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7 November 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 **Reply 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

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| Pennsylvania Public Utility Commission | : | Docket No. |
| | : | |
| v. | : | R-2024-3047822 (water) |
| | : | R-2024-3047824 (wastewater) |
| Aqua PA | : | |
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I hereby certify that I have this day served a true copy of the following document, the Reply 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
7 November 2028

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Aqua PA

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Docket No.

R-2024-3047822 (water)
R-2024-3047824 (wastewater)

REPLY BRIEF
OF
JOHN DAY
LAKE HARMONY, PA

PUBLIC VERSION
7 November 2024

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I – INTRODUCTION

This Reply Brief addresses two pivotal issues raised in Aqua’s Main Brief: its assertion of collateral estoppel and its argument regarding the burden of proof for rate adjustments. Other critical points, such as Aqua’s non-compliance with the Commission’s 2022 Order and the deficiencies of its flat-rate wastewater billing method for Lake Harmony, were thoroughly covered in my Main Brief.

To be clear: this formal complaint was prompted by Aqua’s failure to submit a study and report in its base rate filing—an obligation mandated by the Commission’s 2022 Order and acknowledged by Aqua as an “oversight” (Aqua St. 3-R at 25). Aqua has mischaracterized the intent of this complaint as an attempt to re-litigate past issues when, in fact, this complaint was in response to Aqua’s failure to meet its Commission-ordered obligation. Even more disappointing than the report's absence in the base rate filing, after two years of time to prepare, was the rigor and content of the actual "report" when it was finally delivered—and made known only through the discovery process.

Although Aqua has admitted that the omission of the study was an oversight, the non-compliance remains unresolved. Aqua’s recent assertion of collateral estoppel—precisely as the issue of non-compliance was raised in this party’s Main Brief—seems to be an attempt to sidestep this critical regulatory obligation. The timing of the ‘black box’ settlement, paired with Aqua’s assertion of collateral estoppel, raises significant concerns. It suggests an effort to shield the Company from scrutiny regarding its compliance with the Commission’s 2022 directive. As Thoreau aptly observed, “Some circumstantial evidence is very strong, as when you find a trout in the milk.”

My goal from the outset has been to advocate for just and reasonable rates for the Lake Harmony community. However, as this proceeding has unfolded, notably with the advent of a settlement, I've been compelled to address broader regulatory issues typically handled by the Office of Consumer Advocate (OCA) and the Bureau of Investigation and Enforcement (I&E), particularly concerning the regulatory compact and Aqua's compliance. This shift, unanticipated, has become necessary due to the seeming limitations placed on consumer advocacy by these agencies, with the advent of the proposed 'black box' settlement. As a professional with over a decade of experience in organizational governance and compliance, and as a student of public policy, I am prepared to address these issues as well.¹

It is crucial that Aqua's compliance with the 2022 Order be addressed directly and transparently. Regulatory oversight should not be circumvented by procedural defenses. The credibility of the Commission and its duty to safeguard the public interest hinge on ensuring that utilities fully comply with prior directives, particularly when rate designs or increases are at stake.

II – COLLATERAL ESTOPPEL

Aqua's assertion of collateral estoppel misinterprets the distinctions between this proceeding and the 2021 consumer complaint and base rate case. According to *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998), collateral estoppel applies where:

1. An issue decided in a prior action is identical to the one presented in a later action;
2. The prior action resulted in a final judgment on the merits;
3. The party against whom collateral estoppel is asserted was a party to the prior action or in privity with a party to the prior action;

¹ The Commission retains full regulatory authority over the enforcement of its Orders, and a party settlement process does not preclude, supersede, or limit the Commission's ability to review compliance issues. Appendix D of this Reply Brief addresses in more detail.

4. The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

Aqua claims these conditions are met, but a closer analysis shows that they are not applicable here.

New Facts and Issues – The issues raised in this complaint differ from those litigated in 2021. Key aspects of my current complaint revolve around Aqua's non-compliance with the 2022 Commission Order, new data regarding the operational underutilization of the Kidder/Split Rock Wastewater Treatment Plant, and the broader economic impact to the community. These were neither raised nor addressed in prior cases. As *Allegheny County v. Commonwealth, Pennsylvania Public Utility Commission*, 488 A.2d 338, 343 (Pa. Cmwlth. 1985), states, "an essential fact or law must remain unchanged from the prior adjudication for collateral estoppel to apply." In this case, the fact that the local wastewater plant operates, on average, at 61% of its daily capacity, while customers are billed as if it operates at 100%, introduces new factual grounds that were not part of the prior litigation. This difference in operational data, along with the broader economic impact on Lake Harmony businesses, are distinct issues not previously litigated.

No Final Judgment on the New Issues – The 2021 cases did not result in a final judgment on the merits of the issues currently raised. The 2021 consumer case centered on whether Aqua followed its tariff, not whether the tariff was economically justified. Moreover, the issue of Aqua's non-compliance with the 2022 Commission Order, which required them to explore rate method alternatives, has not been addressed. Therefore, as *City of Pittsburgh v. Zoning Bd. of Adjustment*, 559 A.2d 896, 900 (Pa. 1989), illustrates, collateral estoppel cannot apply because these issues were neither fully litigated nor decided.

Lack of Full and Fair Opportunity to Litigate – Aqua's assertion that this party had a "full and fair opportunity" to litigate these issues in 2021 is unfounded. The current complaint arose due to

Aqua’s failure to comply with the 2022 Commission Order, a development that occurred after the 2021 case. In *Wilkes-Barre v. PUC*, 133 A.2d 825 (Pa. Cmwlth. 1957), the court held that collateral estoppel cannot apply to emergent issues that could not be litigated earlier. My formal complaint was triggered by the absence of the required study from Aqua’s 2024 base rate filing, a matter that could not have been raised in 2021. As Aqua itself states in its Main Brief:

“Aqua PA has agreed to additional commitments to attempt to improve the methodology for calculating a flat rate that is more reasonable for specific rate zones...” (Aqua Main Brief at 36)

Aqua’s acknowledgment of its *continued* need to revise its rate methodology undermines the Company’s claim of preclusion, demonstrating that these are new and distinct issues. If these were identical to the 2021 issues, Aqua’s failure to comply with the 2022 Commission Order would be even more glaring.

Conclusion — Aqua’s collateral estoppel defense should be denied. Should that assertion prevail, it could prevent the Commission from properly investigating a key issue—whether Aqua has complied with its previous obligations, and the overall justness of the proposed rate structure. This is not a mere procedural matter. It cuts to the core of the Commission’s authority to enforce its orders and safeguard the regulatory compact. Allowing this defense to succeed would not only undermine this party’s effort on behalf of unmetered homeowners in Lake Harmony, but would also limit the Commission’s oversight, thereby compromising the integrity of this proceeding.

III. BURDEN OF PROOF FOR ADJUSTING RATES

Aqua asserts in its proposed conclusion of law that while the ultimate burden of proof remains with the utility seeking a rate increase, a party proposing an adjustment to the utility’s ratemaking claim bears the burden of presenting evidence or analysis to support the adjustment.

(Aqua Main Brief, Appendix C) Aqua relies on *Pa. PUC v. PECO*, Docket No. R-891364, et al., 1990 Pa. PUC LEXIS 155 (Order dated May 16, 1990), and *Pa. PUC v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order dated Jan. 31, 1991), to support its position.

However, this interpretation mischaracterizes the legal framework for burden-shifting in rate cases.

The Ultimate Burden of Proof Rests with the Utility – Under Pennsylvania law, the utility seeking a rate increase retains the ultimate burden of proof throughout the proceeding. Section 315(a) of the Pennsylvania Public Utility Code (66 Pa. C.S. § 315(a)) unequivocally states: "In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility."

Thus, while intervening parties proposing adjustments must provide sufficient evidence to justify their claims, this does not relieve the utility from its statutory obligation to prove the overall reasonableness of its proposed rates. The Commission has consistently upheld that the utility's burden is not discharged merely because a party introduces an alternative approach or adjustment. Rather, the utility must address the evidence presented and demonstrate that its proposed rates remain just and reasonable in light of that evidence. See *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2021-3024296 (Order dated Dec. 16, 2021), affirming that the utility must defend the reasonableness of its rates in response to evidence challenging its claims. Such evidence, including new facts supplied to the Commission in this case, has been abundantly supplied by this party.

Parties Proposing Adjustments Must Present Evidence, Not Shift the Ultimate Burden – Aqua's reliance on *PECO* and *Breezewood* highlights the requirement that parties proposing

adjustments to a utility's ratemaking claim must provide some evidentiary basis for their adjustment. However, these cases do not suggest that the burden of proof shifts away from the utility. Rather, they clarify that intervenors must present a "reasonable basis" for their proposed adjustments to initiate scrutiny.

In *Pa. PUC v. PECO*, the Commission noted that parties proposing adjustments must introduce some level of evidence or analysis that challenges the utility's claim, but the ultimate responsibility to prove the overall rate remains with the utility. Similarly, in *Breezewood*, the intervenor's proposed adjustment was required to be backed by evidence, but the Commission emphasized that the utility's case must still withstand scrutiny in light of the challenge presented.

This principle was also affirmed in *Pa. PUC v. UGI Utilities, Inc.*, Docket No. R-2017-2640058 (Order dated Oct. 4, 2018), where the Commission reiterated that "the utility retains the burden of demonstrating that the rates it proposes are just and reasonable, even when adjustments are proposed by other parties."

Evidence Presented in This Proceeding Supports Reasonable Adjustments – This party has provided substantial evidence supporting the proposed adjustment to Aqua's flat-rate structure for unmetered customers, particularly in the seasonal Lake Harmony community. This evidence includes data from the local wastewater treatment plant, showing that, over a 5-year period, the plant has operated at only 61% of its daily capacity, on average. Additionally, testimony highlights the inequity of the flat-rate structure, especially for customers whose usage falls significantly below the assumed average. Aqua's non-compliance with the 2022 Commission Order, alongside the broader economic impact on local businesses, further substantiates the need for a reevaluation of the current rate design.

Aqua has failed to meet its burden of proof under 66 Pa. C.S. § 315(a) to demonstrate that the proposed rates are just and reasonable for all customer classes. OCA Witness Mierzwa

corroborates this, noting that Aqua’s non-compliance with the 2022 Commission Order has compromised the Commission’s obligations:

“I recommend that Aqua be denied any rate increase in this proceeding until it prepares and submits the report it was directed to provide in its prior base rate proceeding evaluating whether different methods of calculating a flat rate would be more reasonable for some rate zones. Aqua failed to comply and due to its noncompliance, critical information necessary to evaluate Aqua’s rates is unavailable for consideration in this case.” (OCA St. 5 at 39)²

These facts remain unchanged with the presence of a party settlement. Aqua’s public reporting on the proposed settlement demonstrates that the overall situation in Lake Harmony, proposed remediation, and the implications of adjustments on the larger rate structure, has not materially changed since 2022.

The burden of proof to justify the Company’s proposed rate design — including any adjustments — rests with Aqua, not this party. I have provided ample evidence supporting the proposed adjustments, while Aqua has yet to meet its burden to justify the continued flat-rate billing structure considering this evidence. Although the proposed settlement, according to testimony in Aqua’s Main Brief, includes a term to examine the rate methodology affecting Lake Harmony, this near-term action does not address the current inequity.³ The Lake Harmony community continues to bear an unjust financial burden under the existing rate design, prolonging the unreasonable transfer of funds from homeowners to the benefit of Aqua’s shareholders.

² Furthermore, the proposed rate adjustments are not a request for special treatment for homeowners in the Lake Harmony community; rather, it is a necessary correction to an unjust situation. The current rate structure, hinged to a systemwide average for calculating flat unmetered rates, has caused an unjust expropriation of funds from Lake Harmony homeowners, benefiting Aqua’s shareholders. An adjustment would aim to restore fairness and ensure that rates are just and reasonable for all Aqua customers, as required under Pennsylvania law. Moreover, such a rate adjustment seeks to address the inequities of using a systemwide average to determine rates for an outlier community.

³ See request for immediate temporary rate relief in Main Brief of John Day, Appendix A.

In summary, Aqua's argument that parties proposing adjustments bear the burden of proof to justify their claims misstates the law as applied to this party's complaint. While this party has presented substantial evidence to support proposed adjustments, the ultimate burden remains with Aqua to prove the reasonableness of its rates. The Commission must therefore evaluate the proposed rate design in light of the evidence presented by all parties and require Aqua to demonstrate that its rate structure is just and reasonable for all customers, as mandated by 66 Pa. C.S. § 315(a).

IV. CONCLUSION

The regulatory process depends on transparency to ensure that rate structures serve the public interest. The combination of a black box settlement combined with Aqua's latest assertion of collateral estoppel raises serious doubts about the Company's commitment to addressing all the substantive issues raised in this rate case.

Aqua's reliance on collateral estoppel is legally unfounded. The issues of non-compliance, operational underutilization, and the economic impact on Lake Harmony are new and distinct from those previously litigated. The Commission must reject Aqua's procedural defenses and require the utility to propose a more equitable rate design that reflects the reality of usage in seasonal communities.

Aqua's assertion that the burden of proof shifts to parties proposing adjustments mischaracterizes the law. While intervenors must present evidence, the ultimate responsibility to prove that its rates are just and reasonable remains with Aqua. Given the substantial evidence presented, Aqua has failed to meet this burden, and the Commission should require Aqua to justify its rate structure, ensuring fairness for all customers, including those in the Lake Harmony community.

V. APPENDICES

APPENDIX A – PROPOSED FINDINGS OF FACT

Operational Underutilization of Kidder/Split Rock Wastewater Treatment Plant – Evidence shows that the Kidder/Split Rock Wastewater Treatment Plant operates on average over a five-year period, at only 61% of its daily capacity. (Day Main Brief, Exhibit 4 at 81)

Despite this significant underutilization, customers are billed as if the plant operates in support of full-time residency. This discrepancy highlights the inequity inherent in Aqua's flat-rate billing design, which unfairly charges seasonal homeowners for services they do not fully utilize, creating an unjust financial burden on these customers.

Metered Customers Pay Lower Rates for Same Level of Service – Aqua's system is available 24 hours, 365 days per year to both metered and unmetered customers in Rate Zone 4. Yet, under Aqua's flat rate billing method, metered homeowners in Rate Zone 4 who use less than Aqua's systemwide average for water consumption pay a lower monthly rate for wastewater service than unmetered, Lake Harmony homeowners for the same level of service availability. (Day Main Brief, Exhibit 3 at 79)

New Evidence and Issues Introduced in the 2024 Base Rate Case – The issues raised in this complaint—including Aqua's non-compliance with the 2022 Commission Order, the economic impact on Lake Harmony residents and businesses, and operational data from the wastewater treatment plant—were not litigated in the 2021 case. Aqua's assertion that these matters have already been addressed is incorrect; these are new, substantive issues requiring independent examination that reflect the changing operational and economic context in Lake Harmony.

Aqua's Non-Compliance with the 2022 Commission Order – Aqua has failed to submit the required study exploring alternative rate structures for unmetered properties, as mandated by the 2022 Commission Order. (Day Main Brief at 11, 38; OCA St. 1, Supp Direct at 9; OCA St. 5 at 7, 39; OCA St. 5-SR at 6) This study is essential for determining whether Aqua's proposed rates are just and reasonable under Section 1301 of the Pennsylvania Public Utility Code. The absence of this study undermines Aqua's claims regarding the fairness and adequacy of its present rate proposal.

Economic Impact on Lake Harmony Residents and Businesses – Unmetered wastewater rates in Lake Harmony are among the highest across the Aqua system, while full-time Kidder Township population fall into a U.S. Census-recognized economically disadvantaged region of Pennsylvania. This economic disparity warrants careful consideration and adjustment of the rate structure to ensure equitable treatment of all customer classes. Furthermore, small businesses in Lake Harmony have demonstrated low occupancy rates not aligned with assumptions of full-time utilization. (Day Main Brief at 33)

Lack of Transparency in Rate Design and Settlement – The black box settlement negotiated without the involvement of all formal complainants compromises the transparency and fairness of the regulatory process. The Commission must ensure that all affected parties are included in discussions that shape rate structures to maintain the integrity and accountability of the regulatory framework.

Historical Context of Rate Structure and Community Impact – Historical rate structures and their impacts on different customer classes must be considered when evaluating Aqua's current proposals. The dramatic increase in rates over the last few years (Day Main Brief, Exhibit 3 at 80), particularly for unmetered seasonal homeowners, indicates a trend toward increasing financial burden without a corresponding increase in service availability or quality, or justification

for the costs imposed. This historical context highlights the need for a comprehensive review of Aqua's billing practices and rate methodologies to address ongoing inequities.

APPENDIX B – PROPOSED ORDERS

Proposed Orders for Aqua Pennsylvania

Order to Reject Aqua’s Invocation of Collateral Estoppel – The Commission is hereby directed to reject Aqua’s collateral estoppel defense, as the issues raised in this proceeding—e.g., Aqua’s non-compliance with the 2022 Commission Order and the operational underutilization of its wastewater treatment plant—are distinct from those litigated in the 2021 base rate case.

Order to Reject Aqua’s Flat-Rate Billing Structure – The Commission shall reject Aqua’s current flat-rate billing structure as it violates the principle of cost causation by disproportionately burdening seasonal residents. Aqua shall be ordered to propose a new rate structure that is reflective of actual usage and proportionate to services rendered.

Order to Require Aqua to Submit Study on Alternative Rate Structures – Aqua shall be ordered to comply with the 2022 Commission Order by submitting a study on alternative rate structures for unmetered customers, including an analysis of seasonal communities like Lake Harmony. This study must be completed and filed with the Commission before any new rate structure is approved, recognizing that homeowners in Lake Harmony continue to bear unjust rates until such time new rates are proposed and approved by the Commission. The Order shall also grant temporary rate relief as requested in my Main Brief.

Order for Increased Transparency in Settlement Processes – Aqua and other parties to the black box settlement shall be ordered to provide greater transparency in future settlement negotiations. Formal complainants and all affected parties must be allowed to participate in settlement discussions to ensure that any proposed terms are just, reasonable, and equitable.

Proposed Orders for the Pennsylvania Bureau of Investigation and Enforcement

To address the Pennsylvania Bureau of Investigation and Enforcement (I&E) participation in the 'black box' settlement while maintaining their role as a regulatory enforcer, the following proposed orders are proposed:

Requirement for I&E to Address Non-Compliance in Settlement Review — I&E, as part of its role in reviewing and participating in settlements, should explicitly evaluate Aqua's non-compliance with the 2022 Order. This would ensure that I&E's participation in settlement negotiations upholds its responsibility to enforce adherence to Commission rulings.

Transparency in I&E's Settlement Contributions — The Commission should require that I&E's contributions to any settlement agreement be fully documented and disclosed, particularly with respect to how any known non-compliance issues, like the one involving Aqua, are addressed within the settlement framework. This order would ensure that the resolution of non-compliance is not obscured by the "black box" nature of the settlement.

Eliminating the Option of "Black Box" Settlements in Cases of Non-Compliance – The Commission should direct the Bureau of Investigation and Enforcement (I&E) to draft new administrative rules that prohibit the use of 'black box' settlements in any proceeding where there is a pending issue of non-compliance with a prior Commission Order – and/or – requiring the I&E to abstain from participating in such settlements when an issue of non-compliance is pending.

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| APPENDIX C – PROPOSED CONCLUSIONS OF LAW |
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Collateral Estoppel Does Not Bar the Present Claims -- Collateral estoppel only applies when an issue has been fully and fairly litigated in a prior proceeding and is identical to the one in the current case (*Rue v. K-Mart Corp.*, 713 A.2d 82 (Pa. 1998)). The issues raised in this

proceeding—Aqua’s non-compliance with the 2022 Commission Order, the operational underutilization of the wastewater treatment plant, and the economic impact on seasonal residents—are new and distinct from those litigated in the 2021 rate case. Therefore, collateral estoppel is not applicable. As *Allegheny County v. Commonwealth, Pennsylvania Public Utility Commission*, 744 A.2d 348 (Pa. Cmwlth. 2000), clarifies, the doctrine only applies when the same issue has been "fully litigated on the merits." Aqua’s failure to complete the study mandated by the 2022 Commission Order and the operational data showing underutilization of the wastewater treatment plant, none of which were previously adjudicated. Therefore, Aqua’s assertion of collateral estoppel fails to meet the legal requirements, and my claims should be considered on their merits. As held in *City of Pittsburgh v. Zoning Bd. of Adjustment*, 559 A.2d 896 (Pa. 1989), collateral estoppel is not applicable when there are changes in the underlying facts or issues that were not fully litigated in prior proceedings.

New Facts and Issues Preclude Collateral Estoppel -- Under *Wilkes-Barre Area School District v. Wilkes-Barre Education Association*, 501 A.2d 251 (Pa. 1985), collateral estoppel cannot apply when new facts or issues arise that were not present in prior litigation. In this case, the introduction of operational data from the Kidder/Split Rock Wastewater Treatment Plant and Aqua’s non-compliance with the 2022 Commission Order are newly raised issues that were not litigated in the 2021 case.

The Utility Bears the Ultimate Burden of Proof in Rate Cases -- According to Pennsylvania Public Utility Code Section 315(a) (66 Pa. C.S. § 315(a)), the burden of proof to show that a proposed rate increase is just and reasonable rests with the utility seeking the rate adjustment (*Popowsky v. PUC*, 683 A.2d 958 (Pa. 1996)). While intervening parties proposing adjustments must present supporting evidence, the ultimate burden of proof remains with Aqua to justify that its proposed rates are reasonable.

Rates Must Be Just and Reasonable Under Pennsylvania Law -- Pursuant to *Lloyd v. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), rates must be proportionate to the services rendered. Aqua's flat-rate billing structure, which charges seasonal customers for services they do not fully use, fails to meet the legal requirement for just and reasonable rates under 66 Pa. C.S. § 1301.

Aqua's Non-Compliance with the 2022 Commission Order Violates Legal Obligations -- Under Pennsylvania law, utilities must comply with orders issued by the Public Utility Commission (*Philadelphia v. Pennsylvania Public Utility Commission*, 450 A.2d 888 (Pa. 1982)). Aqua's failure to submit the required study on alternative rate structures for unmetered customers, as mandated by the 2022 Commission Order, constitutes a violation of this legal obligation.

The Commission Has Authority to Enforce Compliance -- The Pennsylvania Public Utility Commission has the authority to enforce compliance with its orders. *Philadelphia v. Pennsylvania Public Utility Commission* reaffirms the Commission's power to ensure utilities adhere to directives. Aqua's non-compliance undermines the regulatory compact and must be addressed to maintain the integrity of the Commission's oversight. In *Philadelphia v. Pennsylvania Public Utility Commission*, 450 A.2d 888 (Pa. 1982), the Pennsylvania Supreme Court upheld the Commission's authority to enforce compliance, asserting that utilities are obligated to follow regulatory requirements. This reinforces the necessity for I&E's involvement in settlement negotiations to be guided by established legal precedents requiring compliance with Commission orders.

Transparency and Accountability in Utility Settlements Are Mandated -- In *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania*, 53 Pa. PUC 490 (1979), the Commission established that utility settlements must explicitly address compliance issues and ensure transparency. Settlements that obscure non-compliance with Commission orders, such as

the current 'black box' settlement, are contrary to public interest and undermine regulatory accountability.

The Commission Must Monitor Compliance in Settlement Agreements -- In *In re: the Joint Petition for Approval of a Settlement Agreement between Columbia Water Company and its Customers*, 2020 Pa. PUC LEXIS 33, the Commission emphasized the necessity for ongoing monitoring of utility compliance within settlement agreements. Aqua's non-compliance with the 2022 Commission Order requires heightened scrutiny to ensure future adherence to regulatory requirements. This finding supports the necessity for ongoing monitoring by the Bureau of Investigation and Enforcement (I&E) regarding Aqua's compliance with the 2022 Order to ensure that any settlement does not undermine the regulatory framework.

Aqua's Current Flat-Rate Structure Violates the Principle of Cost Causation -- The principle of cost causation requires that rates be based on the costs of providing service to specific customer classes. Aqua's flat-rate billing structure disproportionately burdens seasonal customers, violating this principle and resulting in unjust and unreasonable rates for part-time homeowners in Lake Harmony.

APPENDIX D – CORE VALUES AND THE REGULATORY COMPACT

Core Values of this Complainant

As I testified during the public-input hearing and noted in my detailed written testimony, I belong to the national honor society for public affairs and administration, Pi Alpha Alpha. This induction marked a significant personal and professional milestone during graduate school. It reflected a commitment to the principles of integrity, accountability, and justice in public service. These values have been central to my approach in the Aqua case, where I have consistently

advocated for just and reasonable rates for the Lake Harmony community. These core values of service to the community, ethical governance, and excellence in scholarship — serve as guiding principles in my work, particularly when evaluating these proceedings, the public utilities code, and the decisions of the Pennsylvania Public Utility Commission (PUC). These principles have shaped my involvement in the Aqua rate case, with any direct benefit to my household being merely incidental. In this case, my role has expanded, albeit unexpectedly, beyond advocating for just rates for Lake Harmony to addressing broader concerns about the impact of a settlement on the regulatory compact. This obligation aligns with the dedication to uphold the highest standards of public administration in service to the communities we represent.

Commission's Regulatory Authority

The Pennsylvania Public Utility Code (66 Pa. C.S. § 101 et seq.) establishes the PUC's regulatory authority, with utilities bound by its regulations and orders. Any settlement that undermines compliance with these orders conflicts with this legislative mandate. The Commission's decisions must undergo review and enforcement to protect public interest and ensure legal compliance. It would be contrary to public policy for select parties to negotiate away the Commission's ability to enforce its own orders.

Non-Delegable Duties – Courts have consistently recognized that regulatory bodies like the PUC have non-delegable duties to enforce their orders and regulate utilities in the public interest. In *People ex rel. Public Utilities Commission v. Mountain States Telephone & Telegraph Co.*, 125 P.2d 738 (Colo. 1942), the court emphasized that regulatory bodies cannot abdicate their statutory obligations. A settlement cannot relieve a utility from complying with a Commission order if it conflicts with the public interest.

Public Interest Consideration in Settlements – The Commission has a duty to ensure that any settlement serves the public interest. In *Duquesne Light Co. v. Pa. PUC*, 715 A.2d 540 (Pa.

Cmwlth. 1998), the Commonwealth Court of Pennsylvania held that all settlements must be reviewed by the Commission to verify alignment with public interest standards. Settlements cannot negotiate away regulatory obligations. In *Popowsky v. Pa. PUC*, 550 Pa. 449, 706 A.2d 1197 (1997), the Pennsylvania Supreme Court confirmed that the Commission's primary duty is safeguarding the public interest, even when parties reach settlements.

Judicial Review of Settlements – Settlements are subject to judicial and regulatory review to ensure they do not violate existing laws or undermine the Commission's authority. In *Citizens Utilities Water Co. v. Illinois Commerce Commission*, 124 Ill. 2d 115 (Ill. 1988), the court ruled that settlements cannot alter or negate a regulatory body's existing order without proper modification through formal procedures.

Doctrine of Separation of Powers – The principle of separation of powers prevents private parties from overriding public regulatory functions, which could encroach on the statutory authority of regulatory agencies like the PUC.

Pennsylvania Bureau of Investigation and Enforcement – The Bureau of Investigation and Enforcement (I&E) plays a crucial role in Pennsylvania's regulatory framework, ensuring public utilities comply with the Public Utility Code and Commission directives. I&E's participation in settlement processes must reflect this role, especially when compliance with Commission orders is at issue.

- *Upholding the Regulatory Compact* – I&E's involvement is essential in maintaining the integrity of the regulatory compact, wherein utilities earn a reasonable return in exchange for adherence to oversight and public interest protections. When a utility, such as Aqua, faces scrutiny for non-compliance with Commission orders, I&E must ensure these issues are explicitly addressed in rate or settlement negotiations.

- *Ensuring Accountability* – I&E’s role in settlements includes advocating for full adherence to Commission orders. Non-compliance with the 2022 order, for instance, should not be overlooked or minimized, as this could weaken the regulatory framework and public trust in the process.

To this end, proposed orders have been propounded in Appendix B of this Reply Brief.