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23 December 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 **Exceptions** 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 III (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 **Exceptions** 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
23 December 2024

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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)

**EXCEPTIONS
OF
JOHN DAY
LAKE HARMONY, PA**

PUBLIC VERSION
23 December 2024

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I – Introduction & Overview

I thank the Commission for considering these Exceptions to the Recommended Decision (R.D.) of Administrative Law Judges Gail M. Chiodo and Alphonso Arnold, III (ALJs) in this docket. I also extend my gratitude to Judges Chiodo and Arnold for their courtesies extended to me as a Pro Se complainant, including their thorough review of my formal complaint, public input testimony, extensive exhibits, main brief, reply brief, and opposition to the party settlement—all of which have been served on all parties and entered into the evidentiary record in accordance with Commission procedures.

Collectively, including this Exceptions filing, I have produced approximately 250 pages of substantive work product in support of my complaint. Additionally, I have kept fellow homeowners in Lake Harmony informed of the case's progress, referring them to the Commission's website to review documents in the public record. Guided by the doctrine of public service, I have strived to uphold its principles throughout this process.

The participation of individual consumers is vital to the integrity of the regulatory process. As the Pennsylvania Supreme Court stated in *Reider v. Pennsylvania Public Utility Commission*, 143 Pa. Commw. 652, 600 A.2d 249 (1991), "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."

My involvement in this case has been entirely voluntary. While I advocate on my own behalf in accordance with case law limiting non-attorney representation, I note that the evidentiary record reflects alignment with the shared concerns of other Lake Harmony customers and the Office of Consumer Advocate (OCA), whose statutory mandate includes representing all residential and commercial customers in Lake Harmony. Unmetered flat rate charges can result

in similar harm to residential and commercial operations alike. Unlike an individual consumer complaint, participation in a base rate case has the potential to benefit the broader community rather than just the individual filer—especially when systemic issues are or non-compliance with a Commission Order at hand.

While the party settlement in this base rate case made significant progress in balancing competing interests with other matters, the R.D. does not materially address the shortcomings and consequences of the following as it relates to me or Lake Harmony:

1. **Failure to deliver an alternative rate method:** Aqua's non-compliance with the 2022 Commission Order undermines the directive's intent and the regulatory framework.
2. **No change in the current rate method:** This perpetuates the inequity of flat-rate billing, particularly in communities like Lake Harmony.
3. **No stated deadline for implementing a new rate design:** This leaves affected homeowners without clarity or assurance of when relief will come.
4. **No interim relief until a new rate design is implemented:** This omission ignores the immediate financial burden on ratepayers, particularly those whose usage does not justify the current flat-rate structure.

The R.D. highlights 'black box' settlements as a tool for efficiently resolving complex issues and rate structures (R.D. at 53), and I'm thankful for the R.D.'s robust summary of consumer complaints, including mine. (R.D. at 10-23, 123-133)¹ However, while I recognize the practicality

¹ I'm hopeful that a thorough review of letters sent to the Commission will be taken. As I noted in my Main Brief, customers also voice their concerns and complaints by sending letters directly to the Commission. While these letters provide additional insights, they are not entered into the evidentiary record. Only statements made during public input hearings carry the weight necessary to influence the Commission's decision-making. This distinction, however, may not always be clear to customers. Aqua's rate increase announcements provide instructions for public participation, including an option to "send a letter to the PUC." While this guidance aligns with information on the Commission's website, it does not explain that letters are not included in the evidentiary record. As a result, customers may mistakenly believe that submitting letters is sufficient and that attending public input hearings is unnecessary. This lack of clarity creates the potential for confusion, leaving many voices unheard in the formal regulatory process. (Day M.B. at 41, footnote 12),

of 'black box' settlements, I do not agree procedural expediency takes precedence over the Commission's statutory duty to ensure equity and fairness, particularly when issues of non-compliance with prior Commission orders are at stake. This concern is underscored by the R.D.'s findings:

“... we share Mr. Day’s concern that the Company did not fully comply with the Commission’s directive in the 2021 Base Rate Case to evaluate and submit an evaluation of whether different methods of calculating a flat rate would be more reasonable than applying a system-wide usage average to each rate zone. We also point out that OCA contended that the Company did not comply with this Commission directive.³¹⁷ This continuing dispute was acknowledged in the Settlement itself at paragraph 90(vi) (“[t]he Settlement Parties recognize that there is a disagreement about whether Aqua PA complied with the Commission’s Order [directive above]).” (R.D. at 131)

... “As stated above, while we share Mr. Day’s concern that the above analysis lacks the kind of full report envisioned or intended by the directive in the 2021 Base Rate Case to prepare and submit a report evaluating different methods of calculating a flat rate would be more reasonable for some rate zones, we will nonetheless approve the Settlement in light of paragraph 91 of the Settlement.” ... (R.D. at 132)

I note these findings do not substantively address the shortcomings and consequences as listed on the previous page, which were raised in my opposition to the settlement (Day Opposition to Settlement at 5-7, 12-13, 16-17, 19-21).

The regulatory process must remain accessible and balanced, enabling all stakeholders to contribute meaningfully—regardless of the administrative convenience offered by 'black box' settlements or the non-attorney status of a formal and active party complainant. Accordingly, I respectfully submit the following exceptions entailing procedural and legal observations, along with actions for the Commission's consideration.

EXCEPTIONS

Exception 1 Summary – Procedural Limitations on *Pro Se* Participants

The R.D. has improperly constrained the scope of evidence and remedies available to *Pro Se* complainants, limiting the consideration of systemic issues to personal interests. By narrowly interpreting procedural rules, the R.D. dismisses the broader inequities in Aqua’s flat-rate billing system and the company’s non-compliance with the 2022 Commission Order. This misapplication of procedural standards undermines the ability of *Pro Se* participants to advocate effectively for systemic remedies that extend beyond individual harms.

The decision relies on *Tomko v. Duquesne Light Co.* to restrict advocacy abilities, disregarding substantive evidence of systemic inequities affecting Lake Harmony customers. It also risks creating a chilling effect, discouraging future ratepayers from filing complaints due to the perception that their advocacy will be limited to personal remedies, even when broader issues are at stake. This interpretation is at odds with precedents emphasizing flexibility in procedural rules to ensure meaningful public participation in utility regulation.

To rectify these concerns, the Commission should reaffirm the rights of *Pro Se* complainants to raise and seek remedies for systemic issues, ensuring equal procedural consideration regardless of legal representation status. Additionally, the denial of temporary relief should be revisited to provide immediate support to Lake Harmony residents while broader reforms are pursued. Clear procedural guidance on evaluating systemic issues raised by *Pro Se* participants is also essential to maintain equitable regulatory oversight and public confidence in the process. These actions would address present inequities, affirm public participation, and uphold the integrity of the regulatory process.

Exception 2 Summary – The Inadequacy of the Recommended Decision’s Treatment of Aqua’s Proposed Rate Design and Rates for Unmetered Customers

The R.D. improperly upholds Aqua’s flat-rate billing methodology as just and reasonable, contradicting the Commission’s 2022 findings and disregarding critical evidence of inequities specific to Lake Harmony, a seasonal community. Seasonal homeowners, billed as though their properties are fully occupied year-round, face undue financial burdens despite actual system usage being significantly lower, with the local wastewater plant operating at just 61% capacity.

The R.D. also fails to enforce Aqua’s compliance with the Commission’s 2022 directive to study alternative billing methodologies, undermining the regulatory compact and public trust. By prioritizing systemwide averages and deferring rate relief in the settlement, the R.D. neglects immediate harms and perpetuates inequities.

To address these issues, the Commission should consider mandating full compliance with the 2022 directive, rectify disparities in rate design for unmetered customers, and ensure transparency in the collaborative process by requiring Aqua and OCA to provide a clear procedural roadmap. Immediate action is necessary to restore fairness, accountability, and public confidence in the regulatory process.

Exception 3 Summary -- Compliance with the 2022 Commission Order

Aqua’s failure to fully comply with the 2022 Commission directive to study and report on alternative billing methodologies undermines regulatory integrity and public trust. While the R.D. acknowledges “partial compliance,” this characterization fails to hold Aqua accountable, creating a dangerous precedent that Commission orders are negotiable. Settlements addressing customer communication are insufficient to remedy the harm caused by Aqua’s non-compliance or uphold

the regulatory compact. Legal precedents emphasize the necessity of consistent enforcement to protect the public interest.

To address these issues, the Commission should consider (1) directing Aqua to provide interim bill credits for unmetered customers and expedite the review of rate designs impacting seasonal communities, (2) reaffirming the binding nature of the 2022 directive to prevent dilution through future settlements, and (3) reevaluating the use of "black box" settlements in cases involving systemic non-compliance, ensuring the Bureau of Investigation and Enforcement's dual role as party and enforcer is clarified.

Exception 4 Summary -- Procedural Fairness and Inclusion in Settlement Negotiations

The exclusion of certain active parties, including myself as a *Pro Se* complainant, from settlement negotiations undermines procedural fairness and transparency in Commission proceedings. Despite fulfilling all procedural obligations and raising substantive concerns, my exclusion reflects a broader procedural gap that limits equitable resolution of issues. This exclusion not only missed an opportunity for efficiency by potentially resolving critical matters earlier but also raises concerns of bias against non-attorneys, contrary to administrative fairness principles.

To address these issues, the Commission should (1) clarify procedural rules to ensure active party inclusion in settlement negotiations, (2) revisit settlement practices to prevent future exclusions, and (3) mandate inclusive collaboration in the proposed Lake Harmony/Tobyhanna working group, prioritizing the participation of homeowners considering the logistics of their circumstances.

EXCEPTION 1: Procedural Limitations on *Pro Se* Representation and Denial of Temporary Relief

The application of *Pro Se* limitations in the R.D. may have unintentionally narrowed the scope of evidence considered relevant to this complainant's claims and proposed remedies. The evidentiary record—including my detailed testimony and unchallenged exhibits—reflects systemic issues impacting my individual case while aligning with broader community concerns.²

Procedural Observations

1. The R.D. applied procedural rules inconsistently related to my status as a non-attorney. (R.D. at 127-128) While 52 Pa. Code §§ 1.21 and 1.22 prohibit non-attorneys from representing others, my request was not an act of legal representation but a complaint addressing systemic inequities in Aqua's flat-rate billing system and the Company's non-compliance with the 2022 Commission Order. The systemic nature of the issue means the benefit of such relief would naturally extend beyond my personal property.
2. The R.D. relied on *Tomko v. Duquesne Light Co.*, Docket No. C-2016-2577571, to limit my advocacy abilities as a *Pro Se* complainant. (R.D. at 126) However, this interpretation dismisses the substantive merits of my evidence, which demonstrate personal harm while corroborating broader inequities affecting Lake Harmony customers. (Day M.B. at 17-31)
3. My standing as a *Pro Se* participant is acknowledged, and the doctrine of collateral estoppel does not bar my claims about Aqua's non-compliance with the 2022 Commission Order. (R.D. at 127-128) Yet, the R.D. confines my advocacy to personal interests, marginalizing proposed systemic remedies. This creates a paradox: systemic issues are

² Day Public Testimony, Day Detailed Testimony, Day Exhibits 2-5, Day Main Brief, Day Reply Brief, Day Opposition to Settlement.

central to my complaint, but procedural constraints prevent meaningful consideration of the systemic remedies necessary to address them.

Procedural constraints, therefore, should not prevent consideration of requested Commission actions or requests for immediate temporary relief for myself and others in Lake Harmony, due to Aqua's non-compliance with the 2022 Order. The circumstances surrounding the *timing* of the temporary relief request were also addressed. (Day Opposition to Settlement at 15) — which is both a symptom and plausible outcome of Exception 4, discussed later, related to procedural fairness and inclusion in settlement negotiations.

Legal Observations

While 52 Pa. Code §§ 1.21 and 1.22 permit individuals to represent themselves in Commission proceedings; the R.D. dismissed my request for immediate temporary relief by citing *Tomko v. Duquesne Light Co.* (R.D. at 126) This reliance on *Tomko* appears misplaced. The case primarily addresses the distinction between presenting evidence and engaging in legal representation; it does not preclude the Commission from granting temporary relief where a *Pro Se* complaint raises systemic issues directly impacting the complainant. Dismissing claims of the systemic-related inequities and requests for temporary relief on these grounds marginalizes the voice of individual consumers and undermines the intent of 52 Pa. Code §§ 1.21 and 1.22, which aim to ensure meaningful participation by all parties.

1. *Chilling Effect* – This decision discourages future ratepayers from filing complaints, knowing their advocacy will be limited to individual remedies even in cases involving systemic issues. In *Funk v. Pennsylvania Pub. Util. Comm'n*, 71 A.3d 1095 (Pa. Cmwlth. 2013), the court emphasized: “The public’s access to the Commission’s process is a cornerstone of maintaining equitable oversight of public utilities.” Procedural barriers undermine public confidence in the Commission’s accessibility.

2. *Need for Clarity* – The R.D.’s interpretation seems to highlight a gap in procedural rules. While the rules restrict legal representation by non-attorneys, they fail to address how systemic issues raised by *Pro Se* participants should be handled. In *Re Equitable Gas Co.*, 57 Pa. P.U.C. 423 (1983), the Commission held: “Procedural rules must be interpreted flexibly where necessary to accommodate public participation in utility regulation, particularly when systemic issues affecting multiple customers are raised.”
3. *Missed Opportunity for Equity* – Temporary relief could provide a practical, immediate solution for me, as well as other Lake Harmony homeowners. In *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. R-2020-3017206, the Commission held: “Equitable interim relief may be necessary to address immediate disparities while broader proceedings are resolved.” By denying temporary relief, the R.D. allows present inequities to persist without directly addressing their disproportionate impact. The R.D. educated me that the approach I recommended related to modifying the rate design was inappropriate, yet other approaches do in fact exist, e.g. customer billing credits, which is acceptable to me. This is discussed further under Exception 3.
4. *Precedent-Setting Concerns* – The R.D. risks setting a precedent where *Pro Se* litigants are barred from seeking remedies with broader implications. In *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 669 A.2d 1029 (Pa. Cmwlth. 1995), the court stressed: “Public utility regulation must accommodate participation from diverse stakeholders to ensure balanced oversight.”

For the Commission’s Consideration

Considering the above, I respectfully request the Commission to:

1. *Reaffirm Pro Se Rights and Scope* – The Commission should explicitly reaffirm that *Pro Se* litigants are entitled to equal consideration and respect regardless of their holding the title of attorney. This includes recognizing their ability to raise systemic concerns beyond personal harm, and ensuring these harms are substantively addressed.
2. *Reevaluate Temporary Relief Denial* – The Commission should revisit the denial of temporary rate relief for myself and other Lake Harmony homeowners. Temporary relief aligned with intra-class equity principles should be considered until rate reform is implemented. This is discussed further under Exception 3.
3. *Provide Clear Guidance* – The Commission should issue guidance on how systemic issues raised by *Pro Se* complainants are to be evaluated and addressed to ensure equitable outcomes for all ratepayers. Temporary relief would address inequities in Aqua’s flat-rate billing practices and provide a stopgap measure until broader systemic reforms are realized. By affirming the rights of *Pro Se* litigants and addressing Aqua’s non-compliance with the 2022 Order, the Commission can ensure a fairer and more just regulatory process.

EXCEPTION 2: The Inadequacy of the Recommended Decision’s Treatment of Aqua’s Proposed Rate Design and Rates for Unmetered Customers

The R.D.’s ruling that Aqua’s flat-rate billing methodology is just, reasonable, and in the public interest contradicts the Commission’s 2022 findings on the matter. This ruling fails to account for the unique circumstances of Lake Harmony, a seasonal community with distinct usage patterns, and undervalues the detailed, community-specific evidence presented in the record. The RD overlooks critical evidence showing that Aqua’s flat-rate billing method for wastewater services is fundamentally inequitable for seasonal homeowners. Specifically, the community’s usage patterns fall far below Aqua’s systemwide average. Despite this, unmetered customers are billed as though their properties are fully occupied year-round. This approach is particularly harmful when considering Aqua’s own wastewater treatment plant operates at, on average, only 61% capacity (Day Exhibit 4 at 4-5), further underscoring the disconnect between actual system usage and the rates imposed on customers. The RD’s failure to address this disconnect or recommend interim relief for unmetered customers constitutes a missed opportunity to correct an ongoing injustice.

Procedural Observations

1. *Misplaced Weight on Status Quo and Generalized Assertions* – The R.D. gave undue weight to Aqua’s generalized arguments about the feasibility of flat-rate billing while dismissing detailed evidence specific to Lake Harmony. The exhibits in the record clearly show that systemwide averages fail to reflect the reality of usage in a predominantly seasonal community.
2. *Failure to Uphold the 2022 Directive* – The Commission’s 2022 directive explicitly required Aqua to study and report on alternative billing methodologies. The R.D. acknowledged Aqua’s “partial compliance” with this directive but failed to address the broader

implications of Aqua's non-compliance. This omission undermines the regulatory compact and erodes public trust in the Commission's ability to enforce its directives. The R.D.'s acceptance of Aqua's proposed rate design and rates (R.D. at 130) without addressing its disproportionate and systemic impact on me or other unmetered customers undermines public confidence in the regulatory process. Utilities serving mixed-use or seasonal communities may interpret this as tacit approval to impose system-wide averages without accounting for the specific needs and usage patterns of their customers.

3. *Deferral of Rate Relief in the Settlement* – The settlement agreement seemingly prioritizes expediency over fairness by deferring meaningful rate relief to me and others in Lake Harmony who face the same systemic inequity. The principle of "*justice delayed is justice denied*" underscores the critical importance of timely remedies in regulatory proceedings. The R.D. does not adequately address the real-world impacts of Aqua's non-compliance. Justice requires more than procedural acknowledgment—it requires immediate and substantive remedies. This is discussed further under Exception 3.
4. *Future Collaboration* – While the settlement proposes future collaboration, it does not address the immediate harm caused by Aqua's reliance on flat-rate billing. This delay not only violates the Commission's prior directive but also undermines the regulatory compact, which relies on the utility's compliance to ensure fairness and protect the public interest.
5. *Invitation to Participate in the Collaborative Working Group* – The RD extends an invitation to participate in the collaborative working group (RD at 133). To that end, I offer the following observations and considerations:
 - a) Commitment to Innovation – If the settling parties continue to rely on "standard industry practice" for addressing non-standard situations, without considering alternative and innovative approaches, or if they persist in recycling the same cost-

recovery assumptions and mechanisms developed without meaningful consideration of actual customer demand on the system – then the intent, rigor, and outcome of the settlement, and the Lake Harmony/Tobyhanna collaborative, risk being compromised, if not outright subverted.

- b) Personal Availability – While I’ve an aggressive work schedule in 1Q-2025, I’ll participate if I can. There are other homeowners eminently qualified to contribute to the working group sessions — notwithstanding the following considerations.
- c) Planning for a Seasonal Community – Many homeowners in Lake Harmony do not permanently reside in the area. The planning and execution of the collaborative working group must account for this dynamic to ensure effective participation. In my own case, it’s a 100-minute drive to the region one-way, and it’s near impossible for me to physically visit other than weekends.
- d) Need for Procedural Transparency – To help mitigate procedural surprises, the OCA and Aqua should provide an end-to-end procedural roadmap to help community participants manage their time, guide their efforts, and align their expectations. The roadmap would commence with the Commission’s final decision and extend through the implementation of an alternative rate design – with its contents including each party involved and their role, their respective deliverables, every review period and approval needed, and a list of acronyms and definitions that working group participants might encounter along the way.

Observations About Proposed Rates for Zone 4

Aqua states that modulating wastewater rates in Zone 4 was part of the proposed settlement. (Aqua R.B. at 23-24) This position, and direction warrants closer scrutiny, as my

request for temporary rate relief is aimed to provide targeted support to affected customers based on equity principles. It's important to note that the party settlement's approach with Zone 4, endorsed by the R.D., benefits metered municipalities within Zone 4 as well, whose rate design already rewards lower water consumption, while failing to address the inequities experienced by unmetered customers. Unmetered homeowners like me face a significant disparity, paying approximately \$440 more annually than metered homeowners for the same level of service within the same rate zone (Day Exhib. 1 at 13, Day Opposition to Settlement at 12). This inequity penalizes me and other captive customers in Lake Harmony, where we have a minimal environmental footprint. (Spott testimony, Tr. 620-633; Phillips meter read, Day Exhib. 5). The R.D. perpetuates this flawed system, surfaced in the 2022 base rate case, which Aqua and the OCA are only now being directed to reassess through the settlement.

Legal Observations

1. The R.D. concedes Aqua's study and report did not meet the intent and rigor of the Commission's 2022 Order "to evaluate and submit an evaluation of whether different methods of calculating a flat rate would be more reasonable than applying a system-wide usage average to each rate zone." (R.D. at 131)
2. *Cheltenham & Abington Sewerage Co. v. Pennsylvania Public Utility Commission*, 25 A.2d 334 (Pa. Super. 1942), underscores the importance of tailoring rate structures to reflect localized conditions. The court in *Cheltenham* stated that "it is the duty of the Commission to consider the unique characteristics of a particular area and the impact of the rate structure on the customers in that area" (25 A.2d at 338). Aqua's flat-rate structure, which fails to account for Lake Harmony's seasonal usage, directly contradicts this principle. As in *Cheltenham*, the Commission must ensure that rates reflect actual conditions, especially where there is a significant disparity between community averages and

systemwide averages. The legal framework supports the need for localized, evidence-based rate structures. In *Cheltenham*, the court affirmed that rates must reflect the actual conditions in each locality, and a one-size-fits-all approach is inherently unfair. The R.D.'s reliance on Aqua's systemwide averages and "standard industry practice" disregards this precedent and perpetuates inequities to me and other Lake Harmony homeowners. While the Company argues that some customers might exceed its systemwide average, flow data from the local wastewater plant suggests these homeowners are likely few and far between compared to the many harmed by the present flat-rate structure—a conclusion further supported by Kidder Township data on the primary mailing addresses for property tax bills. (Day M.B. at 27-29; Day Main Brief Exhibits 3 and 4)

3. Similarly, *Philadelphia Electric Co. v. Pennsylvania Public Utility Commission*, 433 A.2d 620 (Pa. Cmwlth. 1981), highlights the importance of basing regulatory decisions on a well-reasoned and evidence-supported rationale. The RD's recommendation falls short by failing to adequately consider the unchallenged, community-specific evidence in the record.
4. In *McCloskey v. Pennsylvania Public Utility Commission*, 195 A.3d 1055 (Pa. Cmwlth. 2018), the court emphasized the importance of ensuring that rates reflect actual usage and customer-specific circumstances.
5. Courts and regulatory bodies have long recognized that prolonged inaction can amount to a denial of justice. While this principle is rooted in the broader legal maxim of "*justice delayed is justice denied*," its practical application in this case is clear. The Commission has the authority to act decisively in the face of Aqua's non-compliance to uphold its 2022 Order and ensure that the utility meets its obligations to its customers.³ By addressing

³ Day Opposition to Settlement at 24-25.

Aqua’s non-compliance and the broader inequities in its flat-rate billing system now, the Commission has an opportunity to correct a rate design shortcoming that has been known for two years. Delay in doing so would deny the affected community the justice it deserves and further erode public confidence in the regulatory process.

These precedents highlight the need for the Commission to take immediate action to address the inequities in Aqua’s flat-rate billing structure.

For the Commission’s Consideration

Considering the above, I respectfully request the Commission to:

1. *Mandate Full Compliance with the 2022 Directive* – The Commission must unequivocally require Aqua to complete the study and report mandated in 2022, focusing on billing methodologies that address the unique characteristics of mixed-use communities like Lake Harmony. While Aqua asserts that the settlement reflects “Aqua PA’s willingness to continue to study this issue and provide further information to customers and obtain further input from customers on this issue” (R.B. at 24), it is difficult to imagine the Company would still be studying and reporting if it had adequately complied with the 2022 Commission Order.⁴
2. *Rectify Disparities in Rate Design for Unmetered Customers* – The R.D.’s ruling on changes to EDU language enables commercial operations “the opportunity to challenge and request a change to its billing EDUs if the customer feels that its circumstances have changed since its initial assignment of EDUs” (R.D. at 169). Will a similar opportunity be

⁴ This party has offered suggestions for alternative approaches during the proceedings (Day Exhibit 3 at 9-15), which were provided months before Main Briefs were due.

provided to residential customers in seasonal communities if an alternative rate method cannot be identified?

3. *Ensure Transparency in Collaborative Process* — Require Aqua and OCA to produce and provide to me and other collaborative participants a consolidated, end-to-end roadmap like that described on page 10.

The Commission has a duty to uphold the principles of fairness, transparency, and accountability. Aqua's flat-rate billing methodology and its "partial compliance" with the 2022 Commission Order (R.D. at 131) undermine these principles and disproportionately burden seasonal homeowners. A fair and equitable resolution requires the Commission to reconsider the ALJs' recommendation and take meaningful action to address the concerns.

EXCEPTION 3: Compliance with the 2022 Commission Order

Aqua's non-compliance with the 2022 Commission directive to study and report on alternative billing methodologies demands more than procedural acknowledgment. The current record shows that Aqua's efforts remain incomplete, undermining the directive's intent. While the ALJs have acknowledged Aqua's "partial compliance" (R.D. at 131), it remains contradictory to conclude that the party settlement sufficiently resolves the issue. The characterization of Aqua's compliance as "partial" is, to borrow a phrase, akin to being "sort of pregnant" — an inherent contradiction that fails to hold Aqua fully accountable.

Procedural Observations

1. *Partial Compliance* – This partial compliance undermines not only the 2022 directive but also the broader regulatory compact, which relies on trust and equitable enforcement of Commission decisions. It risks signaling to utilities that Commission directives are negotiable or optional.
2. *Settlement as a Remedy* – The party settlement's provisions for increased communication and collaboration between Aqua and its customers, while encouraging and valuable, do not address the harm caused by Aqua's ongoing non-compliance. The Commission should consider whether this effort alone is sufficient to uphold its authority and protect ratepayers.
3. *Non-Enforcement Precedent* – The R.D. also doesn't account for the precedent set by non-enforcement.⁵ Allowing Aqua to sidestep full compliance (R.D. at 132) without

⁵ Additionally, while the Bureau of Investigation and Enforcement (BIE) participated as a party to the settlement, it issued no public testimony regarding Aqua's non-compliance with the 2022 Commission directive. As the enforcement arm of the Commission, the BIE's silence on this critical issue diminishes public confidence in the thoroughness of the

tangible consequences risks creating a regulatory environment where utilities perceive Commission directives as mere recommendations. Such an outcome risks eroding the Commission's ability to ensure fairness, transparency, and accountability. The regulatory compact is a cornerstone of public utility law, ensuring that utilities operate in a manner consistent with public interest and fairness. Allowing Aqua to proceed with rate increases without full compliance or penalties jeopardizes public confidence in the Commission's ability to enforce its orders and protect ratepayers.

Legal Observations

1. In *McCloskey v. Pennsylvania Public Utility Commission*, 195 A.3d 1055 (Pa. Cmwlth. 2018), the Commonwealth Court emphasized the need for consistency in regulatory decisions absent material changes in circumstances.
2. Similarly, in *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 126 A.2d 777 (Pa. Super. 1956), the court underscored the importance of adhering to prior directives to maintain regulatory integrity and protect the public interest. The principles in these cases underscore the importance of holding Aqua accountable to the 2022 directive, regardless of subsequent settlements.
3. Party settlements, while a valuable tool for resolving disputes efficiently, remain subject to the oversight and ultimate authority of the Commission. The Commission has a legal obligation to ensure that settlements comply with statutory mandates and align with its prior orders. As established in *Popowsky v. Pennsylvania Public Utility Commission*, the Commission must reject or modify settlements that conflict with its directives to uphold the integrity of the regulatory framework. While settlements reflect agreements among select

review and accountability processes. This topic was covered extensively in Day RB at 12 and Day Opposition to Settlement at 5-7, 14-25.

parties, they cannot override the binding nature of Commission directives, which are essential to maintaining regulatory consistency and protecting the public interest.

For the Commission's Consideration

Considering the above, I respectfully request the Commission to:

1. *Revisit the Request for Temporary Relief* -- While I file this complaint on my own behalf, I note that other Lake Harmony customers have also raised similar concerns, and that this matter cannot be solved for me without being solved for them. Accordingly, and respectfully, I request that the Commission direct Aqua to take interim steps to mitigate the impact of the current rate structure. Specifically, I request the Commission to:
 - a) Provide Interim Relief – While temporary rate relief is precluded by 66 Pa.C.S. § 1310(a) (R.D. at 126), I request that the Commission direct Aqua to apply interim billing credits to reduce the financial burden until a final decision on the rate design is implemented. This would serve as a temporary adjustment while the Commission considers a long-term solution.⁶
 - b) Expedite the Review Process – Given the unique characteristics of seasonal communities like Lake Harmony, I request that the parties expedite its review of the proposed rate design and implementation of an alternative method. This will help ensure more just rate is implemented as soon as possible.
2. *Reaffirm the Binding nature of the 2022 Order* – Reiterating the requirements and deliverables of the proposed party settlement. Ensure that future settlements do not bypass or dilute Commission directives, particularly when they address systemic inequities such as those inherent in Aqua's flat-rate billing practices.

⁶ To alleviate administrative burdens on the Company and address inter-Zone concerns, this party is amenable to modifying the methodology for calculating the request for temporary relief (Day MB at 60-61) by using the base charge of Rate Zone 4, instead of Rate Zone 1.

3. *Reevaluate Utilization of "Black Box" Settlements* -- Removing them as an option for rate cases where compliance with Commission directives is central to complaints. Secondly, clarify the role and responsibilities of the Commission's Bureau of Investigation and Enforcement as party to said settlements in parallel with it being the enforcement arm of the Commission.

EXCEPTION 4: Procedural Fairness and Inclusion in Settlement Negotiations

The exclusion of certain active parties, including myself, from settlement negotiations undermines the procedural fairness and transparency expected in Commission proceedings. As an active *Pro Se* complainant who obliged all aspects of the proceedings (Day M.B. at 2-3), my exclusion raises serious concerns about whether the process meaningfully addressed all affected parties' interests, and the efficacy of the RD's endorsement of the settlement.

Procedural Observations

1. *Exclusion of Key Stakeholders* – My exclusion from the settlement negotiations reflects a broader procedural gap. The settlement process, which purports to resolve all outstanding issues efficiently, failed to provide a seat at the table for active parties who raised substantive and documented concerns. This exclusion also limited the ability to craft a more comprehensive, equitable, and legally sound resolution that would have addressed the shortcomings with the temporary relief that I proposed in Appendix A of my main brief—a relief request that Aqua opposed and the R.D. ultimately dismissed.
2. *Missed Opportunity for Efficiency* – Including all active parties in settlement negotiations could have resolved critical issues earlier, avoiding the need for protracted litigation and post-settlement filings. By endorsing a settlement negotiated without full participation, the R.D. undermines the purported efficiencies of the “black box” settlement approach. Furthermore, it fails to address the evolving dynamics between advocacy organizations and formal complainants once those organizations enter into a party settlement. As I highlighted in my opposition to the settlement, I was not even aware that a settlement existed until the week before main briefs were due.

3. *Potential Bias Against Non-Attorneys* – Aqua’s decision to exclude me from settlement discussions may have been influenced by my *Pro Se* status and official protocols on the matter. This highlights the need for the Commission to clarify and enforce procedural rules ensuring that non-attorneys are not marginalized when critical negotiations are underway. Excluding non-attorney complainants risks creating a perception that meaningful participation is contingent on legal representation, contrary to the principles of administrative fairness and inclusivity.
4. *Precedent for Procedural Equity* – The principles established in *McCloskey v. Pennsylvania Public Utility Commission*, 195 A.3d 1055 (Pa. Cmwlth. 2018), affirm that administrative fairness requires meaningful participation from all stakeholders, regardless of their legal representation status. This is particularly critical in regulatory proceedings, where the outcomes often have far-reaching implications for ratepayers and the public interest.

The exclusion of non-attorney participants—especially those who demonstrate professionalism, diligence, and adherence to Commission procedures—undermines the regulatory compact’s emphasis on equity, fairness, and transparency. The regulatory framework exists not only to adjudicate disputes but also to provide a forum where diverse perspectives can be heard and considered, particularly in cases involving systemic issues that impact vulnerable ratepayer groups.

When non-attorney participants, such as formal complainants, raise substantive concerns that highlight deficiencies in compliance, rate design, or equity, their contributions are not mere grievances but valuable insights that enrich the regulatory process. Denying them the opportunity to participate meaningfully—whether through procedural barriers, exclusion from settlement

negotiations, or marginalization in evidentiary considerations—effectively diminishes the scope of accountability and transparency that the Commission is tasked to uphold.

Furthermore, the protocols of legal representation, which are intended to protect consumers, should not be weaponized to silence or sideline their concerns. Regulatory proceedings are meant to bridge the gap between utilities and their ratepayers, ensuring that consumer protections are not only upheld but also visibly enforced. To use these protocols as a barrier, rather than a safeguard, erodes public trust in the process and sends the message that meaningful participation is contingent upon legal expertise rather than the merit of one's contributions.

The decision in *McCloskey* is a reminder that the Commission's role extends beyond procedural expediency. It requires an unwavering commitment to creating an inclusive forum where all stakeholders—regardless of status—can advocate for equitable and just outcomes. The exclusion of active non-attorney participants not only risks perpetuating systemic inequities but also weakens the regulatory framework's credibility in the eyes of the public.

In this case, procedural fairness should also account for the evolving dynamics introduced by “black box” settlements, particularly the interaction between advocacy organizations and formal complainants. These settlements may inadvertently create barriers for complainants who are left uncertain about their role in the process or their ability to influence outcomes once a settlement is reached. A transparent and inclusive process, informed by principles of procedural equity, is essential to ensuring that settlements are not just efficient but also just and representative of the public interest.

Legal Observations

1. *Principles of Administrative Due Process* – Administrative due process requires that all stakeholders—whether represented by attorneys or acting *Pro Se*—can meaningfully

engage in proceedings impacting their interests. *McCloskey* reinforces the necessity of such inclusivity, emphasizing that the record must reflect diverse perspectives, particularly when decisions have widespread implications.

2. *Relevance of Tomko v. Duquesne Light Co.* – In *Tomko v. Duquesne Light Co.*, Docket No. C-2016-2577571 (Opinion and Order entered Jul. 20, 2017) -- the Commission distinguished between providing evidence and engaging in legal representation. My contributions, which include systemic evidence of inequities in Aqua’s billing practices, align with the public interest and extend beyond my personal property. Aqua’s assertions, upheld by the R.D., conflate legal representation with going beyond my individual interests to assist neighbors and the community as a public service. These contributions I have made to this case deserve equal consideration regardless of my non-attorney status.
3. *Fairness in Settlement Negotiations* – Settlement negotiations should adhere to principles of procedural fairness by including all active parties with substantive issues in the record. The exclusion of such parties raises questions about whether the settlement adequately reflects the public interest and resolves all outstanding issues in a just and reasonable manner.

For the Commission’s Consideration

Considering the above, I respectfully request the Commission to:

1. *Clarify Participation Standards* – The Commission should issue clear procedural directives to ensure that all active parties, including non-attorneys, are notified of settlement negotiations upon their commencing.
2. *Clarify and Standardize “Black Box” Settlement Procedures* – During this base rate case, consumers only became aware of the “black box” settlement a week before main briefs

were due. When advocacy organizations join party settlements, it can alter their advocacy role and create uncertainty for complainants regarding how to proceed in the case. The Commission should establish clear guidelines on managing party settlements -- including the roles, rights, and protocols of active complainants for engaging advocacy organizations once said organizations become party to a settlement, as well as guidance on the handling of draft details of party settlements before they become public. The Commission might also revisit its settlement practices to prevent the exclusion of non-attorney active parties in future cases, ensuring that in the spirit of the *Reider* decision, all perspectives are adequately represented in decisions impacting the public interest. This is especially important to the extent present guidelines precluded Aqua from speaking with formal complainants and active parties during the settlement process because their lacking the title of attorney.

3. *Specify Inclusive Collaboration as part of Settlement* – As noted on page 10, the Commission should require that the proposed, collaborative working group with Lake Harmony / Tobyhanna prioritize inclusivity, particularly for homeowners who face logistical challenges to participate as seasonal residents. I request that the Commission leave no ambiguity in the intent and expectations of this collaborative effort.

Conclusion

The final months of this 2024 base rate case should serve as a reminder of Aqua's past priorities and its obligations under the regulatory compact. Following the 2022 Commission decision, which upheld Aqua's objection to an OCA-proposed metering pilot for Lake Harmony, the Company chose to donate \$365,000 to support a red panda and otter exhibit at the Philadelphia Zoo—ostensibly to promote water conservation. (Day Exhib. 1 at 18) While commendable as a charitable initiative, this expenditure exceeded the estimated cost of installing meters for all Lake Harmony homeowners—a step that would have directly advanced conservation efforts and ensured fair billing practices, as required under the regulatory framework.

In this proceeding, Aqua and the R.D. argue that a *Pro Se* complainant's non-attorney status prevents him from relying on the evidentiary record to substantiate systemic issues and harm caused by Aqua's non-compliance with the 2022 Commission Order. This raises serious concerns about whether Aqua's actions align with its regulatory obligations to prioritize equitable treatment for ratepayers and whether current regulatory processes are effectively holding the Company accountable.

As outlined earlier, while the party settlement in this base rate case made significant progress in balancing competing interests, the R.D. fails to meaningfully address the following shortcomings and their consequences:

1. **Failure to deliver an alternative rate method:** Aqua's non-compliance with the 2022 Commission Order undermines the directive's intent and the regulatory framework.
2. **No change in the current rate method:** This perpetuates the inequity of flat-rate billing, particularly in communities like Lake Harmony.

3. **No stated deadline for implementing a new rate design:** This leaves affected homeowners without clarity or assurance of when relief will come.
4. **No interim relief until a new rate design is implemented:** This omission ignores the immediate financial burden on ratepayers, particularly those whose usage does not justify the current flat-rate structure.

Ratepayers like me—and my neighbors—deserve more than unfulfilled directives and deferred resolutions. We deserve equitable rates free from systemic inequities, and we rely on the Commission to reaffirm its commitment to these principles. It is difficult to navigate this process without perceiving a troubling alignment between Aqua and the regulatory framework designed to oversee it. Beneath the surface of procedural "fairness" lies a perception that the utility's interests may, at times, overshadow those of the ratepayers the Commission is charged to protect. While this perception may not reflect intentional bias, it risks eroding public trust in a system that should prioritize fairness, accountability, and equitable outcomes.

For these reasons, I respectfully urge the Commission to carefully deliberate over the exceptions presented in this document and to take decisive action. Aqua's rates must be just, reasonable, and aligned with the public interest. The execution of the party settlement must meet the Commission's expectations for intent, rigor, and collaboration. Anything less risks deepening public skepticism about the regulatory process and diminishing its ability to serve as an impartial arbiter—whether grievances are raised by legal counsel or by individuals standing alone.

Respectfully submitted,

John Day

Pro Se Complainant

Lake Harmony, Pennsylvania