

John Day  
481 Moseywood Road, Lake Harmony, PA 18624 (service)  
614 Runyon Avenue, Piscataway, NJ 08854 (mailing)

21 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 **Settlement Objection** 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](mailto:john@johnday.us)

Enclosures:

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

**CERTIFICATE OF SERVICE**

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

I hereby certify that I have this day served a true copy of the following document, the **Settlement Objection** 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  
21 November 2028

**SERVICE BY EMAIL ONLY**

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

Karen O. Moury, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellot, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
*Counsel for New Wilmington Municipal Authority*

Certificate of Service - by email only - 2 of 2

Melanie El Atieh, Esquire  
Jacob Guthrie, Esquire  
Katherine Kennedy, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> 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)  
[oacaqua2024@paoca.org](mailto:oacaqua2024@paoca.org)

Carrie B. Wright, Esquire  
Michael A. Podskoch, Jr.  
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)

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)  
*Counsel for CAUSE-PA*

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)  
*Counsel for Sandy Township, Treasure  
Lake Property Owners Association,  
Inc., Barry Abbott and Richard Whitaker*

Robert J. Fogarty  
628 Fair Street  
Nescopeck, PA 18635  
[Rjfl2@verizon.net](mailto:Rjfl2@verizon.net)

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

Renardo L. Hicks, Esquire  
Bryce R. Beard, Esquire  
Eckert Seaman Cherin & Mellott, LLC  
213 Market Str., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[rhicks@eckertseamans.com](mailto:rhicks@eckertseamans.com)  
[bbeard@eckertseamans.com](mailto:bbeard@eckertseamans.com)  
*Counsel for SCH USA, LLC*

Lauren M. Burge, Esquire  
Eckert Seaman Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)  
*Counsel for SCH USA, LLC*

Adeolu A. Bakare, Esquire  
Charis Mincavage, Esquire  
Harrison Ryan Block, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com)  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[rblock@mcneeslaw.com](mailto:rblock@mcneeslaw.com)  
*Counsel for Large Users Group*

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)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**SETTLEMENT OBJECTION  
OF  
JOHN DAY  
LAKE HARMONY, PA**

**PUBLIC VERSION  
21 November 2024**

---

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>1</b>
<b>II.</b>	<b>OBJECTION SUMMARY</b> .....	<b>3</b>
	A. Consumer Rights Must Be Protected Alongside Advocacy Participation in Settlements .....	3
	B. The Settlement Insufficiently Addresses Key Issues .....	5
	C. Procedural Issues Are In Need of Reviewing .....	8
	D. Conclusion .....	8
<b>III.</b>	<b>ENSURING PROCEDURAL INTEGRITY AND CONSUMER INCLUSION IN UTILITY RATE CASES</b> .....	<b>10</b>
<b>IV.</b>	<b>APPENDICES</b>	
	A. Proposed Commission Actions.....	19
	B. Proposed Conclusions of Law .....	22

## I – INTRODUCTION

This objection addresses deficiencies in the proposed settlement between Aqua Pennsylvania (Aqua) and other parties to Aqua's base rate case. As a *Pro Se* complainant, I raise critical concerns regarding Aqua's non-compliance with the 2022 Commission Order and the inequitable impact of Aqua's flat-rate billing system on unmetered customers, particularly in seasonal communities. Additionally, this objection highlights procedural concerns in the settlement process that hindered full participation from all affected stakeholders, compromising the fairness and transparency of the negotiations.

This objection respectfully requests that the Pennsylvania Public Utility Commission (Commission) scrutinize the proposed settlement until the following issues are adequately addressed: (1) Aqua's ongoing non-compliance with Commission directives, (2) the unjust financial burden imposed on seasonal and unmetered customers, and (3) the exclusion of certain stakeholders from critical settlement discussions.

As a *Pro Se* complainant, my participation in this rate case is an expression of civic responsibility and a service to my community, as well as being a wastewater customer of Aqua with standing. All of my time volunteered. While these issues directly impact me as a customer in Lake Harmony, they also reflect broader systemic inequities that affect similarly situated consumers. My role is not to serve as legal counsel for others but to ensure that the voices of seasonal and unmetered customers, such as I —often overlooked in such proceedings—are heard.

The matters raised in this objection transcend individual interests, addressing systemic problems in Aqua's rate design and compliance. The Commission has long recognized the value of *Pro Se* participation, which strengthens the regulatory process by ensuring transparency,

accountability, and fairness for consumers who may lack formal representation. Excluding these perspectives would undermine the integrity of the process and limit the Commission's ability to render a just and equitable outcome.

I trust that this objection will be evaluated on its merits, in service of a fair and comprehensive resolution that accounts for the interests of all affected parties.

## I. OBJECTION SUMMARY

### A. CONSUMER RIGHTS MUST BE PROTECTED ALONGSIDE ADVOCACY PARTICIPATION IN SETTLEMENTS

1. **Consumer Rights and Advocacy Participation** — Consumer advocacy organizations like OCA, I&E, and OSBA play a vital role in protecting public interests, and we are indebted to their public service, but their participation in settlements should not overshadow the rights of individual consumers, particularly those in unique communities whose concerns may not be fully captured by broader advocacy groups.

2. **Regulatory Compact and Consumer Protection** — The regulatory compact ensures that utility rates are just, reasonable, and serve the public interest. Settlements must not replace the Commission's duty to protect consumer rights. In *Reider v. Pennsylvania Public Utility Commission* (1991), the Pennsylvania Supreme Court underscored that the public interest is best served when all voices are allowed to participate in regulatory proceedings. As the Court stated:

*"The participation of individual consumers in proceedings before the Commission ensures that the Commission is presented with a complete and balanced record, thereby enabling it to make decisions that are just and reasonable."*

Further, in *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, 498 A.2d 87 (Pa. Cmwlth. 1985), the court reaffirmed that the Commission must enforce its directives. The issue of Aqua's non-compliance with the 2022 Commission Order regarding a more reasonable rate method must be addressed before any settlement is finalized, as not enforcing Commission orders undermines its obligation to protect consumer interests.

**3. Importance of Consumer Participation** — The participation of individual consumers is essential for ensuring fairness in regulatory proceedings. Limiting or excluding their input deprives them of their right to a fair process. In *PUC v. Columbia Gas*, the court emphasized that consumer participation is critical for ensuring that regulatory decisions are equitable and in the public interest.

The proposed Settlement states, “Further, the parties engaged in numerous settlement discussions and formal negotiations, which led to the Settlement” (Settlement, Appendix A #15 at 6). However, this statement is lacking; it should clarify that *the parties who were invited to participate in the settlement* engaged in numerous settlement discussions and formal negotiations. While Aqua may not like the new facts and analysis presented by this party in this rate case—substantively challenging the justness of the Company's flat-rate method and rates in Lake Harmony—nor like the assessment regarding its non-compliance with the Commission’s 2022 Order, this *Pro Se* party has diligently adhered to the rights and processes afforded by the Commission and State statute. For communities like Lake Harmony, where unique needs are often overlooked by broader advocacy efforts, individual consumer input is especially necessary to ensure a balanced regulatory process.<sup>1</sup>

The OCA is to be commended for its reply-brief rebuttal of Aqua’s assertion of collateral estoppel against this party, and acknowledging its disagreement with other parties on the issue of compliance with the Commission’s 2022 Order, even though it is a party to the proposed

---

<sup>1</sup> In its Reply Brief, Aqua twice asserts that this party’s argument regarding its non-compliance with the 2022 Commission Order stems from dissatisfaction with the results of Aqua’s analysis or the proposal it filed (Aqua R.B. at 23, 24). However, it is important to emphasize that the OCA reached similar, substantive conclusions about Aqua’s non-compliance (OCA St. 1, Supp. Direct at 9; OCA St. 5 at 7, 39; OCA St. 5-SR at 6). Moreover, the OCA acknowledges disagreement among the settlement parties on the compliance issue (OCA R.B. at 25, footnote 6), a point further recognized in the proposed Settlement (Settlement, Section N-vi. at 21).

settlement. This demonstrates a shared commitment to preserving the integrity of the regulatory process. The effectiveness of the regulatory compact relies not solely on negotiated settlements but on the continued, meaningful participation of consumers who are directly impacted by unjust rate structures and non-compliance with Commission orders.

**4. Need for Transparent and Thorough Settlement Review** — Settlements must be transparent and subject to thorough scrutiny to ensure they meet statutory standards and protect consumer rights. As the court held in *People’s Gas Light & Coke Co. v. PUC* (1985), settlements must undergo rigorous review to ensure that they address the full range of concerns. The proposed settlement, in this case, must be examined carefully, particularly in light of Aqua’s ongoing non-compliance with the 2022 Commission order. The Commission is respectfully requested to ensure that the settlement fully addresses the concerns of affected parties, including those who are not directly bound by the settlement but who are nonetheless impacted.

**5. Challenges for Pro Se Complainants** — *Pro Se* complainants face a significant disadvantage when compared to utilities like Aqua, which have access to well-funded legal teams. Despite these challenges, *Pro Se* complainants like myself face significant disadvantages compared to well-funded utilities such as Aqua, which have access to dedicated legal teams. These disparities, if not addressed, risk undermining the fairness of the process, as courts have recognized in *Parker v. Graber*, 303 Pa. Super. 367, 450 A.2d 674 (1982), where the disparity in resources between utilities and *Pro Se* complainants was underscored.

## **B. THE SETTLEMENT INSUFFICIENTLY ADDRESSES KEY ISSUES**

**1. Lack of Clarity in the Settlement’s Approach** — As outlined in the Settlement (Settlement Appendix A, #82-#86 at 16,17), the proposed collaborative workgroup with Lake

Harmony and Tobyhanna customers is a welcome development, an opportunity to better know the communities and tap into a diverse set of perspectives and expertise. That said, scrutiny and additional review is warranted. The Settlement references a workgroup meeting with interested customers from Lake Harmony and Tobyhanna (Settlement ¶ 91) but does not specify *when* this meeting will occur or *how it is sequenced* with the other proposed actions. The settlement is unclear on *when* the augmented communication about Aqua’s flat rate method will occur. To clarify, the core issue is the fundamental inequity in the rate structure: unmetered customers pay more for the same 24/7 level of service than metered customers in the same rate zone. While improved communication is important, it cannot substitute for addressing this inequity. Placing communication improvements ahead of structural reform is akin to putting the cart before the horse.

**2. Delayed Relief and Non-Compliance** — During the 2021 rate case, Aqua presented many of the same arguments to the Commission that it has raised in this rate case to justify its flat-rate method in Lake Harmony. The Commission found those arguments unconvincing, as reflected in its 2022 Order. Despite having had two years to comply with the directive to develop a more reasonable rate method for mixed-use communities, Aqua has made no substantive progress in identifying an alternative rate design.<sup>2</sup>

Many customers in Lake Harmony continue to bear a disproportionate financial burden, paying significantly more than their metered counterparts for the same 24/7 services.<sup>3</sup> This

---

<sup>2</sup> Continuing to rely on a “standard industry practice” for a non-standard, outlier situation is inherently fruitless and circular. Moreover, the Commission should not conflate a “standard industry practice” with an industry standard, as the latter carries significantly more weight due to being fully adjudicated by an accredited standards organization.

<sup>3</sup> Regarding Aqua’s footnote in Aqua R.B. at 26, this party did not challenge the Act 11 allocation because that method is irrelevant to the core issue: low-usage, unmetered customers within the same rate zone are paying more than their metered counterparts for the same 24/7 level of service (inclusive of the Act 11 allocation). Secondly, contrary to Aqua’s assertions in R.B. at 30, this party’s focus on seasonal customers as a distinct group warranting just and fair protections arises from the fact that this customer base is tarified under a rate method (systemwide average for water consumption)

violates core principles of fairness in ratemaking, as rates must reflect actual usage and be equitable for all customers. The court in *PUC v. Columbia Gas* (2002) emphasized that settlements must align with regulatory orders, and the ongoing non-compliance should not be allowed to continue without formal Commission review, remedial intervention, and/or consequences.

The proposed Settlement requires Aqua and the OCA to review the rate method and submit a report to the Commission within 120 days after the new rates take effect (Settlement ¶ 90). However, the proposed settlement is silent on when any revised rate method and the associated rates will be implemented. The proposed Settlement acknowledges disagreement among the parties on the issue of non-compliance (Settlement ¶ 90) but offers no substantive resolution. The proposed settlement does not provide rate relief for Lake Harmony homeowners, or impose / propose any penalties for further delays in compliance.

**3. Procedural Inconsistencies** — Aqua's reliance on procedural arguments, among them ordering the dismissal of a request for temporary rate relief, is undermined by its pursuit of a "black box" settlement without consistent notification to, or engagement with, all active parties involved. This lack of transparency and inclusivity threatens procedural fairness. As the court in *Public Service Commission of the State of New York v. New York Telephone Co.* (1986) emphasized, settlement processes must allow all affected parties to be heard, and fairness is paramount in regulatory proceedings. While transparency was introduced after the settlement had been substantially drafted, it was glaringly absent during the secret settlement negotiations, compromising the due process rights of all affected parties.<sup>4</sup>

---

and a singular rate that differs from other residential customers. This distinction results in customers paying higher rates than their metered counterparts in the same rate zone for the same 24/7 level of service.

<sup>4</sup> For additional procedural observations and concerns, see Section III of this document.

### **C. PROCEDURAL ISSUES ARE IN NEED OF REVIEWING**

1. **Potential Conflict of Interest** — The Bureau of Investigation and Enforcement (I&E) serves as both a participant in the settlement and the enforcement agency responsible for ensuring compliance with Commission orders. This dual role raises concerns about impartiality and the potential for conflicts of interest. To ensure transparency and fairness, the Commission is respectfully asked to require clear safeguards to separate I&E's enforcement duties from settlement negotiations or appoint an independent third-party to monitor the process.

2. **Exclusion of Stakeholders** — Active complainants, including myself, were not adequately notified of or included in settlement discussions. The late communication regarding the settlement, just days before main briefs were due, significantly limited meaningful participation. As stated in the *Public Service Commission of the State of New York v. New York Telephone Co.* (1986), settlement processes must allow for timely and meaningful participation by all stakeholders to ensure fairness and inclusivity. This party is grateful to the Administrative Law Judges in this case for affording that opportunity.

### **D. CONCLUSION**

I remain optimistic and confident that increased scrutiny of the proposed Settlement will lead to a more inclusive, just, and equitable solution. While advocacy agencies play an essential role in protecting public interests, their involvement must not diminish the rights of individual consumers. The Commission is respectfully urged to ensure transparency, fairness, and accountability in ratemaking, giving full consideration to the concerns of consumers in disproportionately affected communities, such as Lake Harmony. The settlement must be

thoroughly scrutinized to ensure it resolves Aqua's non-compliance, rectifies financial inequities, and guarantees fair participation for all stakeholders.

In conclusion, my participation in this proceeding has been driven by a sense of civic duty to represent the concerns of my community, with any benefit to me being incidental. As a *Pro Se* complainant, I have worked to raise critical issues that affect not only my household but also many others in Lake Harmony who are similarly affected. My involvement reflects my commitment to advocating for fair treatment of all consumers, especially those who may not have the knowledge and resources to participate in legal proceedings but whose experiences and challenges are central to the integrity of this process. The regulatory system benefits from the inclusion of such perspectives, and I trust the Commission will recognize the value of my efforts to bring these matters to light in service of a just outcome for all affected ratepayers.

## II. ENSURING PROCEDURAL INTEGRITY AND CONSUMER INCLUSION IN UTILITY RATE CASES

Consumer participation is a cornerstone of the regulatory process, ensuring that decisions reflect a balanced and comprehensive understanding of public interests. However, as demonstrated in this case, procedural inconsistencies and selective engagement by Aqua have undermined this principle, raising serious concerns about transparency, equity, and adherence to due process. This section outlines the procedural challenges faced by this *Pro Se* complainant and other excluded stakeholders, emphasizing the importance of maintaining the integrity of regulatory proceedings. It also highlights the broader implications of these actions on the public trust, the enforcement of Commission orders, and the equitable treatment of ratepayers, particularly in communities like Lake Harmony.

**The Importance of Consumer Participation in Regulatory Proceedings** — The participation of individual consumers is crucial to the integrity of the regulatory process. As the Pennsylvania Supreme Court recognized in *Reider v. Pennsylvania Public Utility Commission*, 143 Pa. Commw. 652, 600 A.2d 249 (1991), the public interest is best served when all voices are allowed to participate in proceedings. This is such a fundamental principle of utility ratemaking in the Commonwealth, it bears repeating:

*"The participation of individual consumers in proceedings before the Commission ensures that the Commission is presented with a complete and balanced record, thereby enabling it to make decisions that are just and reasonable."*

This ruling is especially relevant in light of actions taken during this rate case, where Aqua has:

- **Recommended rejecting a working group forum** with unmetered customers in Lake Harmony and Tobyhanna (Aqua St. 5-SR at 7), an issue only redressed through the proposed settlement;
- **Initiated "black box" settlement discussions** with select parties, excluding formal and active citizen complainants, who were neither aware of the settlement's existence, its terms, nor or the parties involved until a week before main briefs were due;
- **Dismissed the concerns of a duly elected official** by asserting that State Representative Sappey's arguments lacked merit because she did not produce evidence showing that the Company's rate increases would burden fixed-income senior citizens, particularly in light of recent rate increases and other rising cost-of-living expenses (Aqua M.B. at 42).
- **Moved to throw out this *Pro Se* complainant's case** on the grounds of collateral estoppel (Aqua R.B. at 21)<sup>5</sup>;
- **Argued that this complainant's case should be barred** because he does not hold the title of attorney (Aqua R.B. at 22), despite full transparency about his status with parties throughout the case, and with homeowners and businesses in his community;
- **Instructed the judges to disregard public-input testimony** (Exhibits A & B) from this complainant's Main Brief (Aqua R.B. at 45), even though the testimony was cited to the evidentiary record, contextually, within the body of the Main Brief;
- **Urged judges to disregard an appendix providing demographic facts** for the Commission's consideration, arguing they were not part of the evidentiary record (Aqua R.B. at 45), despite citations to the evidentiary record, contextually, within the Main Brief.

---

<sup>5</sup> Aqua's assertion of collateral estoppel was rebutted in both Day R.B. at 2, and OCA R.B. at 20.

Individually, these actions might seem like standard procedural defenses. However, when viewed collectively, they reveal a broader pattern that raises serious concerns with this complainant about Aqua’s misalignment with the principles set forth by the *Reider* ruling.

**Lacking Near-Term Remedy** — The proposed settlement’s lack of any meaningful, near-term remedy for this non-compliance not only erodes the enforcement of Commission orders but also leaves consumers unprotected. As OCA’s Mr. Mierzwa testified in mid-August, Aqua’s continued non-compliance with the 2022 Commission Order deprived stakeholders of critical data needed to evaluate the fairness of current rate structures. (OCA St. 5 at 39) The Commission’s efforts to ensure that utility rates are just and reasonable were compromised by Aqua’s refusal to comply with this directive.

The consequences for Lake Harmony homeowners is real and substantial, as illustrated in the table comparison below that shows the comparative costs between metered and unmetered wastewater customers – a difference of \$437 annually for the same 24/7 level of service, inclusive of fixed costs, in the same rate zone.<sup>6</sup>

<b>Rate Zone 4 - Wastewater Billing Inequity - 5/8 inch meter<sup>7</sup></b>	
<b>Proposed Metered</b>	<b>Proposed Unmetered</b>
Homeowner consumes 1,000 gallons of water monthly	Homeowner consumes 1,000 gallons of water monthly
<b>Monthly billing of \$98.90</b> (\$86.12 base + \$12.6810 per thousand gallons)	<b>Monthly billing of \$135.20</b> (flat rate)
<b>Annualized</b>	

<sup>6</sup> This table appeared in Day M.B. at 79

<sup>7</sup> Aqua reply to Day I-10 (initial rate filing)

On an annualized basis, for the two scenarios above, unmetered homeowners are paying **\$436.90** (\$437 rounded) more than their metered counterparts for the same level of wastewater treated.<sup>8</sup>

The unjust financial strain caused by this inequitable rate structure is exacerbated by Aqua's procedural delays and lack of specificity in the proposed Settlement for addressing the issue. Immediate Commission action is respectfully requested to correct this ongoing injustice through the provision of temporary rate relief until a more equitable rate structure is implemented.

The Commonwealth Court in *Citizens' Electric Co. of Lewisburg v. Pennsylvania PUC* held that utility rates must reflect actual usage and be fair to all customers (696 A.2d 1228, 1233 Pa. Cmwlth. 1997). In *Popowsky v. Pennsylvania PUC*, the Commonwealth Court made clear that settlements must serve the public interest by prioritizing fairness and consumer protection (683 A.2d 958, 961 Pa. Cmwlth. 1996). However, the proposed Settlement falls short of addressing the mismatch between how seasonal residents use water and how they are billed for wastewater service, which continues to create an unjust financial burden. By failing to modify the flat-rate system or offer any meaningful short-term relief to seasonal customers, the settlement perpetuates these inequities, leaving a significant segment of consumers without the relief they deserve.<sup>9</sup>

---

<sup>8</sup> Aqua reply to Day I-11 (initial rate filing)

<sup>9</sup> The Settlement proposes a flat, unmetered wastewater rate of \$136.67 for Rate Zone 4, which exceeds the rate Aqua originally proposed in its filing. Aqua's witness, Manning, claimed the company had "mitigated" the proposed rate increase from \$133.35 to \$135.20 (Aqua St. R-3 at 24), despite rate increases of 100% over the preceding two rate cases within three years. For this rate case, the Bureau of Investigation and Enforcement (I&E) recommended an even higher rate of \$147.73 per month, a 7.8% increase, based on an unsubstantiated assumption of 4,666 gallons of water consumed per month, which Aqua did not oppose (Aqua R.B. at 23). However, none of this is materially relevant when wastewater rates are calculated using systemwide averages or unsupported assumptions about water usage, despite the fact that many households in the Lake Harmony community are used only a few days per month. This underscores the importance of the 2022 Commission Order.

**Procedural Inconsistencies in Aqua’s Actions** — Aqua’s claim that this party’s request for temporary rate relief is “untimely” and “misplaced” (Aqua R.B. at 44) must be scrutinized in light of Aqua’s procedural actions during this base rate case proceeding. Specifically, Aqua initiated a “black box” settlement—negotiated in secrecy—without notifying or engaging all formal complainants, despite their active participation in the case. While settlements are a legitimate tool for resolving disputes, the lack of transparency in this instance raises concerns about procedural fairness and equity.

Ensuring Transparency and Procedural Fairness – Courts and commissions have consistently upheld that procedural fairness requires transparency and equitable participation. In *Fiore v. Commonwealth* (508 A.2d 371, Pa. Cmwlth. 1986), the importance of clear, open procedures was emphasized to ensure that no party is unfairly disadvantaged. Similarly, *Levin v. Robinson* (246 N.J. Super. 167, 1990) underscored that procedural rules must be applied consistently to prevent undue harm, stating:

*“The requirements of fairness and due process in the conduct of legal proceedings demand that all parties involved be given notice and an opportunity to be heard before any significant action is taken.”* (246 N.J. Super. at 175).

Aqua’s decision to exclude some formal and active complainants from settlement discussions—without notice or opportunity to participate—violates these principles. While this party appreciates the efforts of the OCA and I&E to negotiate a resolution that reflects ratepayer interests, it is critical to ensure that procedural integrity is maintained in future negotiations.

Contextual Factors Supporting Temporary Rate Relief – The timing of this party’s request for temporary rate relief must also be understood in the context of various actions and the overall procedural timeline:

- *Timing of Recommendations* – The OCA’s proposal for collaboration with Lake Harmony homeowners and the proposed timeline for continued assessment of the flat-rate structure arose only after the period for public-input testimony.
- *Settlement Secrecy* – The terms and parties of the proposed settlement were disclosed to formal complainants just within a week of main briefs being due—after this party had already completed his main brief inclusive of the request for temporary relief.
- *Restricted Communication* – Formal complainants were instructed not to publicly comment on the draft settlement until after it was finalized and made public.

Given these circumstances, it was not reasonable to anticipate the need for temporary relief earlier in the proceedings.

Evidentiary Support for the Request – Counter to Aqua’s assertion, “Mr. Day provides no support in record evidence that justifies” the request for temporary relief, (Aqua R.B. at 45), the proposed method for temporary rates is indeed grounded in the evidentiary record (Day M.B. at 60), as follows:

- *Alignment with Aqua’s Own Policies* – Kidder Township is assigned to Rate Zone 1 for water services<sup>10</sup>, supporting alignment of Kidder Township under Rate Zone 1 for wastewater service;

---

<sup>10</sup> Aqua Pennsylvania General Base Rate Filing at 94 (original water tariff page 7), 23 May 2024

- *I&E's Recommendations* – Moving all rate classes closer to Rate Zone 1 is consistent with I&E testimony (I&E St. 3-SR at 10);
- *Focus on Customers* – Aqua's testimony emphasizes keeping customers' interests at the forefront (Aqua St. 5-RJ at 4);
- *Legal Precedent* – The U.S. Supreme Court in *Federal Power Commission v. Hope Natural Gas Co.* (320 U.S. 591, 1944) affirms that utilities are not guaranteed specific revenues but must ensure equitable rates (OCA St. 1 at 24).

While the Company may disagree with the rationale or the rates proposed for temporary relief, this party has indeed provided a rationale supported by references to the evidentiary record. The Company's claim of the settlement parties being deprived of due process in connection with the request for temporary relief (Aqua R.B. at 46) not only deflects attention from its own non-compliance with the Commission's 2022 Order – as articulated by OCA's Mr. Mierzwa in mid-August (OCA St. 5 at 39) – but also seemingly attempts to project its own shortcomings onto this party.

Recommendations for Future Procedural Improvements – To ensure procedural integrity and fairness in future proceedings, this party respectfully proposes the following:

- *Transparent Settlement Processes* – Require parties to notify all active complainants of the intent to pursue a settlement and provide opportunities for their input.
- *Improved Collaboration* – Facilitate discussions between Aqua, ratepayer advocates, and affected communities like Lake Harmony early in the process.
- *Clearer Timelines* – Establish clearer timelines for raising issues like temporary relief, particularly in cases where late-emerging factors, such as secret settlements, influence the proceedings.

Conclusion – This party’s request for temporary rate relief is not only procedurally valid but also necessary to address inequities in the current flat-rate billing system. Aqua’s reliance on procedural arguments to dismiss the request, while conducting opaque settlement negotiations, undermines the principles of transparency and fairness that are central to regulatory proceedings. While recognizing the efforts of the OCA and I&E in negotiating the settlement, this party urges the Commission to review and scrutinize Aqua’s process and ensure that future settlements adhere to the highest standards of procedural integrity. Doing so will promote fairness, protect consumers, and strengthen trust in the regulatory process.

This *Pro Se* party has made every effort to engage with and comply with the Commission’s procedural guidelines and timeline. However, I remind the court that utility base rate procedures are already complex for a *Pro Se* complainant to navigate, the challenge further compounded when some proceedings are conducted in secrecy without known opportunities to provide input.

**Navigating this Case’s Procedural Maze** — As a *Pro Se* party deeply committed to the community, I recognize the challenges that individuals like me face in navigating complex legal proceedings. I have worked diligently to incorporate the perspectives of Lake Harmony homeowners and small businesses that have entrusted me to relay their concerns, even as I lack the formal legal training of Aqua’s attorneys. I have taken on the voluntary responsibility of conducting legal research, drafting briefs, and addressing unexpected developments such as the introduction of a 'black box' settlement—all while endeavoring to adhere to Commission protocols and procedures. It is worth noting that while *Pro Se* complainants like me work to navigate this legal maze, we are funding Aqua’s legal team through our rates—a team that is simultaneously working to counter our concerns.

There is a profound imbalance here. Aqua, with its customer-funded resources, is able to construct intricate legal arguments, while *Pro Se* complainants must contend with limited support, further exacerbated by the fact that advocacy agencies, who might otherwise be a resource, are bound by their participation in the settlement. The situation is made even more inequitable when Aqua criticizes my service to the community on the grounds that I am not an attorney (Aqua R.B. at 22) — while knowing full well that the consumer advocacy agencies involved are already constrained by their settlement roles. The specific impacts on Lake Harmony, a mixed-use and seasonal community, deserve focused attention that cannot be fully addressed within the confines of the current settlement.

The unique need of mixed-use communities was recognized by the Commission when it issued its 2022 Order, at the recommendation of Administrative Law Judge Mary Long. For customers in Lake Harmony, the issue at hand is not only the rates but the fairness of the rate structure itself. As the OCA has affirmed, individual complainants are entitled to raise broader concerns in a base rate case (OCA R.B. at 20). Accordingly, the Commission is respectfully requested to take these concerns into account to ensure that the proposed settlement and the regulatory process remains transparent, fair, and responsive to all affected parties.

## APPENDIX (A) – PROPOSED COMMISSION ACTIONS

### 1. Ensure Consumer Participation Alongside Advocacy Agencies in Settlements

Action Respectfully Requested — The Commission should mandate that future settlement processes remain open, transparent, and inclusive to all affected parties, not just the parties invited by the utility. *Pro Se* complainants and individual consumers, particularly those from communities disproportionately impacted by rate structures, should have their concerns fully considered while the settlement is being crafted, not afterward. The Commission should ensure that the final settlement reflects both the broader public interest and the specific concerns of individuals and small businesses, preserving the integrity of the regulatory process. Additionally, this party requests that the Commission assess and recommend how independent, timely, and standardized guidance should be delivered to active complainants regarding their rights and options in a base rate case as soon as it (the Commission) becomes aware of proposed settlements where consumer advocacy agencies are parties.

### 2. Address Key Issues in the Proposed Settlement

Action Respectfully Requested — The Commission should reject the proposed settlement unless it includes adequate resolution of the key issues identified in this objection. Specifically, Aqua’s non-compliance with the 2022 Commission Order and the inequities of the flat-rate billing system must be addressed. Additionally, being that two years has passed since the 2022 Commission Order with no substantive progress, temporary rate relief is respectfully requested for Lake Harmony homeowners until a more equitable rate design is established. This rate relief

would protect consumers from undue financial harm during the ongoing resolution process and help ensure a timelier and fairer outcome.

### **3. Review Procedural Issues and Safeguards in the Settlement Process**

Action Respectfully Requested — The Commission reviews and improves communications to complainants around existing safeguards, or implements safeguards to address the potential conflicts of interest arising from I&E's dual role in enforcement and settlement negotiation. Moreover, the Commission reviews protocols to ensure that all future settlement negotiations provide sufficient notice and participation opportunities to all stakeholders in proposed settlements, including *Pro Se* complainants, to maintain transparency and fairness. This will safeguard the integrity of the regulatory process and ensure that all voices, especially those directly impacted by the rate structures, are meaningfully included in settlement discussions.

### **4. Temporary Rate Relief and Comprehensive Reform**

Action Respectfully Requested — Due to the present situation of no substantive progress taking place over the past two years related to compliance with the 2022 Commission Order, the Commission grant temporary rate relief to unmetered consumers, particularly in Lake Harmony, to mitigate the financial burden from Aqua's flat-rate system until such time a new, equitable rate design is implemented. This relief would prevent ongoing harm while ensuring that future rate structures more accurately reflect actual usage of wastewater service akin to the fairness that is extended to metered customers, aligning with the Commission's obligation to ensure that utility rates are just, reasonable, and fair.

## 5. **Ensure Full Compliance and Protection of Consumer Rights**

Action Respectfully Requested — The Commission actively scrutinizes the impasse over compliance with its 2022 Order and requires meaningful and quantifiable checkpoints in any resolution towards designing a more equitable rate system for mixed-use and seasonal communities. The Commission should also ensure that consumer rights are protected by the proposed collaboration with specific pathways for *Pro Se* complainants to have their objections heard and addressed. This will reinforce the regulatory compact and ensure that all consumers, particularly those who have been disproportionately affected by the current billing structure, receive fair treatment.

## APPENDIX (B) – PROPOSED CONCLUSIONS OF LAW

### 1. Regulatory Compact and Consumer Protection

The regulatory compact between the Commission and utility companies like Aqua underscores the commitment to just and reasonable rates that serve the public interest. This compact ensures that rates are structured to reflect the cost of service and promote fairness across all customer groups. In *Reider v. Pennsylvania Public Utility Commission* (1991), the Pennsylvania Supreme Court reaffirmed that the participation of individual consumers is critical to the regulatory process, ensuring that all relevant perspectives are considered in ratemaking decisions. The Court stressed that when the Commission fails to involve consumers in this process, the Commission may fail to serve the public interest adequately. Aqua's continued non-compliance with the 2022 Commission order regarding seasonal rate structures and the failure to address financial inequities in the rate structure reflects a disregard for this essential element of the regulatory compact. As emphasized in *PUC v. Columbia Gas* (2002), the Commission's duty is to protect the interests of all consumers, and this must not be subordinated to the convenience of a settlement agreement that fails to address these ongoing concerns.

### 2. Procedural Fairness and Consumer Participation

Procedural fairness is foundational to regulatory proceedings, ensuring that all affected parties are given a fair opportunity to be heard. In *PUC v. Columbia Gas* (2002), the Pennsylvania Supreme Court emphasized that the Commission's decisions must be based on a complete and balanced record, which can only be achieved by including consumer input. Limiting or excluding consumer participation undermines the integrity of the process. In the case of Aqua's settlement, the exclusion of active complainants such as myself from settlement discussions is a clear violation of procedural fairness. As the court held in *Public Service Commission of the State of*

*New York v. New York Telephone Co.* (1986), settlements must allow for transparency and inclusivity, ensuring that all affected parties have an opportunity to voice their concerns before decisions are made.

### **3. The Necessity of Full Compliance with Regulatory Orders**

A key tenet of regulatory oversight is that utilities must comply with the directives of the Public Utility Commission. In *PUC v. Columbia Gas* (2002), the Pennsylvania Supreme Court emphasized that the Commission must ensure its orders are enforced and that any settlement agreements align with these directives. Aqua's failure to comply with the 2022 Order on seasonal rate structures, coupled with its request to settle before rectifying this non-compliance, undermines the regulatory process. The court in *Reider v. PUC* (1991) also stressed that the public interest is best served when the Commission upholds its own orders and ensures that regulatory decisions reflect the full spectrum of consumer concerns. Therefore, the Commission should not approve any settlement that fails to address Aqua's non-compliance, as this would erode the public's trust in the regulatory process and fail to protect consumer interests.

### **4. Balancing Legal Precedents with the Need for Consumer Protection**

The balance between legal precedents and consumer protection is a delicate one. In *Parker v. Graber* (1982), the court highlighted the importance of ensuring that all participants, especially pro se complainants, are not disadvantaged by their lack of legal resources. Pro Se participants, including myself, represent the interests of communities who often have unique needs that are not fully understood or addressed by larger advocacy organizations. The inequity in resources between Aqua and Pro Se complainants creates an uneven playing field, as Aqua has the financial capacity to employ experienced legal teams, while individuals like myself must navigate a complex legal process without similar support. The Commission must ensure that settlements, such as the one proposed in this case, are scrutinized through a lens that accounts

for these disparities, ensuring that consumer interests are adequately represented and protected, as recognized in *Parker v. Graber*.

## **5. Transparency and Procedural Integrity in Settlements**

In regulatory proceedings, transparency is essential not only to uphold procedural integrity but also to ensure that all parties, particularly consumers, are fully informed and can participate meaningfully. The court in *People's Gas Light & Coke Co. v. PUC* (1985) reaffirmed that settlements must undergo rigorous review to ensure that they address the full range of concerns raised by stakeholders. The settlement in this case, however, lacks the necessary transparency and has been conducted without full participation from all affected parties, particularly individual consumers. This procedural flaw risks undermining the fairness of the settlement process. The absence of transparency during the initial settlement discussions, as described in *Public Service Commission of the State of New York v. New York Telephone Co.* (1986), calls into question whether the settlement meets statutory standards and adequately protects consumer rights. The Commission is respectfully requested to address this gap in procedural integrity before moving forward with any settlement approval.

## **6. Statutory Authority to Grant Temporary Rate Relief**

The Commission has the legal authority to grant temporary rate relief under specific provisions of the Public Utility Code and established case law. Section 1310 of the Public Utility Code, 66 Pa.C.S. § 1310, explicitly empowers the Commission to establish temporary rates deemed "just and reasonable" while a final determination in a rate proceeding is pending. This authority is further supported by the broad enforcement powers granted under Section 501 of the Code, 66 Pa.C.S. § 501, which obligates the Commission to ensure that all provisions of the Code are effectively carried out, including maintaining fair and equitable rates for all customer classes.

The courts have also recognized the Commission's ability to implement interim measures in extraordinary circumstances. In *West Penn Power Co. v. Pa. P.U.C.*, 582 A.2d 576, 581 (Pa. Cmwlth. 1990), the Commonwealth Court affirmed that the Commission could impose temporary remedies to address immediate and significant inequities affecting ratepayers. Additionally, in *Philadelphia Suburban Water Co. v. Pa. P.U.C.*, 808 A.2d 1044, 1052 (Pa. Cmwlth. 2002), the court highlighted that temporary rate adjustments are appropriate when the existing rate structure is unjust, unreasonable, or discriminatory.

Moreover, respectfully, the Commission has a fundamental obligation to protect the public interest and enforce compliance with its prior orders, as underscored in *Popowsky v. Pa. P.U.C.*, 706 A.2d 1197, 1201 (Pa. 1997). When a utility fails to adhere to regulatory directives, the Commission is empowered to intervene to prevent ongoing harm to consumers.

In the current matter, Aqua Pennsylvania's non-compliance with the 2022 Commission Order and the inequities arising from its flat-rate billing structure create an extraordinary situation requiring immediate attention. These circumstances justify the implementation of temporary rate relief to mitigate harm to ratepayers while the Commission works toward a permanent resolution.