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October 28, 2024

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find SCH USA's Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

LMB/lww

Enclosure

cc: Hon. Gail M. Chiodo w/enc.
Hon. Alphonso Arnold III w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

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

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Dated: October 28, 2024

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2024-3047824, *et al.*
 :
 Aqua Pennsylvania Wastewater, Inc. :

**MAIN BRIEF OF
SCH USA LLC**

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Table of Contents

I. INTRODUCTION 1

 A. Background..... 1

 B. Procedural History 2

II. SUMMARY OF ARGUMENT 2

III. OVERALL POSITION ON RATE INCREASE..... 4

IV. FLAT RATE BILLING OF SCH USA 4

 A. Background on EDUs 5

 B. The Current EDUs Assessed to SCH USA are Baseless and In Violation of
 Aqua’s Tariff..... 6

 C. Billing SCH USA on a Flat Rate Results in Charges that are Not Just and
 Reasonable 8

 D. Other Reliable, Accurate and Technically Feasible Options are Available
 Such That SCH USA Can Be Billed for Actual Consumption..... 11

V. OTHER TARIFF CHANGES..... 13

VI. CONCLUSION..... 16

Appendix A – Proposed Findings of Fact

Appendix B – Proposed Conclusions of Law

Appendix C – Proposed Ordering Paragraphs

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Pa. Elec. Co. v. Pa. PUC</i> , 502 A.2d 130 (Pa. 1985).....	4
<i>Popowsky v. Pa. PUC</i> , 665 A.2d 808 (Pa. 1995).....	4
Administrative	
<i>Pa. PUC v. Aqua Pennsylvania Inc. and Aqua Pennsylvania Wastewater, Inc.</i> , Docket Nos. R-2021-3027385	10
<i>Pa. PUC v. Community Utilities of Pa. Inc.</i> , Docket Nos. R-2021-3025206	10
<i>Pa. PUC v. Little Washington Water Co. Southeast Consol. Div.</i> , Docket Nos. R-2010-2207853	9, 10
Statutes	
66 Pa. C.S. § 1301.....	4, 5
Regulations	
25 Pa. Code § 73.17	5, 8, 14

I. INTRODUCTION

SCH USA, LLC (“SCH USA”) is a commercial wastewater customer of Aqua Pennsylvania Wastewater, Inc. (“Aqua”). SCH USA intervened in Aqua’s base rate case in order to address the billing method applied to SCH USA as a wastewater customer with unmetered water service. Aqua currently bills SCH USA a flat rate based on “Equivalent Dwelling Units.” As discussed in detail herein, the flat rate currently billed to SCH USA is based on an incorrect number of EDUs, and has no relationship whatsoever to actual usage at the property. This results in SCH USA being charged for significantly more wastewater usage than Aqua is actually collecting or treating. These inaccurate charges are unjust and unreasonable. SCH USA respectfully requests that the Commission direct Aqua to implement metered service for SCH USA by: (1) measuring actual wastewater discharges to Aqua’s system; or (2) measuring actual water consumption, so as to permit SCH USA to be billed based on its actual usage. Further, Aqua should be directed to include language in its tariff explicitly providing for such billing options.

A. Background

SCH USA owns and operates a large commercial resort property known as the Split Rock Resort, which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. SCH USA purchased the Resort property on October 29, 2020. The Resort consists of the following buildings and amenities: (1) The Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; (2) Willowbrook, a resort hotel with 256 guest rooms; (3) the Galleria, a resort hotel with 77 guest rooms and 8 VIP rooms, as well as other features including a food court and

shops, restaurants, movie theater, racquetball court, waterpark, indoor pool, lobby, bar, and large meeting space; and (4) a laundry that serves the Resort properties.¹

Water for the Split Rock Resort is provided by private wells which SCH USA also acquired when it purchased the Resort. The Resort receives non-residential wastewater service from Aqua as part of Rate Zone 4. Because SCH USA does not currently have metered water service, Aqua bills SCH USA a flat rate for unmetered wastewater service on a per Equivalent Dwelling Unit (“EDU”) basis.²

B. Procedural History

On May 23, 2024, Aqua filed Original Tariff Sewer – PA P.U.C. No. 4 (“Tariff No. 4”) with the Commission to become effective July 22, 2024. Through the tariff filing, Aqua proposed to increase its total wastewater annual operating revenues by approximately \$14.6 million, or 20.1%. On June 27, 2024, SCH USA filed a Petition to Intervene in Aqua’s rate case, which was subsequently granted. SCH USA submitted Direct and Surrebuttal testimonies and exhibits which were admitted into the record during the evidentiary hearing held on October 11, 2024. SCH USA now files this Main Brief pursuant to the Briefing Order issued by Administrative Law Judges Gail M. Chiodo and Alphonso Arnold, III on October 16, 2024.

II. SUMMARY OF ARGUMENT

Aqua’s current and proposed wastewater tariffs result in unjust and unreasonable rates being charged to SCH USA in violation of the Public Utility Code. Because SCH USA’s water usage is not metered, Aqua bills the Resort a flat rate for wastewater usage on a per EDU basis. The EDUs assessed to SCH USA: (1) are improperly based on a 2010 Settlement Agreement that

¹ SCH USA St. No. 1 at 2.

² SCH USA St. No. 1 at 2-3.

has long since expired and is no longer applicable to the properties; (2) are inconsistent with the calculation to be used for EDUs outlined in Aqua's tariff; and (3) assume full occupancy at the Resort at all times, even though, since SCH USA purchased the Resort and coming out of the COVID-19 pandemic, the Resort's occupancy rates have been significantly lower than 100%. As a result, SCH USA is being charged for more wastewater usage than Aqua is actually collecting and treating which is both unjust and unreasonable. Further, Aqua proposes changes to its EDU definition in its tariff in an attempt to solidify and secure the Commission's approval of its current practice of unfairly overcharging SCH USA based on an outdated, expired and now meaningless Settlement Agreement. The EDUs overcharged to SCH USA under the current and proposed wastewater tariffs have no relationship whatsoever to actual usage at the property, and therefore are unjust and unreasonable.

SCH USA respectfully requests that the Commission direct Aqua to charge SCH USA for wastewater service in a manner similar to other metered Rate Zone 4 customers that is based on the actual wastewater service being provided. This could be accomplished in a number of ways, including: (1) measuring actual water consumption and billing for wastewater service based on metered water consumption; (2) measuring actual wastewater discharges to Aqua's system; (3) adjusting the EDUs used for billing purposes in compliance with Aqua's tariff which better reflects actual usage and occupancy at the property; or (4) assigning a different proxy that more accurately reflects actual usage and occupancy. Aqua should be directed to explicitly provide for such billing options in its tariff in order to allow currently unmetered customers such as SCH USA to be billed for actual usage, rather than using EDUs which are an unfair and inaccurate estimation.

III. OVERALL POSITION ON RATE INCREASE

SCH USA did not take a position on the overall rate increase. Rather, SCH USA's testimony focused on specific issues related to Aqua's use of EDUs for flat rate billing as applied to SCH USA, as well as related tariff provisions. As such, SCH USA's brief only addresses these limited topics and will not address other items outlined in the Common Briefing Outline attached to the October 16, 2024 Briefing Order.

IV. FLAT RATE BILLING OF SCH USA

Section 1301 of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.”³ As discussed herein, Aqua's rates for wastewater service as applied to SCH USA are not just and reasonable because: (1) Aqua currently bills SCH USA based on a number of EDUs originally determined in a Settlement Agreement that Aqua did not assume when purchasing the system and which has long since expired; (2) Aqua's practice of billing SCH USA on a flat, per EDU, basis results in charges that have no relationship to actual usage at the property and may significantly overstate wastewater usage at the Resort, as occupancy at the Resort varies widely and is often significantly less than 100%;⁴ and (3) there are other reliable and technically feasible options to bill SCH USA for actual usage at the property.

³ 66 Pa. C.S. § 1301; *see also Popowsky v. Pa. PUC*, 665 A.2d 808 (Pa. 1995) (stating that the Commission has an “overriding responsibility to balance the consumer and investor interest in the establishment of just and reasonable rates,” citing 66 Pa. C.S. § 1301); *Pa. Elec. Co. v. Pa. PUC*, 502 A.2d 130, 133 (Pa. 1985), *citing Pa. PUC v. Pa. Gas and Water Co.*, 424 A.2d 1213, 1219 (Pa. 1980) (noting that, in determining just and reasonable rates, the Commission has “the power to make and apply policy concerning appropriate balance between prices charges to utility customers and return on capital to utility investors consonant with constitutional protections applicable to both.”).

⁴ SCH USA. St. No. 3 at 3.

For these reasons, Aqua’s current flat rate for unmetered wastewater service as imposed on SCH USA is unjust and unreasonable in violation of Section 1301 of the Public Utility Code. Aqua should instead be directed to implement one of the alternative methods described below to more accurately and equitably bill SCH USA for wastewater usage based on actual consumption at the property.

A. Background on EDUs

Aqua currently bills SCH USA a flat rate based on Equivalent Dwelling Units, or “EDUs.” An EDU is an estimated measurement of how much wastewater a customer produces when a means to meter the actual water or wastewater flow is not available.⁵ In general, EDUs are calculated by taking the estimated wastewater produced by an unmetered wastewater customer and dividing it by the average wastewater produced by a single-family residence.⁶

Under Aqua’s current and proposed wastewater tariff, Aqua uses EDUs for billing purposes when a wastewater customer does not have metered water service upon which volumetric charges can be based.⁷ Aqua’s tariff currently uses the sewage flows for the type of business as outlined in the Pennsylvania Department of Environmental Protection regulation at 25 Pa. Code § 73.17 and then divides that value by the estimated average daily wastewater flow from a single-family unit to calculate the EDUs for the property.⁸

Aqua’s per EDU charge is a flat rate charge based on estimated usage, rather than actual usage, relying on assumptions about the use of the property. While there may be instances where flat rate billing based on EDUs may be reasonable, applying this method to calculating bills for

⁵ SCH USA St. No. 2 at 2.

⁶ SCH USA St. No. 2 at 2.

⁷ SCH USA St. No. 2 at 3.

⁸ Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 3. In this proceeding, Aqua is proposing to change the definition of EDU in its tariff, as discussed in further detail below.

SCH USA's Resort significantly overstates the volume of wastewater that is produced at the property. Further, the number of EDUs that are currently billed to SCH USA and which would be billed to SCH USA under Aqua's proposed wastewater tariff have no relationship whatsoever to actual wastewater flows from the Resort.⁹

B. The Current EDUs Assessed to SCH USA are Baseless and In Violation of Aqua's Tariff.

The number of EDUs currently charged to SCH USA were originally set by a Settlement Agreement between Split Rock's original owner and the Township of Kidder in 2010. These EDUs are not based on actual usage by the Resort and are not calculated consistent with Aqua's existing tariff language. This results in rates charged to SCH USA that are unjust, unreasonable, and in violation of Aqua's tariff.¹⁰

The EDUs assigned to SCH USA were determined during litigation initiated in 2007 between a prior owner of Split Rock Resort and the Township of Kidder ("Kidder Township").¹¹ During the course of that proceeding, the litigants reached a Settlement Agreement ("2010 Settlement") on several issues, including the number of EDUs that would be used in calculating Split Rock Resort's wastewater charges.¹² Later, in 2012, Little Washington Wastewater Company d/b/a Suburban Wastewater Company ("LWWC") entered into an Asset Purchase Agreement ("APA") with Kidder Township to purchase the wastewater system.¹³ Under this

⁹ SCH USA. St. No. 3 at 3.

¹⁰ SCH USA St. No. 3 at 3-5.

¹¹ See SCH USA Exhibit FL-3, Aqua Response to SCH Interrogatory SCH-I-9, in which Aqua confirmed that "[t]he EDUs that are stipulated in [Aqua's] Compliance tariff were taken from the Settlement Agreement entered into between the Township of Kidder and Vacation Charters LTD., Split Rock Country Club, Inc., and Summit Management & Utilities, Inc."

¹² SCH USA Exh. FL-1, Release and Settlement Agreement, *Vacation Charters LTD., Split Rock Country Club, Inc., Summit Management & Utilities, Inc., v. Kidder Township*, In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079.

¹³ SCH USA Exh. FL-2 provides a copy of the Asset Purchase Agreement.

APA, only two paragraphs from that Settlement were transferred from Kidder Township to LWWC – and those paragraphs did not include the EDUs for the Split Rock Resort.¹⁴

Specifically, the APA states: “LWWC shall not assume any rights or obligations of Seller under any contract, agreement, commitment, lease, certificate, permit or other instrument, whether oral, written, express or implied, except with respect to: (i) those agreements, contracts, permits and other instruments listed on Schedule 1.4 attached hereto....” Schedule 1.4 of the APA states “Seller shall assign to LWWC Seller's right to collect the payments still to be made by the Plaintiff to Kidder Township under paragraphs nine and ten of that certain Release and Settlement Agreement entered by and between Vacation Charters LTD as Plaintiff and Kidder Township pursuant to the civil action filed in the Court of Common Pleas of Carbon County, Pennsylvania at Docket No. CV-07-4079....” The payments outlined in paragraphs nine and ten of the Settlement were to resolve disputed charges from the wastewater system between 2002 and 2010 and did not include EDU calculations for the Resort. As such, LWWC did not assume the portions of the 2010 Settlement related to the Resort’s EDU calculations, and Aqua likewise did not assume those EDU provisions when it later acquired the system.

Based on the plain language of these agreements, the 2010 Settlement has long expired, and any terms related to EDU calculations for the Resort were not assumed by Aqua when it acquired the wastewater system. The EDU determinations outlined in the 2010 Settlement have no bearing whatsoever on the calculation of EDUs for the Resort today or how SCH USA’s current wastewater bills should be calculated. By continuing to rely on these outdated and baseless EDU calculations, Aqua is imposing improper charges on SCH USA that are unjust and unreasonable.

¹⁴ SCH USA St. No. 3 at 4-5.

Additionally, Aqua's position violates its own tariff by failing to calculate EDUs in the manner described in and consistent with the tariff. Aqua's current tariff requires that EDUs be determined based upon the estimated average daily wastewater flow for the type of business, as calculated by the Pennsylvania Department of Environmental Protection ("PA DEP") regulation at 25 Pa. Code § 73.17, divided by the typical estimated average daily wastewater flow from a current single-family unit.¹⁵ Billing SCH USA based on the inapplicable 2010 Settlement does not comport with the calculation method outlined in the tariff. As such, the Commission should find that Aqua's current flat rate billing process as applied to SCH USA is illegal and in violation of Aqua's tariff and must not be permitted to continue.

C. Billing SCH USA on a Flat Rate Results in Charges that are Not Just and Reasonable

Aqua's current practice of billing SCH USA on a flat, per EDU basis results in rates being charged to SCH USA that are not just and reasonable. While there may be situations where flat rate billing can be applied in a reasonable manner, applying flat rate billing to a large commercial resort is entirely unreasonable. Billing on a per EDU basis assumes full occupancy of the Resort; however, due to various circumstances, the Resort is rarely if ever at 100% occupancy.¹⁶ Flat rate billing causes SCH USA to be billed for amounts that significantly overestimate actual usage, resulting in rates that are unjust and unreasonable in violation of the Public Utility Code. Additionally, the Commission has articulated a clear and consistent preference for charges based on actual meter usage, as opposed to estimated, flat rate billing. It is

¹⁵ Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25.

¹⁶ SCH USA St. No. 1 at 3.

entirely possible here for SCH USA to be billed based on actual usage, but Aqua simply refuses to cooperate with SCH USA's reasonable and technically feasible proposals.¹⁷

Aqua's flat rate billing methodology inherently assumes that the Resort is at full occupancy, every single day of the year, making this approach unreasonable as applied to SCH USA. As SCH USA witness Frank Lacey explained, occupancy is one of the primary drivers of water and wastewater consumption. Occupancy drives both direct consumption (i.e., consumption from bathing, use of toilets, sinks, etc.), as well as indirect consumption (i.e., consumption from food preparation, laundry, etc.).¹⁸ Particularly at a large commercial resort like SCH USA's property, actual consumption will vary significantly based on occupancy rates. However, EDU-based billing results in SCH USA receiving the same bill every month, whether occupancy is at zero percent or 100%.¹⁹ The Resort's average occupancy rates are significantly lower than 100%,²⁰ and as a result the Resort's actual wastewater usage is much lower than what is being billed by Aqua. As such, Aqua's practice of billing SCH USA a flat rate is unjust and unreasonable.

Importantly, the Commission has consistently stated that volumetric billing based on actual, measured usage is clearly preferable to flat rate billing. For example, in *Pa. PUC v. Little Washington Water Co. Southeast Consol. Div.*, the Commission stated that:

The ALJs conclude that there is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation. We agree. In addition to encouraging the conservation of water and wastewater services, volumetric billing also results in a more equitable distribution of the variable costs of wastewater service among ratepayers.

¹⁷ See SCH USA St. No. 3 at 12-16.

¹⁸ SCH USA St. No. 3 at 6.

¹⁹ SCH USA St. No. 3 at 6.

²⁰ SCH USA St. No. 1 at 3.

Pa. PUC v. Little Washington Water Co. Southeast Consol. Div., Docket Nos. R-2010-2207853 *et al.*, 2011 WL 3001699 (Pa.P.U.C.), Opinion and Order (entered June 9, 2011) (internal citation omitted); *see also Pa. PUC v. Community Utilities of Pa. Inc.*, Docket Nos. R-2021-3025206 *et al.*, 2022 WL 143145 (Pa.P.U.C.), Opinion and Order (entered Jan. 13, 2022) (“We concur with the Joint Petitioners that there is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation ... [and] also results in a more equitable distribution of the variable costs of wastewater service among ratepayers.”)

In Aqua’s 2022 base rate case, the Commission reiterated its preference for volumetric billing, while noting specifically in the context of unmetered residential wastewater service that “where metered information is unavailable, we acknowledge the standard industry practice of basing the flat rate on a system-wide average usage per month plus a customer charge.” *Pa. PUC v. Aqua Pennsylvania Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2021-3027385 *et al.*, Opinion and Order (entered May 16, 2022), at 272. However, it is not the case for SCH USA that metered information is simply “unavailable.” Rather, as SCH USA witness Ronald Carrier explained, it is entirely possible and technically feasible to obtain metered usage data for billing purposes for SCH USA’s accounts.²¹ The Commission’s statement in Aqua’s 2022 base rate case also specifically related to unmetered *residential* customers, which is very different from SCH USA’s large commercial resort at which occupancy and usage may vary widely throughout the year.

As discussed further below, SCH USA has identified various practical, reasonable and accurate means of measuring actual flows such that SCH USA could be billed based on actual

²¹ SCH USA St. No. 2 at 7-10.

metered usage going forward.²² Aqua simply refuses to cooperate with SCH USA's reasonable requests because its current practice is the way they have always done it,²³ despite the fact that Aqua itself has recognized that volumetric billing is preferable to flat rate billing.²⁴ Aqua has even acknowledged that it currently has customers in its system who are billed based on metered wastewater service, as well as those who are billed based on metered water usage from private wells.²⁵ Aqua's argument is weak and ignores the Commission's clear and consistent statements that volumetric billing is superior and should be provided where possible.

D. Other Reliable, Accurate and Technically Feasible Options are Available Such That SCH USA Can Be Billed for Actual Consumption

As explained by SCH USA witness Ronald Carrier, there are a number of reliable, accurate and technically feasible options available that would allow SCH USA to be billed based on actual metered usage, or at a minimum, provide a more accurate proxy for SCH USA's actual usage.

First, Aqua could use wastewater meters to measure SCH USA's actual discharges into its wastewater system and bill SCH USA based on these actual measurements. As Mr. Carrier discussed, there are metering technologies available that allow for direct measurement of wastewater flow, negating the need for estimating the usage based on EDUs or from water meter readings.²⁶ Two of the most common types of metering technologies used in measurement of sewage flow are ultrasonic flowmeters and electromagnetic flowmeters.²⁷ Mr. Carrier identified

²² SCH USA St. No. 2 at 7-10.

²³ SCH USA St. No. 3-SR at 1.

²⁴ See Aqua St. No. 10 at 14; SCH USA Exhibit RC-1, Aqua Response to OCA-II-5.

²⁵ SCH USA St. No. 2 at 10; SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Responses to SCH-I-1 and SCH-I-2.

²⁶ SCH USA St. No. 2 at 7.

²⁷ SCH USA St. No. 2 at 7.

other utilities across the country that use such wastewater meters, including in Michigan, Indiana, and Washington.²⁸

The Commission has recognized wastewater metering as a viable option. For example, the Commission's sample wastewater tariff includes a provision wherein metered rates could be charged based on the metered volume of wastewater discharged at a property into the wastewater system.²⁹ SCH USA witness Lacey also noted Aqua's existing and proposed wastewater tariffs allow for wastewater metering in different zones, and that Aqua has admitted in discovery that it currently serves customers whose wastewater output is metered for billing purposes.³⁰

As a second option, SCH USA's actual water consumption could be metered and Aqua could use water consumption as a proxy for wastewater usage for billing purposes.³¹ In this instance, water meters could be used to determine a more accurate, and more reasonable, quantity of wastewater being discharged to Aqua's system. Basing wastewater bills on actual metered water usage is a common practice that provides a more accurate means of determining wastewater usage.³² While this is still a method of estimating wastewater usage (given that not all water going through the meters ends up in the sewer system), it is a significant improvement over calculating EDUs and would provide a more accurate wastewater bill than the current flat rate bill SCH USA receives.³³ Aqua has admitted that it has customers in its system who are

²⁸ SCH USA St. No. 2 at 8-9.

²⁹ SCH USA St. No. 2 at 9; *see* https://www.puc.pa.gov/documents/utility-files/346/Sam_Tariff_Wastewtr.pdf at Page No. 8.

³⁰ SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Response to Interrogatory SCH-I-1 (“[Aqua] has two commercial customers ... that are billed based on metered wastewater flows.”)

³¹ SCH USA St. No. 2 at 9-10.

³² SCH USA St. No. 2 at 9-10.

³³ SCH USA St. No. 2 at 10.

billed for wastewater service based on reads for meters connected to private, customer-owned wells.³⁴

Other potential alternatives include adjusting SCH USA' EDUs used for billing purposes to better reflect actual usage and occupancy; or assigning some other proxy that more accurately reflects actual usage and occupancy.³⁵ However, SCH USA submits that because metering actual wastewater discharge or actual water consumption is entirely feasible and provide a more accurate representation of usage, one of those options should be employed to provide accurate, just and reasonable bills to SCH USA for wastewater service. SCH requests that the Commission direct Aqua to implement one of these options. Further, Aqua should be directed to explicitly provide for such billing options in its tariff in order to allow currently unmetered customers such as SCH USA to be billed for actual usage.

V. OTHER TARIFF CHANGES

As part of its filing, Aqua has proposed to change to the definition of EDU in its wastewater tariff. This proposed tariff change is an attempt to solidify Aqua's position and secure the Commission's approval for the Resort's EDUs to continue to be based on a "predetermined EDU allocation" as established in the 2010 Settlement discussed above. As previously explained, the 2010 Settlement is not a valid method of determining Split Rock Resort's EDUs – let alone reflecting its actual usage – and this proposed definition change must be rejected.

In its current tariff, Aqua defines an EDU as "a measure based upon the estimated average daily wastewater flow for the type of business, as calculated by the Pennsylvania

³⁴ SCH USA St. No. 2 at 10; SCH USA Exh. RC-1, Aqua Response to SCH-I-2.

³⁵ SCH USA St. No. 1 at 4.

Department of Environmental Protection regulation at 25 Pa. Code § 73.17 divided by the typical estimated average daily wastewater flow from a current single-family unit. In the Company’s sole discretion, the Company may assign more than one (1) EDU for a residential Property.”³⁶ In its proposed tariff, Aqua proposes to revise the definition of EDU to provide as follows:

Equivalent Dwelling Unit or “EDU”: Except for existing Customers acquired by the Company through a purchase or acquisition and for billing purposes only, the EDU is a measure assigned by the Company based upon the estimated average daily wastewater flow for the type of business, as calculated by the PaDEP regulation at 52 Pa. Code § 73.17(b) divided by the Company’s typical estimated average daily wastewater flow from a current single-family unit. Residential Customers are designated as one (1) EDU; however, in the Company’s sole discretion, the Company may assign more than one (1) EDU for a residential Property.

For existing customers without a predetermined EDU allocation, the EDU is a measure based upon the estimated average daily wastewater flow for the type of business based on water usage, divided by the typical estimated average daily wastewater flow from a current single-family unit. For other existing customers acquired by the Company through a purchase or acquisition, the number of equivalent dwelling units is available at <https://www.aquawater.com/about/states-we-serve/pennsylvania/index.php>.

Any Customer who modifies their properties in a manner that impacts the EDU calculation, including in areas previously acquired by the Company, will be subject to the EDU definition described above. The Company will consider a Customer’s request for a change in the number of assigned EDU’s upon presentation of substantial evidence, satisfactory to the Company in its sole discretion. The Customer shall bear the burden of proof for all such requests.³⁷

SCH USA opposes the revised definition of EDU and submits that it should be rejected.

First, because SCH USA is a customer acquired through a purchase or acquisition, and Aqua’s position is that SCH USA has a “predetermined EDU allocation” under the 2010 Settlement, it appears that Aqua is attempting to modify the EDU definition to provide a basis

³⁶ Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25.

³⁷ Proposed Aqua Tariff Sewer-PA P.U.C. No. 4, Original Page 26.

for continuing to bill SCH USA based on the 2010 Settlement.³⁸ As explained above, there is no valid basis for using the 2010 Settlement to determine SCH USA’s EDUs for billing purposes, and continuing to bill SCH USA on this basis is unjust and unreasonable.

Additionally, the new definition allows Aqua to be the sole “judge and jury” when it comes to evaluating requests for changes to EDU calculations.³⁹ The proposed definition states “[Aqua] will consider a Customer’s request for a change in the number of assigned EDU’s upon presentation of substantial evidence, satisfactory to the Company in its sole discretion.” It is unreasonable for Aqua to serve in this role, particularly without any clear guidelines. However, if the Commission is inclined to defer to Aqua in this manner, SCH USA submits that Aqua should be required to include clear definitions in its tariff to define what comprises “substantial” evidence and the specific criteria by which Aqua will make such determinations “in its sole discretion.”⁴⁰

For all of these reasons, Aqua’s proposed revisions to the definition of EDU should be rejected.

³⁸ SCH USA St. No. 3 at 9.

³⁹ SCH USA St. No. 3 at 10.

⁴⁰ SCH USA St. No. 3 at 10.

VI. CONCLUSION

For the foregoing reasons, SCH USA submits that Aqua's current flat rate billing as applied to SCH USA results in rates that are unjust and unreasonable in violation of the Public Utility Code, and therefore cannot be permitted to continue. SCH USA respectfully requests that the Commission direct Aqua to permit SCH USA to be billed for wastewater service based on actual measured usage, by: (1) measuring actual wastewater discharges to Aqua's system; or (2) measuring actual water consumption. Further, Aqua should be directed to include language in its tariff explicitly providing for such billing options.

Respectfully submitted,

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Appendix A – Proposed Findings of Fact

1. SCH USA owns and operates a large commercial resort property known as the Split Rock Resort, which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. SCH USA St. No. 1 at 2.
2. SCH USA purchased the Split Rock Resort property on October 29, 2020. SCH USA St. No. 1 at 2.
3. The Split Rock Resort consists of the following buildings and amenities: (1) The Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; (2) Willowbrook, a resort hotel with 256 guest rooms; (3) the Galleria, a resort hotel with 77 guest rooms and 8 VIP rooms, as well as other features including a food court and shops, restaurants, movie theater, racquetball court, waterpark, indoor pool, lobby, bar, and large meeting space; and (4) a laundry that serves the Resort properties. SCH USA St. No. 1 at 2.
4. Water for the Split Rock Resort is provided by private wells which SCH USA also acquired when it purchased the Resort. SCH USA St. No. 1 at 2-3.
5. The Resort receives non-residential wastewater service from Aqua as part of Rate Zone 4. SCH USA St. No. 1 at 2-3.
6. Aqua currently bills SCH USA a flat rate for unmetered wastewater service on a per Equivalent Dwelling Unit (“EDU”) basis. SCH USA St. No. 1 at 2-3.
7. An EDU is an estimated measurement of how much wastewater a customer produces when a means to meter the actual water or wastewater flow is not available. SCH USA St. No. 2 at 2.
8. In general, EDUs are calculated by taking the estimated wastewater produced by an unmetered wastewater customer and dividing it by the average wastewater produced by a single-family residence. SCH USA St. No. 2 at 2.
9. Under Aqua’s current and proposed wastewater tariff, Aqua uses EDUs for billing purposes when a wastewater customer does not have metered water service upon which volumetric charges can be based. SCH USA St. No. 2 at 3.
10. Aqua’s tariff currently uses the sewage flows for the type of business as outlined in the Pennsylvania Department of Environmental Protection regulation at 25 Pa. Code § 73.17 and then divides that value by the estimated average daily wastewater flow from a single-

family unit to calculate the EDUs for the property. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 3.

11. Applying flat rate, per EDU billing to SCH USA's Resort significantly overstates the volume of wastewater that is produced at the property. SCH USA. St. No. 3 at 3.
12. The number of EDUs that are currently billed to SCH USA and which would be billed to SCH USA under Aqua's proposed wastewater tariff have no relationship whatsoever to actual wastewater flows from the Resort. SCH USA. St. No. 3 at 3.
13. The number of EDUs currently charged to SCH USA were originally set by a Settlement Agreement between Split Rock's original owner and the Township of Kidder in 2010. SCH USA St. No. 3 at 3-5.
14. The EDUs currently billed to SCH USA are not based on actual usage by the Resort. SCH USA St. No. 3 at 3-5.
15. The EDUs currently billed to SCH USA are not calculated consistent with Aqua's existing tariff language. SCH USA St. No. 3 at 3-5.
16. During litigation initiated in 2007 between Split Rock Resort and the Township of Kidder a Settlement Agreement ("2010 Settlement") was reached on several issues, including the number of EDUs that would be used in calculating Split Rock Resort's wastewater charges. SCH USA Exh. FL-3, Aqua Response to SCH Interrogatory SCH-I-9; SCH USA Exh. FL-1, Release and Settlement Agreement, *Vacation Charters LTD., Split Rock Country Club, Inc., Summit Management & Utilities, Inc., v. Kidder Township*, In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079.
17. In 2012, Little Washington Wastewater Company d/b/a Suburban Wastewater Company ("LWWC") entered into an Asset Purchase Agreement ("APA") with Kidder Township to purchase the wastewater system. SCH USA Exh. FL-2.
18. Under the APA, only two paragraphs from the 2010 Settlement were transferred from Kidder Township to LWWC, and those paragraphs did not include the EDUs for the Split Rock Resort. SCH USA St. No. 3 at 4-5; SCH USA Exh. FL-2.
19. Aqua likewise did not assume the EDU provisions in the 2010 Settlement when it later acquired the system. SCH USA St. No. 3 at 4-5.
20. The EDU determinations outlined in the 2010 Settlement have no bearing whatsoever on the calculation of EDUs for the Resort today or how SCH USA's current wastewater bills should be calculated. SCH USA St. No. 3 at 4-5.

21. Billing SCH USA based on the inapplicable 2010 Settlement does not comport with the calculation method outlined in Aqua's wastewater tariff. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 3.
22. Billing on a per EDU basis assumes full occupancy of the Resort. SCH USA St. No. 1 at 3.
23. The Resort is rarely if ever at 100% occupancy. SCH USA St. No. 1 at 3.
24. It is entirely possible for SCH USA to be billed based on actual usage, but Aqua simply refuses to cooperate with SCH USA's reasonable and technically feasible proposals. SCH USA St. No. 3 at 12-16.
25. Occupancy is one of the primary drivers of water and wastewater consumption. SCH USA St. No. 3 at 6.
26. Occupancy drives both direct consumption (i.e., consumption from bathing, use of toilets, sinks, etc.), as well as indirect consumption (i.e., consumption from food preparation, laundry, etc.). SCH USA St. No. 3 at 6.
27. At a large commercial resort like SCH USA's property, actual consumption will vary significantly based on occupancy rates. SCH USA St. No. 3 at 6.
28. EDU-based billing results in SCH USA receiving the same bill every month, whether occupancy is at zero percent or 100%. SCH USA St. No. 3 at 6.
29. The Resort's average occupancy rates are significantly lower than 100%, and as a result the Resort's actual wastewater usage is much lower than what is being billed by Aqua. SCH USA St. No. 1 at 3; SCH USA St. No. 3 at 6.
30. It is entirely possible and technically feasible to obtain metered usage data for billing purposes for SCH USA's accounts. SCH USA St. No. 2 at 7-10.
31. Aqua currently has customers in its system who are billed based on metered wastewater service. SCH USA St. No. 2 at 10; SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Response to SCH-I-1.
32. Aqua currently has customers in its system who are billed based on metered water usage from private wells. SCH USA St. No. 2 at 10; SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Responses SCH-I-2.

33. There are metering technologies available that allow for direct measurement of wastewater flow, negating the need for estimating the usage based on EDUs or from water meter readings. SCH USA St. No. 2 at 7.
34. Two of the most common types of metering technologies used in measurement of sewage flow are ultrasonic flowmeters and electromagnetic flowmeters. SCH USA St. No. 2 at 7.
35. Other utilities across the country use wastewater meters, including utilities in Michigan, Indiana, and Washington. SCH USA St. No. 2 at 8-9.
36. The Commission's sample wastewater tariff includes a provision wherein metered rates could be charged based on the metered volume of wastewater discharged at a property into the wastewater system. SCH USA St. No. 2 at 9.
37. Aqua's existing and proposed wastewater tariffs allow for wastewater metering in different zones. *See* SCH USA St. No. 3 at 11-12.
38. SCH USA's actual water consumption could be metered and Aqua could use water consumption as a proxy for wastewater usage for billing purposes. SCH USA St. No. 2 at 9-10.
39. Basing wastewater bills on actual metered water usage is a common practice that provides a more accurate means of determining wastewater usage. SCH USA St. No. 2 at 9-10.
40. Aqua's proposed change to the definition of EDU in its wastewater tariff is an inappropriate attempt to provide a basis for continuing to bill SCH USA based on the expired 2010 Settlement. SCH USA St. No. 3 at 9.

Appendix B – Proposed Conclusions of Law

1. Section 1301 of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa. C.S. § 1301.
2. The number of EDUs that Aqua currently charges to SCH USA results in rates that are unjust and unreasonable in violation of 66 Pa. C.S. § 1301.
3. The number of EDUs currently charged to SCH USA violate of Aqua’s current wastewater tariff. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 3 at 3-5.
4. The 2010 Settlement has expired and cannot be used to determine the EDUs to be charged to SCH USA. SCH USA Exh. FL-2 and FL-3; SCH USA St. No. 3 at 4-5.
5. Aqua’s current method of calculating SCH USA’s EDUs violates Aqua’s wastewater tariff by failing to calculate EDUs in the manner described in and consistent with the tariff. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 3 at 3-5.
6. The Commission has consistently stated that volumetric billing based on actual, measured usage is clearly preferable to flat rate billing. *See, e.g., Pa. PUC v. Little Washington Water Co. Southeast Consol. Div.*, Docket Nos. R-2010-2207853 *et al.*, 2011 WL 3001699 (Pa.P.U.C.), Opinion and Order (entered June 9, 2011); *see also Pa. PUC v. Community Utilities of Pa. Inc.*, Docket Nos. R-2021-3025206 *et al.*, 2022 WL 143145 (Pa.P.U.C.), Opinion and Order (entered Jan. 13, 2022).
7. Aqua’s application of flat rate billing based on EDUs to SCH USA results in rates that are unjust and unreasonable in violation of the Public Utility Code. 66 Pa. C.S. § 1301.

Appendix C – Proposed Ordering Paragraphs

1. Aqua is directed to bill SCH USA for wastewater service based on actual measured usage, by: (1) measuring actual wastewater discharges to Aqua’s system; or (2) measuring actual water consumption.
2. Aqua is directed to include language in its tariff explicitly providing for the billing options identified in Ordering Paragraph 1 above.
3. Aqua’s proposed change to the definition of “Equivalent Dwelling Unit” (“EDU”) in its wastewater tariff is rejected.