate relief is filed with this brief. See Appendix A to this Main Brief.

VII – BILLING TRANSPARENCY AND DECEPTIVE PRACTICES

Under Section 1329 of the Pennsylvania Public Utility Code, Aqua Pennsylvania has the authority to recover the fair market value of systems it acquires by incorporating these costs into its rate base. This mechanism allows Aqua to expand its operations and modernize infrastructure. However, the financial burden of these acquisitions is borne not by Aqua's shareholders but by its existing customers—customers who are unaware of how much of their monthly water or wastewater bill is attributed to underwriting Aqua's strategy for acquisitions. This party's request for increased billing transparency is not questioning Aqua's ability to recover costs associated with Section 1329 filings but rather imploring the Commission for increased consumer transparency regarding the allocation of these costs.

OCA's Ms. Hoover has provided a record of Aqua's acquisition history, noting that since 2009, Aqua's rates have increased by \$137.8 million, with 71% of these increases occurring since 2021 when Commission rulings on Section 1329 filings began matriculating into the rate base (OCA St. 1 at 17) The percentage of that \$137.8 million rate increase attributed to seven Section 1329 filings is not published in rate tariffs and has not been communicated to consumers.

Aqua's transfer of Section 1329 costs to customers functions as a de facto lien on private property. Although Section 1329 filings are not formal liens, the effect is similar: they impose a long-term financial burden on captive customers, whose property values are indirectly impacted by the increased utility costs, even though they had no role in the acquisition decisions. These customers and their private property cannot escape the financial obligations imposed by Aqua's acquisitions, which accumulate over time like a lien, limiting their control over their own financial commitments. Without clear and transparent billing that identifies these costs, customers are left in the dark, further compounding the problem. The frequency of base rate hikes (with no sign of

abating), paired with the lack of transparency around the rate impact of Section 1329 filings, undermines consumer trust and Pennsylvania's consumer protection laws.

In his rebuttal testimony regarding the lack of billing transparency related to Section 1329 acquisitions, Aqua's Mr. Duerr states:

"I disagree with Mr. Day's accusations about our tariffed rates or billing practices. Consolidation of the water and wastewater industry has occurred over decades and a separate line item for a system acquisition assessment is not feasible. Moreover, the Commission has recognized that it is in the interest of customers and the public to consolidate and regionalize water and wastewater systems across the Commonwealth. 52 Pa. Code § 69.721. Mr. Day's concerns run counter to this policy." (Aqua St. 11-R at 17)

Aqua's defense of its tariffed rates and billing practices, based on the consolidation and regionalization policy under 52 Pa. Code § 69.721, misinterprets the scope of the policy. While consolidation serves the public interest by improving infrastructure and service reliability, it does not absolve Aqua from its responsibility to ensure transparent and cost-reflective rates. Moreover, this party's complaint is specific to Section 1329 filings, not all consolidations that have occurred over decades. The claim that a separate line item for aggregate system acquisition expenses is "not feasible" ignores industry precedent, where utilities routinely include line items for specific charges. Aqua's refusal to provide such transparency raises concerns under Pennsylvania's Consumer Protection Law and court rulings, which emphasize the need for clear communication about rate components. Consolidation cannot be used as a blanket justification for not communicating to customers a material cost in their billing, particularly when those costs do not benefit them directly. This leads to a broader argument about material costs, cost causality, and the necessity for transparent billing to protect consumers. This allocation of costs highlights a fundamental issue of cost causation, as in cases of Section 1329 filings, ratepayers are forced to

pay the material costs of acquisitions that are not caused by their consumption or their local infrastructure needs.

Aqua Mr. Packer's rebuttal regarding more transparent communication in relation to Section 1329 filings is also less than satisfactory, where he opines:

"I believe that the vast majority of customers that want to see and understand their usage and a possible increase can review their bill, look at the usage, and then look at the usage used as a proxy on the notice to gain perspective on how a rate increase will impact them in a general fashion... As noted above, customers have the option, as indicated in the notice, to contact Aqua to determine how the proposed rate changes would impact their bill or to visit the Company's website to review the proposed rates in the tariffs... The Company is in compliance with existing notice provisions and those provisions provide ample information to customers over the course of a nine month time period." (Aqua St. 1-R at 25)

Mr. Packer overestimates customers' ability to remember the financial impact of Aqua's Section 1329 acquisitions by simply monitoring billing signals or visiting the company's website. While he suggests that customers can 'look at their usage' as a proxy for understanding rate changes, this ignores the principle of cost causality. The system acquisition assessments generated by Section 1329 filings are unrelated to customer usage. These filings are contributing increasingly to material costs for customers, yet these costs are not clearly communicated on consumer bills. It is therefore unreasonable to expect consumers to fully grasp their financial impact from the available materials. Furthermore, Mr. Packer's reliance on Aqua's compliance with existing notice provisions does not adequately address the core issue of transparency or consumer protection laws. While Aqua may meet a minimum courtesy via customer notification, the lack of detailed, clear information on how Section 1329 costs are distributed across rate zones and to consumers undermine the principle of informed consent in rate-setting. Customers have a right to understand

the specific drivers of their rates and rate increases, and placing the burden on them to contact Aqua or conduct independent research to uncover such details shifts responsibility away from the utility. Aqua should proactively provide clear, accessible information about how Section 1329 filings affect customer bills to meet the standards of transparency and consumer protection.

Obscurity Through Single Tariff Pricing – During discovery, Aqua was asked to “enumerate for each system acquisition – from previous years and those pending in this rate case – the respective expense allocations to Rate Zone 4 metered and unmetered rates.” (Day Interrog. I-2) Aqua’s reply and rebuttals fell short, as it was unable to provide any hard numbers, even though it has the capability to generate estimates in pre-acquisition notifications.

The Company’s reliance on single-tariff pricing as a justification for obscuring Section 1329 filings is also problematic. While Aqua claims that consolidation has resulted in rate decreases or minimal increases for Rate Zone 4, it has provided no detailed evidence of how these decreases or nominal increases are directly linked to Section 1329 acquisitions as opposed to, for example, improving operational efficiency or reducing shareholder dividends. Without such transparency, it is impossible for customers to ascertain whether they are being charged for Section 1329 filings fairly. This violates the principles of consumer protection laws, particularly in cases where billing lacks clarity and conceals material cost drivers. The Pennsylvania Consumer Protection Law (73 P.S. § 201-1 et seq.) requires that businesses, including utilities, provide clear and accurate pricing information, which Aqua is failing to do by not conveying the impact of acquisition costs in their aggregate through customer billing or a separate communication.

Furthermore, Aqua’s assertion that consolidation benefits all customers glosses over the disproportionate impact on seasonal communities like Lake Harmony. These customers are being asked to disproportionately underwrite the total costs of services from which they receive partial

benefit, in addition to bearing the cost of acquisitions from which they derive no benefit.¹⁴ Aqua's single-tariff argument obscures the financial impacts of Section 1329 filings with lacking transparency related to system expansions that are not relevant to a customer's service needs.

Consumer Protection Laws & Judicial Precedent – Aqua's failure to provide clear billing practices also raises significant concerns under Pennsylvania's Consumer Protection Law (73 P.S. § 201-1 et seq.). This law mandates that businesses, including utilities, provide truthful, clear, and comprehensive communication regarding pricing. Aqua customers currently receive no itemized breakdown of how much of their monthly bill is tied to acquisition costs under Section 1329. Although Aqua provides notifications of potential rate increases before the Commission approves system acquisitions, as testified by OCA's Ms. Hoover (OCA St. 1-SR at 18), there is no transparent post-acquisition communications (other than the consumer's higher bill) that informs them of the specific financial impact of these acquisitions in the aggregate.

In *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (Pa. Commw. Ct. 2006), the Commonwealth Court held that rates must reflect cost causality, ensuring that those who pay higher rates should only do so if they cause higher costs. Aqua's current practice of incorporating Section 1329 acquisition assessments into its base rate billing to all customers, regardless of their involvement or benefit from the acquisitions, is inconsistent with these rulings and with the public policy goals that underpin the utility rate-setting process. Aqua's captive customers did not cause the acquisition-related expenses they are being billed for – Aqua's expansion and acquisition strategy caused it.

The Federal Trade Commission (FTC) asserts that businesses must provide transparent and non-misleading billing information to consumers.¹⁵ Aqua's current billing practices obscure

¹⁴ During discovery, Aqua confirmed that no systems acquired through Section 1329 filings serve Lake Harmony. (Day Interrog. I-3A)

¹⁵ Federal Trade Commission Act, 15 U.S.C. §§ 41-58 (Section 5) prohibits "unfair or deceptive acts or practices in or affecting commerce." This foundational law guides the FTC's regulation of business practices, including transparency and non-misleading billing.

the distinction between operational expenses and acquisition-related costs, leaving consumers unaware of how their rates are calculated and why they are being asked to pay higher bills.

The solution lies in more transparent billing practices. Aqua must adopt practices that clearly separate operational costs from Section 1329 acquisition assessments on customer bills; this can be achieved through communicating to customers the aggregate amount of acquisition costs they are paying on either a monthly or annualized basis.¹⁶ Such transparency not only complies with Commission directives and consumer protection laws, but also aligns with industry best practices. Utilities that embrace transparency in their billing often see improved customer understanding and reduced regulatory scrutiny.

In conclusion, Aqua's current rate structure—wherein acquisition costs under Section 1329 filings are passed onto consumers without proper and ongoing communications transparency around material costs and cost causation—violates the principles established by the Commission, Pennsylvania courts, and Pennsylvania consumer protection statutes. For these reasons, it is imperative that Aqua be required to itemize the aggregate costs of Section 1329 acquisitions on customer bills, providing clarity around the material costs that captive consumers did not cause nor directly benefit from.

This party supports Ms. Hoover's recommendation for greater consumer transparency by informing customers of actual acquisition expenses following the Commission's approval of Section 1329 filings (OCA St. 1-SR at 18). However, this minimal action may fall short of upholding the core principles of consumer protection. Consumers – who have families to care for, full-time jobs, and/or retirements to enjoy – should neither need to commit to memory the pricing signal

¹⁶ If Aqua has limitations related to invoicing software that prevents the aggregate system acquisitions assessment from being delineated in monthly, customer's invoices, a letter inserted once annually with an invoice that explains the rationale and percentage of the consumer's bill associated with Section 1329 acquisitions, existing and pending, would be a satisfactory step in the right direction.

and outcome of every Section 1329 filing affecting their billing, be expected to study reams of base rate case proceedings to discern the material costs and cost causality of their monthly water and wastewater bills, nor triangulate estimated rate increases against their usage. They deserve clear, transparent information on an ongoing basis that explains the charges they incur akin to how other utilities delineate different and material expenses.

VIII – UNJUST ECONOMIC TAKING: AQUA’S FLAT-RATE STRUCTURE AND THE RIGHTS OF RATEPAYERS

There is a fundamental inequity embedded within Aqua’s proposal: the presumption that shareholders are more entitled to returns than customers are to retain their own earnings. This raises serious constitutional concerns, particularly under the U.S. Constitution’s Takings Clause, which prohibits the government—or in this case, a regulated utility acting under government sanction—from unjustly seizing private property without just compensation. In the case of *Duquesne Light Co. v. Barasch* (1989), the U.S. Supreme Court ruled that utility shareholders must be protected from confiscatory rates that would deprive them of a fair return. However, this protection extends both ways: ratepayers, too, have a right to protection from economic harm.

When rate designs such as Aqua’s flat-rate billing system erode the financial stability of customers, particularly those who use minimal services and the economically vulnerable, it becomes a form of economic taking. By forcing low-usage customers to subsidize costs they do not incur, Aqua is effectively expropriating their earnings, depriving them of their financial resources for the benefit of its shareholders. The Takings Clause, when viewed in this broader context, supports not only the right of utility shareholders to fair returns but also the right of ratepayers to retain their earnings and not be subjected to rates that confiscate their income without a direct and reasonable relationship to their usage.

This issue is further compounded by Aqua’s flat-rate billing structure, which forces all customers to pay the same rate, regardless of how much service they use. Such a rate design violates the core principle of fairness in public utility regulation, which is that rates should be just, reasonable, and reflective of actual service levels and costs. The Pennsylvania Public Utility Code, under 66 Pa. C.S. § 1301, mandates that rates must follow the principle of cost causation, meaning that customers should pay in proportion to the services they receive. Yet Aqua’s flat-rate

billing ignores this principle entirely, particularly in seasonal communities like Lake Harmony, where many customers are forced to pay for infrastructure they rarely use.

Moreover, Aqua's shareholders are insulated from the financial risks borne by ratepayers. It is customer rates—not shareholder capital—that underpin the utility's financial stability. Ratepayers, not investors, provide the primary source of funding for infrastructure projects and operational expenses. Yet Aqua's rate proposal prioritizes maximizing returns for shareholders over safeguarding the financial well-being of the customers who make the utility's operations possible. This imbalance is both inequitable and unjust, particularly in the context of monopolized utilities like Aqua, where customers have no alternative service provider and are, in essence, captive to whatever rate structure is imposed upon them.

The courts, in landmark cases like *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia* (1923) and *Federal Power Commission v. Hope Natural Gas Co.* (1944), have repeatedly affirmed that while utilities are entitled to reasonable returns, such returns must not come at the expense of ratepayers. Aqua's flat-rate billing, by failing to account for actual usage patterns and customer needs, clearly tilts the scales in favor of shareholders at the cost of its captive customers. This is not only economically unjust but also raises serious constitutional concerns under the Takings Clause.

Aqua's reliance on flat rates, particularly in areas like Lake Harmony where seasonal usage is common, exacerbates this inequity. These customers are forced to subsidize infrastructure and acquisition costs they scarcely benefit from. The excessive focus on maximizing return on equity (ROE) disregards the fact that ratepayers are the financial backbone of the utility, providing the revenues that allow Aqua to thrive. Yet the rate proposal prioritizes shareholder profits, overlooking the broader financial harm inflicted on low-usage or seasonal customers.

In conclusion, Aqua's flat-rate billing structure, which forces customers to pay disproportionate amounts for services they scarcely use, amounts to an unjust taking under the U.S. Constitution's Takings Clause. The fundamental inequity lies in Aqua's prioritization of shareholder returns over the rights of customers to retain their earnings, an imbalance that public utility law and constitutional protections are meant to prevent. Both the Commission and the courts have consistently ruled that rates must be fair, just, and reflective of actual usage patterns, and Aqua's current rate design fails this test.

IX – MAIN BRIEF CONCLUSION & PROPOSED ORDERS

In summary, Aqua has not affirmatively demonstrated the reasonableness of every element of its claims related to flat, unmetered wastewater rates in Kidder Township/Lake Harmony – including but not limited to regionalization, single price tariff, use of systemwide averages, fixed costs, burdening other customers, compliance with the 2022 Commission order. Nor has Aqua affirmatively demonstrated the reasonableness of its present method for transparency around Section 1329 acquisition expenses in consumer billing.

Accordingly, it is well within the discretion of the ALJs and the Commission to deny, and the ALJs and the Commission should deny:

- (1) Aqua's ratemaking claims, ratemaking method, and proposed wastewater rates for Lake Harmony homeowners that are challenged by this party.
- (2) Aqua's claims related to its Section 1329 billing transparency, as challenged by this party.

Respectfully Submitted,

/s/ John Day

John Day

Lake Harmony Homeowner, 481 Moseywood Road

Dated: 28 October 2014

PROPOSED ORDERS

To maintain fairness and accountability, this party respectfully proposes that the Commission adopt alternative ratemaking methods that better reflect the seasonal usage patterns of communities like Lake Harmony. Additionally, this party requests improved billing transparency from Aqua, especially regarding the impact of Section 1329 filings on customer rates.

1. REQUEST FOR IMMEDIATE TEMPORARY RATE RELIEF

The request for immediate rate relief is critical to addressing the unjust and unreasonable rate method for Kidder Township/Lake Harmony homeowners, and Aqua's demonstrated non-compliance with the Commission's 2022 order. In requesting immediate temporary rate relief, it is indisputable that homeowners in Kidder Township/Lake Harmony have suffered irreparable harm by way of Aqua's unjust, unreasonable and unsubstantiated flat rates due to Aqua's disregard of the Commission's 2022 order, and will continue to do so unless and until temporary relief is granted. Further, for all of the reasons set forth in this main brief, the likelihood of success on the merits lies with the Kidder Township/Lake Harmony homeowners.

In support of the foregoing and as set forth in greater detail in Appendix A of this Main Brief, implementing a proposed interim rate of \$70.59 will provide much-needed financial relief to Kidder Township / Lake Harmony homeowners and ensure fair treatment while Aqua works towards compliance or until a final order is issued in this base rate case, whichever date comes later.

2. COMMISSION TO REMEDY NON-COMPLIANCE WITH 2022 COMMISSION ORDER

Given Aqua's non-compliance, the Commission should consider the following remedies:

A) Denial of the Proposed Rate Design and Rate Increase – Until Aqua provides the required study and report on rate structures for unmetered, seasonal communities, the Commission should reject Aqua’s proposed rate design for Lake Harmony along with any proposed rate increase across the Aqua system. This would ensure that ratepayers are not subject to unjust and unreasonable charges based on incomplete data and analysis.

B) Mandated Study with Deadline – Aqua should be required to submit a comprehensive study and report by a set deadline, detailing alternative rate structures that reflect the actual usage patterns of seasonal communities like Lake Harmony. This report should be subject to review by the Commission and other interested parties to ensure that it meets the Commission's original directive.

C) Penalties for Non-Compliance – The Commission should consider imposing financial penalties or other sanctions for Aqua’s failure to comply with the 2022 order. This would reinforce the importance of regulatory compliance and deter future inaction by the utility.

D) Grant Requested Temporary Relief to Kidder Township/Lake Harmony homeowners – as requested herein.

3. AQUA TO IMPLEMENT AN UNMETERED RATE METHOD MORE REASONABLE FOR MIXED-USE, SEASONAL COMMUNITIES

Noting Aqua’s and the Commissions previous concerns related to expense and logistics for metering private homes with well service, and Aqua’s failure to produce a rate method more reasonable for systems not representative of system wide averages, the remedy requested is an alternative flat rate method. Three options are presented here for the Commission’s consideration:

- *Creating a new rate zone for all unmetered wastewater customers across the Aqua system*
– and aligning base charges with Rate Zone 1, and volumetric charges based on local wastewater treatment data.
- *Reassigning Kidder Township / Lake Harmony homeowners to Rate Zone 1* – with a rate method similar to that described in the request for temporary, immediate relief.
- *Creating a new rate zone for all unmetered wastewater customers across the Aqua system*
– and charging Rate Zone 1's flat rate for wastewater service.

OCA's recommendation for a collaborative working group between Aqua and affected communities can be used to explore these alternatives – as well as other options that Aqua might propose.

4. THE COMMISSION OR AQUA TO RE-EXAMINE AQUA'S FLAT RATE, EDU METHODOLOGY FOR COMMERCIAL BUSINESSES IN LAKE HARMONY

This proposed order seeks to re-assess the merit of an EDU methodology for businesses with operations in seasonal communities like Lake Harmony and propose alternative rate methods or metering options that do not disadvantage small businesses in seasonal communities. It's proposed this effort be coordinated in collaboration with the appropriate Commonwealth state agencies, and other state regulatory bodies the Commission deems appropriate.

5. AQUA TO IMPLEMENT MORE TRANSPARENT COMMUNICATION PRACTICES RELATED TO SECTION 1329 EXPENSES IN CONSUMER BILLING, MINIMALLY ONCE ANNUALLY

This proposed order seeks to keep customers current on material costs associated with their water and wastewater billing in a more transparent manner. The communications shall convey the dollar amount and percentage of a customer's rates that are attributed to Section 1329 filings, along with corresponding explanation, with enumeration of the aggregate amount of Section 1329 expense already approved by the Commission, and those filings and dollar amounts

pending before the Commission. This new communication shall not replace the current practice of pre-acquisition notifications to consumers that inform them on their options for participating in the ratemaking process.

APPENDIX A
IMMEDIATE REQUEST FOR RATE RELIEF

Since the 2022 Commission Order, Lake Harmony homeowners have upheld their end of the regulatory compact by accepting rate increases, despite the inequities in Aqua’s rate structure that disproportionately burden our community. Lake Harmony homeowners have continued to pay these increased rates, even though they don’t reflect actual, seasonal usage patterns. The Commission directed Aqua to develop a more reasonable rate method for unmetered properties, particularly for seasonal communities like Lake Harmony. Aqua’s failure to comply with this directive not only disregards the Commission’s authority but also perpetuates an inequitable rate structure. This non-compliance has further exacerbated the financial burden on our homeowners. The *Barasch v. Pa. PUC* ruling supports this position: when a utility fails to comply with Commission directives, it fails to meet its burden of proof in subsequent rate cases. Aqua cannot justify cost recovery without first demonstrating compliance with Commission regulations.

As an active party in the 2024 base rate case for Aqua PA, I, John Day, formally request temporary, immediate rate relief to alleviate the financial strain imposed on Lake Harmony homeowners by unjust wastewater rates. This relief is sought to remain in effect until Aqua complies with the Commission’s 2022 Order or until the Commission issues a final ruling in this base rate case – whichever date is later.

Whereas: During public input hearings the week of 12 August 2024, Mrs. Erika Spott supplied in-person testimony and exhibits detailing the inequitable impact of Aqua’s flat unmetered rates on Lake Harmony homeowners. During her testimony, Ms. Spott formally requested immediate relief for Aqua's unjust rates in Lake Harmony.¹⁷

Whereas: OCA Witness Mr. Jerome Mierzwa, who has testified Aqua is not in compliance with the 2022 Commission Order.¹⁸

¹⁷ See Exhibit A to this document - Public input testimony of Erika Spott.

¹⁸ Aqua St. 5 at 39

Whereas: OCA's Ms. Christine Hooper concurs with Mr. Mierzwa's assessment that Aqua has not complied with the 2022 Commission order, and additionally recommends Aqua engage with affected communities related to their flat wastewater rate, offer periods of public comment, and issue a final report to the Commission – all of which will not be completed until dates well into 2025.

Whereas: John Day, with active party status in Aqua PA's 2024 base case, has submitted fact-based evidence and testimony that demonstrates the unjust and unreasonable wastewater rate method and rates for Lake Harmony homeowners.

This complainant with active party status in the Aqua PA's 2024 base rate case, hereby requests the Commission intervene and extend temporary, immediate rate relief to the homeowners of Lake Harmony.

This request for immediate relief is submitted in accordance with the tenets of irreparable harm, balance of equities, and upholding the public interest.

Irreparable Harm

Despite having over two years to comply with the 2022 Commission Order, Aqua PA has failed to address the unjust and disproportionate wastewater rates affecting Kidder Township/Lake Harmony homeowners. The ongoing financial burden inflicted by these rates remains unmitigated, month after month, leading to significant harm that cannot be remedied through typical compensation. Homeowners, particularly those with seasonal properties, are unfairly billed as if they were full-time residents, compounding the financial strain and undermining their ability to sustain their properties, and full-time residents in an economically disadvantaged region of Pennsylvania continue to pay among the highest of wastewater rates across the Aqua system.

Balance of Equities

The continued harm to the homeowners in Kidder Township/Lake Harmony, clearly outweighs any harm to Aqua. Aqua has failed to take any meaningful steps or good faith attempts to comply with the Commission's order, and as such, should not continue to be rewarded by collecting unjust, unreasonable and unsubstantiated flat rates until it complies. The proposed rate adjustment represents a fair and equitable resolution by aligning the wastewater rates more closely with the average costs experienced across all rate zones. This adjustment not only

addresses the disproportional financial burden on unmetered ratepayers but also ensures that Aqua PA does not experience undue financial strain. Setting the flat, monthly wastewater rate to \$70.59 seeks to balance the interests of all parties involved, providing necessary relief while maintaining a sustainable financial environment for Aqua. The equities clearly favor Kidder Township/Lake Harmony homeowners, who continue bearing an undue financial burden due to Aqua's non-compliance with the Commission's Order. The current flat rate structure unfairly benefits Aqua by allowing the company to profit from a flawed rate design, in addition to benefiting from non-compliance with a Commission Order. The proposed rate adjustment, by contrast, represents a minimal impact on Aqua's overall operations while providing crucial relief to affected homeowners.

Public Interest

The public interest strongly favors prompt enforcement of the Commission's directives. Ensuring that utility companies adhere to regulatory orders is essential not only for protecting individual homeowners but also for maintaining public trust in the fairness and effectiveness of the regulatory process. A resolution that aligns with the public interest will reinforce the Commission's authority and promote equitable treatment for all ratepayers. Furthermore, if Aqua's non-compliance is not addressed, it could set a concerning precedent for future cases. Other utility companies might perceive regulatory orders as optional, rather than mandatory, weakening the Commission's ability to enforce fair and equitable practices across the industry and engendering public mistrust in its government institutions.

In issuing temporary rates, the Commission must weigh the public interest and ensure that any relief granted serves the overall fairness and equity of the rate structure. As captive ratepayers, Kidder Township/Lake Harmony homeowners have no other available remedy to address the inequities set forth herein, and absent immediate relief, remain "locked in" to a rate structure that is unfair, unreasonable and unsubstantiated. The current flat-rate billing scheme for Lake Harmony, which is based on full-time occupancy assumptions, does not adequately reflect the seasonal nature of the community and the lower water and wastewater usage during much of the year. As outlined in my brief, the wastewater treatment plant serving Lake Harmony is operating at only 61% capacity, yet customers are billed as if the system were at full capacity. It is clearly in the public interest to ensure that ratepayers are not overcharged based on inaccurate usage assumptions. Granting temporary relief would provide immediate relief to Lake

Harmony homeowners, preventing further financial harm while the Commission considers the appropriate long-term solution.

IMMEDIATE RELIEF REQUEST

The following relief measure is requested to align with Commonwealth and Aqua goals related to rate zone consolidation and to redress the unfair rates imposed on Lake Harmony homeowners, while also fulfilling the spirit of Commission's 2022 Order to identify a rate method more reasonable to a seasonal community like Kidder Township / Lake Harmony. The request for relief entails a new, flat metered rate for Lake Harmony residential customers in the amount of **\$70.59** per month. The rate shall be the outcome of the following actions:

Reassigning Kidder Township / Lake Harmony to the Rate Zone 1 Wastewater Tariff – with the rationale as follows:

- Consistent with Aqua assigning Kidder Township to its Rate Zone 1 for the Company's water tariff¹⁹
- Consistent with the I&E's direction of moving all all rate classes closer to Rate Zone 1. (I&E St. 3-SR at 10)
- Consistent with Aqua's testimony about keeping the interests of its customers in the forefront (Aqua St. 5-RJ at 4)
- Consistent with the United States Supreme Court ruling in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), that the rate-making process does not guarantee that a business will generate specific revenues. (OCA St. 1 at 24)

Recalculated the Wastewater Rate for Kidder Township / Lake Harmony – with rationale as follows:

Utilizing the wastewater rate tariff proposed by Aqua for Rate Zone 1 and the volumetric data from the Kidder / Splitrock Wastewater Treatment Plant, the rate shall be calculated as follows:

- Base Charge - Rate Zone 1 tariff for wastewater service, proposed by Aqua at \$47.64 monthly
- Flat Volumetric Rate - Rate Zone 1 tariff for wastewater service, proposed by by Aqua at \$11.474 per 1000 gallons – and using the informed assumption of 2000 gallons per month

¹⁹ Aqua Pennsylvania General Base Rate Filing at 94 (original water tariff page 7), 23 May 2024

consumption based on the wastewater treatment patterns of the Kidder / Split Rock Wastewater Treatment Plant (Day Exhib. 4)²⁰

→ Total Unmetered Flat Rate – **\$70.59**, summing the base and flat volumetric charges above²¹

Legal Basis: This rate reassignment is consistent with public policy objectives and the principle of just and reasonable rates under 66 Pa. C.S. § 1301 and is a necessary corrective measure in light of Aqua's non-compliance with the Commission Order, and continued benefiting from non-compliance. This new flat rate method fulfills the 2022 Commission's order to deliver a rate method more reasonable for a mixed-use and seasonal community like Kidder Township/Lake Harmony. The Commission has clear legal authority to issue temporary rate relief under the Public Utility Code when there is an immediate need to prevent undue financial harm to consumers pending final disposition of a rate case. In this instance, Lake Harmony homeowners, who are subject to Aqua's flat-rate billing structure, face a significant and disproportionate financial burden, particularly given the community's seasonal nature. The legal grounds for temporary rate relief in this case are supported by multiple factors that align with the Commission's statutory authority and relevant case law. In cases of utility non-compliance, the Commission has the authority to implement temporary rate adjustments to protect consumers until compliance is achieved.

Period of Remedy: This immediate relief shall remain in place until such time as Aqua delivers its directed study and report to the satisfaction of the impacted parties, or the Commission renders its final opinion on this base rate case -- whichever date comes later. Thus ensuring the burden of proof with unfair wastewater rates is no longer allocated to the homeowners of Lake Harmony.

Mandatory Progress Reporting

Regular Updates: Aqua PA should be required to provide monthly progress reports to the Commission and OCA on efforts to comply with the 2022 Commission Order.

Legal Basis: Compliance with prior Commission orders is relevant to the rate case and justifies enhanced oversight.

²⁰ Should compliance with the 2022 Commission order not be completed by Aqua's next base rate case, the volumetric portion of this rate can be revisited at the next base rate case using a the preceeding, 3-year average of wastewater treatment volume compared to the capacity of the Kidder / Split Rock Wastewater Treatment Plant.

²¹ This recalculated rate would be subject to adjustments made to Aqua's wastewater rate for Rate Zone 1, pending the outcome of the Commission's final ruling in this base rate case.

Future Rate Implementation

Long-Term Solution: We are grateful for the Commission's continued interest in a more equitable rate design for unmetered wastewater customers in systems that may not reflect Aqua's system wide averages. Until then, the interim measures proposed herein will protect Kidder Township / Lake Harmony homeowners from the continuance of excessive and unjust rates.

Legal Basis: Accurate metering is the best way to adhere to the cost causation principle, ensuring that rates are tied to actual usage and that customers are charged equitably. Absent metering, a substitute and defensible flat rate method is needed. Given Kidder Township/Lake Harmony's mixed-use nature, demonstrated through complainant testimony and exhibits, Aqua's present method for calculating wastewater rates using a system wide average of water consumption is not defensible, with the burden of proof falling on Aqua to demonstrate otherwise.

LEGAL & REGULATORY FRAMEWORK

Pennsylvania Public Utility Code

- **66 Pa. C.S. § 1301 (Rates to be Just and Reasonable):** This section mandates that all rates charged by public utilities be just, reasonable, and nondiscriminatory. In the absence of metering, Aqua's flat wastewater rates for Lake Harmony homeowners may violate this standard if they do not accurately reflect actual usage.
- **66 Pa. C.S. § 523 (Performance Factor Considerations):** The Commission may consider a utility's compliance with prior orders when determining rates. Aqua's non-compliance should be factored into a decision regarding interim rates for the unmetered homeowners of Lake Harmony.

2022 Commission Order and Directives (2021 Base Rate Case)

The 2022 Commission Order directed Aqua to explore and report on options for metering unmetered properties. Aqua's failure to comply suggests a need for remedial measures that prevent unjust enrichment and ensure that Kidder Township/Lake Harmony homeowners are not unfairly charged. The need for temporary rate relief is further supported by Aqua's failure to comply with the Commission's 2022 order directing the utility to submit a report on options for a rate method more reasonable to mixed-use and seasonal systems that do not align with Aqua's system wide averages. Aqua's non-compliance leaves Lake Harmony homeowners in an

uncertain rate environment that does not adequately address their unique circumstances as a seasonal community. In light of this failure, temporary rate relief is warranted to protect ratepayers from continuing to bear an unreasonable financial burden during the ongoing proceedings.

RATEMAKING PRINCIPLES

Cost Causation

Rates should reflect the costs incurred by the utility in serving specific customers. For unmetered properties like those in Kidder Township/Lake Harmony, the absence of metering means rates are not tied to actual wastewater generation, potentially leading to disproportionate charges.

Fairness and Equity

The principle of equity requires that similarly situated customers be treated alike. Kidder Township/Lake Harmony homeowners, who use their homes infrequently, should not bear the same costs as full-time residents or higher-usage customers in other rate zones, nor should a population of economically disadvantaged homeowners be burdened with Aqua's highest flat, unmetered rate.

Temporary Relief and Adjustments

In *Barasch v. Pennsylvania PUC* (1983), the Commonwealth Court upheld the Commission's authority to approve interim rates while a final determination was pending, provided that the rates were just and reasonable under the circumstances. In this case, the financial impact on Lake Harmony homeowners, who are being charged rates disproportionate to their actual usage, creates a compelling justification for temporary relief. The Commission has a duty to ensure that rates are just and reasonable at all times, and temporary rate adjustments are necessary when the current structure imposes undue financial burdens on ratepayers.

CONCLUSION

This request for immediate rate relief is critical to addressing the unjust and unreasonable rate method for Lake Harmony homeowners, and Aqua's demonstrated non-compliance with the Commission's 2022 order.

The financial harm to these homeowners is immediate and ongoing. In such circumstances, the issuance of temporary rate relief is not only permissible but necessary to mitigate inequities while the Commission conducts a thorough review of the underlying rate structure. The proposed temporary rate of \$70.59 per month for Lake Harmony homeowners, based on recalculations using Aqua PA's Rate Zone 1 tariff and volumetric data from the Kidder/Split Rock Wastewater Treatment Plant, provides a fair and reasonable interim measure to address this disparity.

Implementing the proposed interim rate of \$70.59 will provide much-needed financial relief to Kidder Township / Lake Harmony homeowners and ensure fair treatment while Aqua works towards compliance or until a final order is issued in this base rate case, whichever date comes later. This action not only supports affected ratepayers but also upholds the public interest by reinforcing the Commission's regulatory authority. The current flat-rate billing scheme for Lake Harmony, which is based on full-time occupancy assumptions, does not adequately reflect the seasonal nature of the community and the lower water and wastewater usage during much of the year. As outlined in my brief, the wastewater treatment plant serving Lake Harmony is operating at only 61% capacity, yet customers are billed as if the system were at full capacity.

It is clearly in the public interest to ensure that ratepayers are not overcharged based on inaccurate usage assumptions. Granting temporary relief would provide immediate relief to Lake Harmony homeowners, preventing further financial harm while the Commission considers the appropriate long-term solution.

Respectfully Submitted,

/s/ John Day

John Day – Lake Harmony Homeowner, 481 Moseywood Road

Dated: 28 October 2014

APPENDIX B

NEW FACTS FOR THE COMMISSION

The Commission's role is ensuring that it gathers all necessary facts to make an informed and fair decision, “from the evidence presented by the utility, the consumer, and other stakeholders, in order to render a fair and equitable decision that serves the public interest.”²² In that spirit, detailed exhibits with data and facts about the mixed-use and seasonal nature of the Lake Harmony community were researched and have been presented to the Commission in this base rate case.

Aqua seems to dismiss this data as not relevant to the goals of regionalization and Aqua's broader rate proposal. (Aqua St. R-11 at 18) And seems to be shifting the focus away from the core issue of equity and the impetus of the Commission's 2022 order. Yet, Aqua takes no responsibility for how its implementation of regionalization has resulted in the present inequity. The fact-based exhibits related to Lake Harmony's seasonal nature are presented to assist the Commission with its fact-finding role, and to draw contrast to the assumptions Aqua has used to determine the township's wastewater rates.

A Mixed-Use / Seasonal Community – Over 50% of Lake Harmony homeowners have their property tax invoices mailed to addresses outside of Kidder Township, with 75% of those homeowners residing elsewhere in Pennsylvania, strongly suggesting that these homes are not occupied year-round. Further diversifying the community's mixed-use is the prevalence of short-term rental properties. The data shows that 35% of homes in Kidder Township are permitted for short-term rentals, with the occupancy rate for these rentals in Lake Harmony being only 38%. This further demonstrates that many homes in the area are underutilized, with water consumption fluctuating based on rental demand and occupancy. Despite this, Aqua's flat-rate billing structure

²² “A Guide to Pennsylvania Rulemaking,” Cawley and Kennard, 2018.

assumes consistent usage at the systemwide average, further inflating costs for homeowners whose properties see limited use.

These mixed-used and seasonal residents are consuming significantly less water and generating less wastewater compared to full-time residents, which is evidenced by data from the Kidder / Splitrock Wastewater Treatment Plant.

Kidder / Splitrock Wastewater Treatment Plant Runs at Partial Capacity – In the absence of local water metering data, proxy data provide insights into water consumption relative to Aqua’s system wide average for water consumption, which Aqua uses to determine flat unmetered wastewater rates for Rate Zone 4 and, by extension, homeowners in Lake Harmony.

Demand distribution trends for the wastewater plan over a 60-month period indicates that the plant's average daily treatment was 61% of its 400,000-gallon daily volumetric design capacity (Day Testimony Exhibit 1 at 11). The plant processes volume for the combined demand of both residential and commercial accounts, with the plant’s treatment data including inflow and infiltration; I&I percentages that Aqua states are similar to other systems. (Day Interrog. IV-4)

Moreover, the total volumetric waste processing at the Kidder/Splitrock wastewater plant actually declined by 16.5% between 2019 and 2023. (Day Testimony Exhibit 4)

Taken together, the data clearly demonstrates that Aqua’s reliance on a systemwide average for determining flat wastewater rates is inappropriate for a mixed-use and seasonal community like Lake Harmony. Perhaps most telling is the operational data from the Kidder/Splitrock Wastewater Treatment Plant, operating well below what would be expected if the homes and commercial businesses in Lake Harmony were consuming water at Aqua’s systemwide average.

In summary, these new facts for the Commission's consideration illustrate the inequities inherent in Aqua's flat-rate model. The use of systemwide averages for a community with such a pronounced seasonal occupancy fails to capture the reality of water usage, leading to inflated and unjustified charges for wastewater services. As a result, many customers in Lake Harmony are being unfairly overcharged for services they do not fully use, raising a need for a more tailored approach that reflects the actual consumption patterns of this unique community.

APPENDIX C

MISAPPLICATION OF CONSUMER CASE DECISION

In Aqua's rebuttal, the Company recited four paragraphs of Commission ALJ Judge Cheskis' decision from a 2021 consumer complaint case as "background" in this 2024 base rate proceeding (Aqua St. 3 at 27; Aqua St. 11-R at 14-15; reference by SCH-USA 3-SR at 4).²³ While that decision was appropriate for a consumer complaint case, the legal standards for utility base rate cases are different. This fundamental shift in the burden of proof distinguishes the present case from the consumer case, where the complainant was responsible for demonstrating unreasonableness in Aqua's actions. Accordingly, Aqua's reference to four paragraphs from the ALJ decision in a consumer complaint decision seems to be intended to substantiate the company's position in this base rate case. Aqua's reference creates a misleading parallel that is not applicable to the facts or regulatory requirements of the present case.

The Distinction Between Consumer Complaint Cases and Base Rate Cases — In a consumer complaint, the complainant bears the burden of proving that the utility's actions are unreasonable or unlawful. However, in a base rate case, the utility—not the consumer—bears the burden of proof. The relevant legal and regulatory principles that govern rate-making underscore this distinction. Under *66 Pa. C.S. § 315(a)* of the Pennsylvania Public Utility Code, a utility seeking a rate increase must bear the burden of demonstrating that its proposed rates are just, reasonable, and in the public interest. This fundamental shift in the burden of proof distinguishes the present case from the consumer complaint, where the complainant was responsible for demonstrating unreasonableness in Aqua's actions.

Case Law Supporting the Utility's Burden of Proof in Base Rate Cases — The Pennsylvania courts and the Public Utility Commission have consistently reaffirmed that the utility carries the burden

²³ *John Day v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. C-2021-3026213, November 30, 2021

of proof in base rate proceedings. In *Popowsky v. Pennsylvania Public Utility Commission*, 542 Pa. 99 (1995), the Pennsylvania Supreme Court decisively held that the utility must prove that its proposed rates are just and reasonable. The Court emphasized that, in rate cases, the utility's evidence must establish that its rates meet statutory requirements. This ruling directly supports the argument that in this base rate case, Aqua, not the parties in this rate case, must demonstrate that its proposed flat-rate billing system and requested rate increases are justified. The Commission has similarly recognized this distinction. In the case of *Western Pennsylvania Water Company*, 1981 Pa. PUC LEXIS 93, the Commission ruled that while complainants carry the burden of proof in consumer complaints, the utility bears the burden of proving the fairness and reasonableness of rates in a base rate case. The Commission specifically held that the utility must demonstrate that its proposed rates are based on a reasonable cost-of-service allocation and serve the public interest. Additionally, the *City of Lancaster Sewer Fund* (2020) case provides another clear example of this principle in action. There, the Commission reiterated that the utility, in seeking rate increases, must justify its proposed rates with substantial evidence that they are just and reasonable, emphasizing that utilities are held to a much higher standard in base rate proceedings than in consumer complaints.

Aqua's Misapplication of Consumer Case Decision — By citing ALJ Judge Cheskis' decision in a consumer complaint, Aqua misapplies the burden of proof. The reference to a consumer complaint decision fails to acknowledge that the burden of proof now rests on Aqua to justify its proposed rate structure and increases, not on its parties in this rate case to disprove them. As clarified by the Pennsylvania Supreme Court and the Commission, the utility in a base rate case must affirmatively prove that its proposed rates are just and reasonable. Aqua's use of a consumer case decision as a background and rebuttal to arguments in this base rate case is not only legally inappropriate but also a distraction from the core issue of whether Aqua has met its burden of proof in this proceeding. The mere fact that a prior decision ruled against the plaintiff in a

consumer complaint case does not absolve Aqua of its duty to provide sufficient evidence in this rate case to support its proposed rates.

In summary, the Honorable Judges are respectfully requested to disregard Aqua's reliance on Judge Cheskis' decision in a consumer complaint as background and rebuttal to arguments in this base rate case. The appropriate legal standard in this proceeding is whether Aqua has met its burden of proving that its proposed rates are just, reasonable, and in the public interest. As such, I urge the Commission to hold Aqua to the appropriate standard and require that it meets its burden of proof in demonstrating that its proposed rate design and rates are just and reasonable.

EXHIBIT 1

**Public Input Testimony of Erika Spott
Lake Harmony Homeowner
12 August 2024²⁴**

The statement in this exhibit is substantially similar to, and an accurate representation of, Ms. Spott's oral testimony given at the 12 August 2024 public hearing, which was transcribed by the court reporter onsite and available to the Judges and PUC.

Good afternoon, Judge Chiodo, Judge Arnold, Members of the Public Utility Commission, Advocates, Aqua representatives and audience members.

My name is Erika Spott. My husband and I are Aqua water service customers at our full-time residence located in King of Prussia **AND** Aqua wastewater service customers at our vacation home located in Lake Harmony, Kidder Township (“KT”), PA.

I am here today in opposition to Aqua’s requested base rate increase. While I oppose the rate increase requests for both water service and wastewater service, my comments today will focus on the unmetered flat rate for wastewater in KT, which is currently ***\$134.20/month and is the highest residential unmetered flat rate in PA.***

In KT, Aqua applies its “standard system-wide monthly average” for homeowner water consumption; which Aqua claims is 3,870 gallons, to support its unmetered flat rate for wastewater.

Aqua’s methodology for KT’s unmetered flat rate is, however, in total disregard of, and lacking in even the most rudimentary inquiry into, the mixed-use profile of the community. Its methodology for KT is wholly devoid of any relevant fact-based data or other rational foundation to support the application of a “standard system-wide average”, and is contrary to any conceivable public interest.

Indeed, as the Commission will recall, during Aqua’s last base rate case in 2021, ALJ Mary Long recognized this gross injustice and required that Aqua revisit its flat rate methodology to assess whether another methodology that is more reasonable and representative of the mixed-use nature of the community should apply.

Aqua has now had several years to undertake the study and report (which to the best of my knowledge has not been done) and in the meantime, KT’s homeowners have continued to pay unmetered flat rates based

²⁴ This testimony is provided here with the permission of Ms. Spott.

on assumptions that have no rational relationship whatsoever to a fair and reasonable rate that is representative of the community profile.

But in the absence of Aqua's study and report, please allow me to provide you with a picture of the KT community that is based on verifiable facts relevant to its wastewater usage and not some unrelated "standard average".

For those of you that may not be familiar with Kidder Township, it is home to Lake Harmony and is a popular rest-and-relaxation destination for Philadelphians situated on the western edge of the Pocono Mountains.

According to information from the 2020 U.S. Census data for PA ZIP Code 18624 (which is Kidder Township): (readily available at <https://data.census.gov/profile/18624>), Kidder Township has:

- 1,620 housing units, and
- A population of 549.

My family has owned a vacation home in Lake Harmony since 1973, so over 50 years. The community has always been overwhelmingly 2nd homes for families to enjoy the beauty and recreational offerings of the area. A majority of the homes are not occupied as full-time residences, but rather second or vacation homes, like ours. And even today with the popularity of AirBNB, only a small number of properties are short-term rentals.

Despite this community profile being very different than most cities, towns and municipalities in PA, Aqua justifies its unmetered flat rate for KT on its standard system wide average, that in turn is presumably obtained from overwhelmingly full-time occupied residences. I submit this is plainly and simply wrong.

Indeed, since we are also Aqua water service customers in King of Prussia, I thought it would be interesting to "stress test" just how Aqua's standard system-wide average of 3,870 gallons compares to our actual water usage and what we pay for metered service at our full-time residence, and then compare that to our estimated usage in KT based on our average number of days spent in KT.

For this hearing, I have made copies of our metered water service invoices from King of Prussia for 2023 and YTD 2024 for entry into the record. In King of Prussia, our property consists of a 4 BR, 2.5 BA home on a roughly 2-acre lot that also has a 20,000 gallon in-ground swimming pool, a koi pond, 4 large raised bed gardens, mature landscaping, window boxes and potted plantings around the home and swimming pool. We fill our pool and pond with Aqua water and water our gardens, landscaping and plantings with Aqua water.

As you will see from our actual metered invoices, our 2023 average monthly water usage was 2,417 gallons (or 62.8% of Aqua's "standard system-wide average"). Our 2023 average monthly cost was \$68.87 (or 51% of our current unmetered flat rate of \$134.20 for KT). For YTD 2024, we are on track for a slightly higher usage due to the extreme heat thus far and need to irrigate, but still nowhere close to Aqua's "standard system-wide average" of 3,870 gallon/mo.

Turning to our vacation property in KT: it too consists of a 4 BR, 2.5 BA home on a roughly 1/2 acre lot. The property has no swimming pool, no pond, no raised bed gardens and no landscaping/plantings other than what naturally occurs in the Pocono Mountains, which we do not otherwise irrigate.

So, to make it plainly obvious, in KT, where we spent an average of 4 days/month in 2023, we pay an unmetered flat rate that is twice as much as what we pay for metered service at our full-time (and more water service intense) residence. Or stated otherwise:

We are paying 100% more for wastewater service in KT compared to our primary residence while using our second home in KT 90% less, when measured by time.

How can this be just and reasonable??? And Aqua now wants even more???

Finally, let's look at the demographics of the 549 individuals that call KT their primary, full-time home:

According to 2020 U.S. Census data for PA ZIP Code 18624, KT has:

- Median population age: 60.5 years old (compared to 40.9 years old of the entire PA population)
- 33.4% of KT population is 65 years of age or older (and presumably on fixed incomes) (compared to 19.6% of PA population being 65 years of age or older)
- 22.5% of KT population lives in poverty (compared to 11.8% of all of PA population)
- Employment rate: 45.8% (compared to 60.1% of employment rate in PA)
- Clearly, KT's full-time population is not the most affluent nor is KT the most economically advantaged community in Aqua's service area, yet KT homeowners pay the highest unmetered residential wastewater rate in the state because of Aqua's unfounded and unfair flat rate methodology.

How is this just and reasonable? And yet Aqua wants to burden this population even more?????

THESE ARE FACTS. THIS IS THE PROFILE OF KT. THIS IS THE COMMUNITY THAT AQUA HAS CHOSEN TO APPLY ITS HIGHEST UNMETERED FLAT RATE WITHOUT ANY RELEVANT FACTUAL DATA OR REASONABLENESS TEST.

WE, OUR FELLOW KIDDER TOWNSHIP HOMEOWNERS, AS WELL AS THE WATER SERVICE CUSTOMERS OF KING OF PRUSSIA, ARE TIRED TO FUNDING AQUA'S ACQUISITIONS AND SO-CALLED SYSTEM IMPROVEMENTS THAT WE HAVE NO BENEFIT FROM.

SO WHAT IS OUR ASK:

The PUC is charged with, among its many duties, balancing the needs of consumers and utilities, ensuring safe and reliable utility service at reasonable rates and protecting the public interest.

I submit to you that the scales are not balanced, and in particular KT customers have had the scales tipped against them for many years now, paying thousands of dollars in unmetered, unsubstantiated and unreasonable flat rates for wastewater that have served no public interest, but have generously enriched Aqua.

The egregiousness of this situation requires swift and dramatic action, and we respectfully ask that the PUC issue an immediate Order reducing KT's unmetered flat rate by 50% and that such flat rate not be subject to any future rate increase requests unless and until:

(1) Aqua provides a fact-based study and report that fully addresses ALJ Long's concern, is consistent with the PUC Order and justifies a fair and reasonable rate for the mixed-use community in KT; OR

(2) Aqua installs metered wastewater service, at its sole cost, for KT customers,

whichever occurs first.

Please rebalance those scales and give the homeowners of KT some relief until there is a more fair and equitable solution.

Thank you.

EXHIBIT 2

Public Input Testimony of Louis Del Rosso,
on behalf of the Westwood Condominium Association
14 August 2024²⁵

The statement in this exhibit is substantially similar to, and an accurate representation of, Mr. Del Rosso's oral testimony given at the 14 August 2024 public hearing, which was transcribed by the court reporter onsite and available to the Judges and PUC.

Good Evening My name is Lou DelRosso and I represent Westwood Condominium Association, its Board of Directors and each of its owners, and am offering this testimony in opposition to yet another rate increase proposed by Aqua Pennsylvania Wastewater, and to provide a statement as to the unfair billing practices those connected to the sewer system are subjected to.

I am engaged as a Financial Consultant for Westwood Condominium Association and have been for the past several years. Westwood Condominium Association is a non profit timeshare owners association located in Lake Harmony, Pa. The Westwood Development is comprised of 21 buildings containing 90 townhouse type accommodations. Therefore, Westwood has been billed the equivalent of 90 EDU's on a monthly basis regardless of unit availability or occupancy percentages. The current Aqua rate per EDU is \$131 per month.

The primary mission of the Association is to manage and operate the Westwood Development for the benefit of its timeshare owners. Westwood is a deeded timeshare development which means that purchasers of a one week interval receive a deed for a 1/51 interest in their unit. The Westwood Board of Directors, who engage me, speak for and represent each of those individual owners.

Those connected to the Aqua wastewater system in the Lake Harmony/Kidder Township area, including Westwood, are charged a flat monthly rate for sewage, regardless of use, flow or occupancy.

By way of some background information. I am an accountant residing in Scranton pa. For most of my career, I was employed in various financial and administrative capacities by Vacation Charters, Ltd. Until 2014, Vacation Charters was the owner of Split Rock Resort and developed the vast majority of what today constitutes Split Rock Resort, including the Westwood Development. In fact, a wholly owned subsidiary of Vacation Charters was the entity that originally constructed the Sewer Treatment Facility servicing the Lake Harmony area. Throughout my tenure with Vacation Charters, I was employed as their Controller, Treasurer and in 2010 was named President. In 2014, all the assets of Vacation Charters were acquired by Stabilis Split Rock and I was retained by Stabilis in various capacities including General Manager of atl. Resort Operations. I remained in this capacity until Stabilis sold the property in October, 2020 and I remained with the new owner of the Resort until May 2021.

²⁵This testimony is provided here with the permission of Mr. Del Rosso.

Throughout the entirety of my career, in my business and financial dealings, and especially in this specific instance, I only ask for, and expect, that which is fair and equitable.

I do understand and acknowledge that there is a cost associated with providing a service, however, being invoiced a flat monthly rate, whether or not there was use or occupancy, is neither fair nor equitable.

Westwood, as well as those connected to the sewer system continue to be invoiced based on a flat monthly rate, regardless of use. While I cannot speak for the homeowners, I can state unequivocally that while occupancy at Westwood has declined in recent years, the monthly invoice for sewer service to Westwood has increased dramatically. To assign a Fixed EDU, based on expected or historical availability and occupancy, without a plan to address and account for a decrease in either, is neither fair nor equitable to the property owner. This creates an unreasonable financial burden on the property owner while creating an unearned and unreasonable windfall for the utility provider. There is absolutely no incentive for the utility to make any downward adjustments in the billings or attempt an accurate calculation of the actual amount due. In fact, over all the years that Aqua has owned the sewer treatment facility not once did Aqua discuss the EDU's assigned to Westwood, attempt to validate the appropriateness of the Westwood EDU's, or investigate the occupancy or flow. There was simply no incentive for them to do so.

In 2019 Westwood was invoiced approximately \$65 per month per EDU (about \$5,900 per month); today that number has doubled to about \$131 or a little shy of \$12,000 per month. Westwood sewer cost went from approximately in 2018 to an estimated \$142,385 for 2024. These significant rate increases and the unitaterrat mandate that each unit pays a flat monthly rate is diametrically opposed to actual use, occupancy and unit availability at Westwood.

For example, on 6-5-2022, unit # 1083 was damaged by fire. Despite a significant amount of repairs, this unit is still not available for occupancy, yet continues to be included in the 90 EDU's used to calculate the monthly invoice from Aqua to Westwood.

Westwood has approximately 14 units that are out of service for various reasons, primarily heat/air conditioning. Due to lack of demand and some financial constraints, these units have not been brought back online, meaning they cannot be occupied, yet Westwood is invoiced each and every month for sewer service to these units as if they were fully and consistently occupied. Just recently, because of the rain and some flooding issues, another 6 units are out of service.

At the start of the pandemic, Westwood closed from the middle of March 2020 through the end of June 2020 yet throughout this period Aqua billed, and was paid \$9,000 per month for sewer service. How is that fair and equitable?

After reopening in late June 2020, Westwood followed CDC protocol and limited occupancy and rotated unit available so the maximum occupancy at any point in time was limited to 50%, and yet Westwood was consistently billed, and paid for all units as if they were fully available and occupied.

Throughout the past few years, Westwood occupancy has steadily declined and currently averages less than 25% on an annual basis. Yet, the flat unmetered rate is consistently assessed as if each unit were occupied 100% all of the time.

From May 2024 to July 2024, the monthly invoice from Aqua increased from a total of \$11,865.46 (See Exhibit A) to \$11,981.00 (see Exhibit B). The majority of this difference was an unexplained increase in the Distribution System improvement Charge.

I had been advised by the management of Westwood that repeated attempts to resolve these erroneous billing issues with Aqua were met with a simple response of "File a Complaint with the PUC."

How is any of this fair and equitable?

Aqua shouldn't be allowed any additional rate increases and the above mentioned inequities in their billing practices must be addressed so that Westwood and al.t those connected to the Aqua system are invoiced based on actual[wastewater flow. Westwood has no issue paying for a service based on actual use, because that is what is fair and equitable.

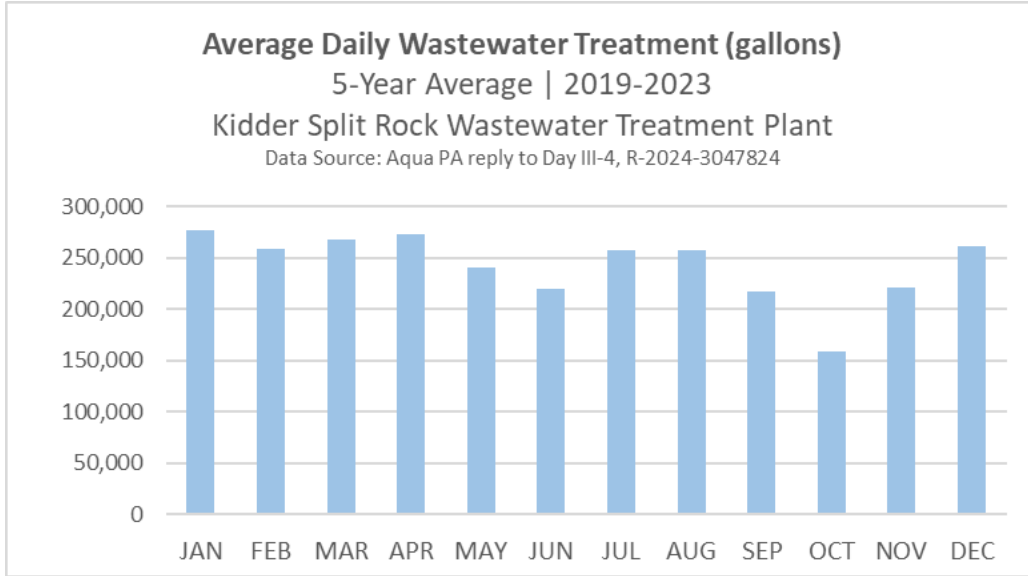
The only way to insure a fair and equitable billing process, is to meter wastewater. Please make it happen

Thank you for the opportunity to speak in this matter

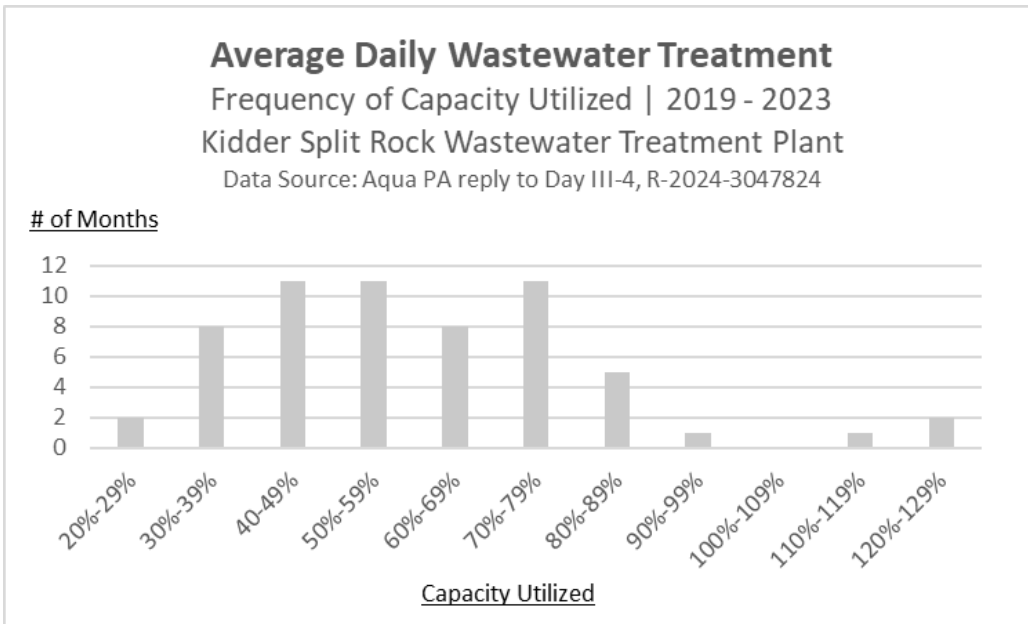
Louis N Del Rosso

EXHIBIT 3

Charts & Tables from Day Public Input Testimony & Exhibits²⁶



(Day Testimony, Exhib. 1 at 10)



(Day Testimony, Exhib. 1 at 11)

²⁶ From the detailed testimony / exhibit 1 of John Day, in support of telephonic, public input testimony delivered on 14 August 2024.

Rate Zone 4 - Wastewater Billing Inequity - 5/8 inch meter²⁷	
Proposed Metered	Proposed Unmetered
Homeowner consumes 1,000 gallons of water monthly	Homeowner consumes 1,000 gallons of water monthly
Monthly billing of \$98.90 (\$86.12 base + \$12.6810 per thousand gallons)	Monthly billing of \$135.20 (flat rate)
Annualized	
On an annualized basis, for the two scenarios above, unmetered homeowners are paying \$436.90 (\$437 rounded) more than their metered counterparts for the same level of wastewater treated. ²⁸	

(Day Testimony, Exhib. 1 at 13)

Wastewater Rates Comparison	Average for Aqua Rate Zones²⁹	Rate Zone 4 Metered	Rate Zone 4 Unmetered
<i>Base Charge</i>	\$57.91	\$86.12	\$135.20
<i>Volumetric per 1,000 gallons</i>	\$11.43	\$12.68	

(Day Testimony, Exhib.1 at 13)

²⁷ Aqua reply to Day I-10

²⁸ Aqua reply to Day I-11

²⁹ Aqua reply to Day III-5. In the case of the Day household, this annualized difference is larger on account of monthly water consumption ranging from 700-750 gallons. See Aqua Reply to Day III-8.

Rate Zone 4	2021 base rate case	Base rate case prior to 2021
Metered Base Rate	Up 33.5% – from \$62 to \$86.12 per month	n/a - only flat rates (see below)
Metered Volumetric Charge	Up 33.5% – from \$0.95 to \$1.281 per 1000 gallons	
Unmetered Flat Rate based on systemwide average consumption	Up 33.4% – from \$100 to \$135 per month	Up 60% – from \$62.50 per month to \$100

(Day Testimony, Exhibit 1 at 15)

EXHIBIT 4

Kidder / Splitrock Wastewater Treatment Plant Data³⁰

The total capacity of the Lake Harmony wastewater treatment plant is 400,000 gallons per day.³¹ The table below shows daily average flow as a percent of the plant's 400,000 gallon capacity. Over the five year period, 2019-2023, the average daily capacity of the plant ran at 61% – inclusive of infiltration and inflow.

Kidder Split Rock Wastewater Plant - Daily Flow as Percent of Daily Plant Capacity (400,000 gals)											Data Source: Aqua PA, 2 August 2024		
YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Annual Avg
2024	71%	43%	61%	59%	51%	40%							
2023	88%	40%	41%	38%	49%	33%	72%	56%	37%	39%	35%	74%	50%
2022	41%	73%	65%	89%	61%	56%	46%	49%	36%	37%	54%	77%	57%
2021	71%	52%	121%	73%	72%	61%	79%	111%	125%	57%	87%	50%	80%
2020	54%	69%	36%	54%	46%	63%	69%	64%	46%	41%	50%	78%	56%
2019	92%	89%	72%	87%	73%	62%	55%	41%	27%	26%	51%	49%	60%
5-yr Monthly Avg	69%	65%	67%	68%	60%	55%	64%	64%	54%	40%	55%	65%	61%

During the 60 months of measurement, the plant had three months – May, August and September 2021 – where average daily flow exceeded average daily capacity. The graph below shows the frequency with which average daily flows achieve different levels of plant treatment capacity.

Raw Count of Monthly Capacity Utilization

Avg Daily Capacity Utilized	20%-29%	30%-39%	40-49%	50%-59%	60%-69%	70%-79%	80%-89%	90%-99%	100%-109%	110%-119%	120%-129%	
# Months in 2023	0	5	3	1	0	2	1	0	0	0	0	12
# Months in 2022	0	2	3	2	2	2	1	0	0	0	0	12
# Months in 2021	0	0	0	3	1	4	1	0	0	1	2	12
# Months in 2020	0	1	3	3	4	1	0	0	0	0	0	12
# Months in 2019	2	0	2	2	1	2	2	1	0	0	0	12
TOTAL	2	8	11	11	8	11	5	1	0	1	2	60
<i>Distribution</i>	32				25				3			
	53%				42%				5%			

³⁰ These tables are a subset of those presented in the detailed testimony / exhibit 4 of John Day, in support of telephonic, public input testimony delivered on 14 August 2024.

³¹ Aqua reply to Day III-3.