



Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219

TEL: 412 566 6000  
FAX: 412 566 6099

Lauren M. Burge  
412.566.2146  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)

November 7, 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 Reply 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 Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### Via Email Only

Michael W. Hassell, Esquire  
Garrett P. Lent, Esquire  
Nicholas A. Stobbe, Esquire  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mhassell@postschell.com](mailto:mhassell@postschell.com)  
[glent@postschell.com](mailto:glent@postschell.com)  
[nstobbe@postschell.com](mailto:nstobbe@postschell.com)

Kimberly A. Joyce, Esquire  
Alexander R. Stahl, Esquire  
762 Lancaster Ave  
Bryn Mawr, PA 19010  
[kajoyce@essential.co](mailto:kajoyce@essential.co)  
[astahl@aquaamerica.com](mailto:astahl@aquaamerica.com)

Steven C. Gray, Esquire  
Rebecca Lyttle, Esquire  
Office of Small Business Advocate  
555 Walnut Street, 1st Floor  
Forum Place  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)  
[relyttle@pa.gov](mailto:relyttle@pa.gov)

Carrie B. Wright, Esquire  
Michael A. Podskoch, Jr. Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17105-3265  
[carwright@pa.gov](mailto:carwright@pa.gov)  
[mpodskoch@pa.gov](mailto:mpodskoch@pa.gov)

Melanie El Atieh, Esquire  
Jacob Guthrie, Esquire  
Katherine Kennedy, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[melatieh@paoca.org](mailto:melatieh@paoca.org)  
[jguthrie@paoca.org](mailto:jguthrie@paoca.org)  
[kkennedy@paoca.org](mailto:kkennedy@paoca.org)  
[oaaqua2024@paoca.org](mailto:oaaqua2024@paoca.org)

John W. Sweet, Esquire  
Ria M. Pereira, Esquire  
Elizabeth R. Marx, Esquire  
Lauren Berman, Esquire  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@pautilitylawproject.org](mailto:pulp@pautilitylawproject.org)

Karen O. Moury, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellot, LLC  
213 Market St., 8th Floor  
Harrisburg, PA 17101  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

Scott T. Wyland, Esquire  
Elana D. Schnall, Esquire  
Salzmann Hughes, P.C.  
1801 Market Street, Suite 300  
Camp Hill, PA 17011  
[swyland@salzmannhughes.com](mailto:swyland@salzmannhughes.com)  
[eschnall@salzmannhughes.com](mailto:eschnall@salzmannhughes.com)

Adeolu A. Bakare, Esquire  
Charis Mincavage, Esquire  
Harrison Ryan Block,  
Esquire McNeese Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[abakare@mcneese.com](mailto:abakare@mcneese.com)  
[cmincavage@mcneese.com](mailto:cmincavage@mcneese.com)  
[rblock@mcneese.com](mailto:rblock@mcneese.com)

Robert J. Fogarty  
628 Fair Street  
Nescopeck, PA 18635  
[Rjf12@verizon.net](mailto:Rjf12@verizon.net)

Susan Unvarsky and Sharon Ellis  
151 Brook Street  
Sugar Notch, PA 18706  
[Sunvarsky24@gmail.com](mailto:Sunvarsky24@gmail.com)

Steven Boyanowski  
34 Willow Way  
Dallas, PA 18612  
[judyccd@gmail.com](mailto:judyccd@gmail.com)

State Representative Christina Sappey  
698 Unionville Road  
Kennett Square, PA 19348  
[scooper@pahouse.net](mailto:scooper@pahouse.net)

John Day  
614 Runyon Avenue  
Piscataway, NJ 08854  
[john@johnday.us](mailto:john@johnday.us)

Dated: November 7, 2024

*Lauren M. Burge*  
\_\_\_\_\_  
Lauren M. Burge, Esq.



**Table of Contents**

I. INTRODUCTION ..... 1

II. FLAT RATE BILLING OF SCH USA ..... 2

    A. The Current EDUs Assessed to SCH USA are Baseless, Incorrect and In Violation of Aqua’s Tariff..... 2

    B. Aqua’s Claims Regarding SCH USA’s EDUs and its Wastewater Treatment Capacity are Unfounded..... 5

    C. Aqua Has No Basis for Refusing to Provide Metered Options to SCH USA..... 6

    D. Aqua’s Proposed Changes to its Definition of EDU Must Be Rejected ..... 8

III. CONCLUSION..... 9

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Split Rock Country Club, Inc., Summit Management &amp; Utilities, Inc., v. Kidder Township</i> , In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079 .....	3
<b>Administrative</b>	
<i>Pa. PUC v. Community Utilities of Pa. Inc.</i> , Docket Nos. R-2021-3025206 .....	7
<i>Pa. PUC v. Little Washington Water Co. Southeast Consol. Div.</i> , Docket Nos. R-2010-2207853 .....	7
<b>Regulations</b>	
25 Pa. Code § 73.17 .....	4

## **I. INTRODUCTION**

SCH USA, LLC (“SCH USA”) owns and operates the Split Rock Resort, a large commercial resort property which receives wastewater service from Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”). As described in detail in SCH USA’s Main Brief (“MB”), 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” (“EDUs”). 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, which can vary widely based on occupancy at the Resort. 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 and must not be permitted to continue.

In its Main Brief, the Company raises a number of arguments in support of its position which would allow Aqua to maintain its current practice of charging SCH USA based on an incorrect number of EDUs and in violation of its own tariff. As discussed below, each of these arguments is baseless. At its core, Aqua simply refuses to bill SCH USA for actual metered usage, even though SCH USA has presented a number of reliable, accurate and technically feasible options that would allow SCH USA to be billed based on actual water or wastewater consumption. Aqua has other customers on its system who are billed based on metered wastewater usage or metered water consumption from private wells, but the Company refuses to provide a similar service to SCH USA. This is despite the fact that the Commission has stated a clear preference for billing based on actual, metered usage, and Aqua can point to no concrete reason or requirement that would prevent it from billing SCH USA based on metered usage.

For the reasons discussed in its Main Brief and herein, 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.

## **II. FLAT RATE BILLING OF SCH USA**

### **A. The Current EDUs Assessed to SCH USA are Baseless, Incorrect and In Violation of Aqua’s Tariff.**

In its Main Brief, Aqua argues that it is obligated to bill SCH USA pursuant to its Commission-approved tariff, and that SCH USA’s claims regarding existing rates fail because Aqua believes that it is currently billing SCH USA consistent with its tariff.<sup>1</sup> Aqua also claims that SCH USA has not shown that its assigned EDUs are incorrect or inaccurate, and the Company has “merely continued to apply agreed upon values” pursuant to an expired settlement.<sup>2</sup> These arguments are incorrect because, in fact, Aqua is not currently billing SCH consistent with its tariff. Rather, Aqua is billing SCH USA for EDUs determined by a long expired and inapplicable settlement agreement, which is not reflected anywhere in its tariff and which is inconsistent with the method of calculating EDUs described in Aqua’s tariff. Further, the EDUs charged to SCH USA have no relationship to the actual usage at the property. Therefore, the EDUs currently charged to SCH USA result in rate that are unjust and unreasonable, and therefore must be rejected.

As explained in SCH USA’s Main Brief, the EDUs assigned to SCH USA were determined during litigation between a prior owner of Split Rock Resort and the Township of

---

<sup>1</sup> Aqua MB at 22-23.

<sup>2</sup> Aqua MB at 26.

Kidder (“Kidder Township”).<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Under this 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.<sup>6</sup> Therefore, the 2010 Settlement has long expired, and any terms related to EDU calculations for the Resort were not assumed by Aqua when it later acquired the wastewater system.<sup>7</sup> 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 not only imposing charges on SCH USA that are unjust and unreasonable, but is also violating its own tariff by failing to calculate EDUs in the manner described in and consistent with its Commission approved 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

---

<sup>3</sup> SCH USA MB at 6; *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.”

<sup>4</sup> SCH USA MB at 6; *see* 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.

<sup>5</sup> SCH USA Exh. FL-2 provides a copy of the Asset Purchase Agreement.

<sup>6</sup> SCH USA MB at 6-7; SCH USA St. No. 3 at 4-5.

<sup>7</sup> SCH USA MB at 7.

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.<sup>8</sup> Billing SCH USA based on the inapplicable 2010 Settlement does not comport with the calculation method outlined in the tariff.<sup>9</sup> As such, Aqua’s current flat rate billing process as applied to SCH USA violates Aqua’s tariff, and Aqua’s argument that it is simply complying with its tariff by charging SCH USA in this manner is completely meritless.

Further, Aqua claims that the Commission approved the EDU-based billing of SCH USA in the acquisition docket, the 2018 rate case and 2021 rate case.<sup>10</sup> This statement is not accurate. As SCH USA witness Frank Lacey testified, a review of Aqua’s last two rate cases shows the Commission did not expressly approve an allocation of costs or EDUs specific to SCH USA in either of those proceedings.<sup>11</sup> Aqua’s Main Brief generically cites to these proceedings but does not provide any specific citation as to where it claims the Commission has approved the number of EDUs that it argues must be billed to SCH USA. Further, Aqua’s current tariff does not include any mention of EDUs specific to SCH USA. Aqua has failed to provide any support for this argument.

Aqua also appears to claim that SCH USA has not proven that its actual consumption differs from the assigned EDUs or that there have been changed circumstances at the property, and on that basis SCH USA’s claims should be denied.<sup>12</sup> However, Aqua has not pointed to any requirement or regulation providing that circumstances at the property must have changed or that

---

<sup>8</sup> Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25.

<sup>9</sup> SCH USA MB at 8.

<sup>10</sup> Aqua MB at 19.

<sup>11</sup> SCH USA St. No. 3-SR at 2.

<sup>12</sup> Aqua MB at 26-27; 28-29.

actual consumption must differ from the EDUs charged in order for SCH USA's concerns to be addressed. As discussed above and in SCH USA's Main Brief, the current EDUs are based on the 2010 Settlement which has never been applicable to SCH USA's wastewater usage. Further, the current EDUs have no relationship whatsoever to actual usage at the property. The current EDUs also were not calculated consistent with Aqua's tariff. As such, there is no basis for the current EDU charges, and Aqua's attempts to impose unfounded requirements must be rejected.

For these reasons and those discussed in SCH USA's Main Brief, the Commission should find that Aqua's current billing practice as applied to SCH USA is illegal and in violation of Aqua's tariff and must not be permitted to continue.

**B. Aqua's Claims Regarding SCH USA's EDUs and its Wastewater Treatment Capacity are Unfounded.**

Aqua argues that its use of EDUs is reasonable from a system design perspective because the Company must consider the "sewer capacity needed to treat wastewater from the customer / premises at all times."<sup>13</sup> However, this does not make it reasonable to bill SCH USA a flat rate based on the assumption that the maximum amount of wastewater consumption is occurring at the property, particularly given that occupancy at the property is typically significantly below 100%.<sup>14</sup>

As SCH USA witness Lacey explained, by billing based on EDUs, Aqua is charging SCH USA for the maximum amount of flow that could come from the property at all times,<sup>15</sup> regardless of whether the Resort's occupancy is at zero percent or 100%.<sup>16</sup> As such, these rates have nothing to do with actual services rendered. This approach is unfair to SCH USA as a

---

<sup>13</sup> Aqua MB at 24, *quoting* Aqua St. No. 11-R at 3.

<sup>14</sup> SCH USA St. No. 1 at 3.

<sup>15</sup> SCH USA St. No. 3-SR at 3.

<sup>16</sup> SCH USA St. No. 3 at 6.

customer with variable wastewater needs, and worse yet, it creates tremendous disincentives to any type of water or wastewater conservation or efficiencies.<sup>17</sup> Further, based on a review of the applicable regulations (which pre-date construction of the Resort), the wastewater system should have been designed to handle two times the expected wastewater flow from the Resort, even if the Resort were to reach full occupancy.<sup>18</sup> Therefore, Aqua's claims that billing SCH USA on a basis other than the current EDUs would in some way affect its capacity to treat SCH USA's wastewater is entirely unsupported.

**C. Aqua Has No Basis for Refusing to Provide Metered Options to SCH USA**

Aqua claims that metered wastewater service is neither feasible nor reasonable to implement at SCH USA's property.<sup>19</sup> SCH USA disagrees with this claim. SCH USA witness Ronald Carrier provided detailed testimony describing various options that would allow for wastewater service to be metered for billing purposes.<sup>20</sup> Indeed, Aqua already has customers in its system who are billed based on metered wastewater flows, showing that wastewater metering is clearly possible.<sup>21</sup> Further, billing based on metered wastewater consumption is just one of the options presented by SCH USA.<sup>22</sup> SCH USA simply seeks to be billed based on its actual usage, which is entirely feasible and consistent with Commission precedent, and the only option that will provide just and reasonable rates to this resort property with significant variances in occupancy.

---

<sup>17</sup> SCH USA St. No. 3-SR at 3.

<sup>18</sup> SCH USA St. No. 3 at 10-11.

<sup>19</sup> Aqua MB at 30-32.

<sup>20</sup> SCH USA St. No. 2 at 7-9; SCH USA St. No. 2-SR at 1-2.

<sup>21</sup> SCH USA St. No. 2 at 9; SCH USA Exh. RC-1, Aqua Response to SCH -I-1.

<sup>22</sup> *See* SCH USA St. No. 1 at 4.

As previously noted, the Company admits that it currently has customers that are billed based on metered wastewater usage as well as metered water usage from private wells, but claims that this is only for customers who received this service prior to acquisition by Aqua.<sup>23</sup> It remains unclear why Aqua refuses to accept metered consumption as a basis for billing SCH USA for wastewater service, except that this is how they have always done it.<sup>24</sup> Aqua has pointed to no concrete reason or regulatory requirement establishing that it cannot bill SCH USA on a metered basis. As SCH USA witness Lacey observed, “[i]t is not SCH USA who is seeking special treatment. It is Aqua who refuses to provide a metered option to SCH USA when they provide that option to other customers.”<sup>25</sup>

In addition to the fact that Aqua already has customers who are billed based on metered wastewater service and based on metered private wells, SCH USA has presented testimony showing that there are reliable, accurate and technically feasible options available such that SCH USA can reasonably be billed based on actual consumption.<sup>26</sup> Importantly, the Commission has consistently maintained that volumetric billing based on actual, measured usage is clearly preferable to flat rate billing.<sup>27</sup> Aqua has no basis for refusing to provide metered options to SCH USA, and the Company’s arguments to the contrary must be rejected.

---

<sup>23</sup> Aqua MB at 25-26.

<sup>24</sup> SCH USA St. No. 3-SR at 1.

<sup>25</sup> SCH USA St. No. 3-SR at 4.

<sup>26</sup> See SCH USA MB at 11-13.

<sup>27</sup> See *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) (“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.”).

**D. Aqua's Proposed Changes to its Definition of EDU Must Be Rejected**

Finally, Aqua argues that its proposed revision to the definition of EDU in its tariff is intended to clarify the definition and the number of EDUs assigned at the time of acquisition, and to provide a mechanism for properties that have been modified to request a change to the billed EDUs.<sup>28</sup> SCH USA disagrees with this characterization; rather, the 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.<sup>29</sup> As described above and in SCH USA's Main Brief, 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.<sup>30</sup>

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 for continuing to bill SCH USA based on the 2010 Settlement.<sup>31</sup> 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.

---

<sup>28</sup> Aqua MB at 29-30.

<sup>29</sup> See SCH USA MB at 13-15.

<sup>30</sup> *Id.*

<sup>31</sup> SCH USA St. No. 3 at 9.

### III. 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,

*/s/ Lauren M. Burge*

---

Lauren M. Burge, Esq. (I.D. No. 311570)  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 566-6000 (phone)  
(412) 566-6099 (fax)  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)

Renardo L. Hicks, Esquire (I.D. No. 40404)  
Bryce R. Beard, Esquire (I.D. No. 325837)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)  
[rhicks@eckertseamans.com](mailto:rhicks@eckertseamans.com)  
[bbeard@eckertseamans.com](mailto:bbeard@eckertseamans.com)

Date: November 7, 2024

*Attorneys for SCH USA LLC*