



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

TEL: 412 566 6000
FAX: 412 566 6099

Lauren M. Burge
412.566.2146
lburge@eckertseamans.com

December 23, 2024

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

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

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

LMB/lww

Enclosure

cc: Hon. Gail M. Chiodo w/enc.
Hon. Alphonso Arnold III w/enc.
Cert. of Service w/enc.
Ra-osa@pa.gov

CERTIFICATE OF SERVICE

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

Via Email Only

Michael W. Hassell, Esquire
Garrett P. Lent, Esquire
Nicholas A. Stobbe, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101
mhassell@postschell.com
glent@postschell.com
nstobbe@postschell.com

Kimberly A. Joyce, Esquire
Alexander R. Stahl, Esquire
762 Lancaster Ave
Bryn Mawr, PA 19010
kajoyce@essential.co
astahl@aquaamerica.com

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

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

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

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

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

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

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

Robert J. Fogarty
628 Fair Street
Nescopeck, PA 18635
Rjf12@verizon.net

Susan Unvarsky and Sharon Ellis
151 Brook Street
Sugar Notch, PA 18706
Sunvarsky24@gmail.com

Steven Boyanowski
34 Willow Way
Dallas, PA 18612
judyccd@gmail.com

State Representative Christina Sappey
698 Unionville Road
Kennett Square, PA 19348
scooper@pahouse.net

John Day
614 Runyon Avenue
Piscataway, NJ 08854
john@johnday.us

Dated: December 23, 2024

Lauren M. Burge

Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
SCH USA LLC**

I. INTRODUCTION

SCH USA, LLC (“SCH USA”) is a commercial wastewater customer of Aqua Pennsylvania Wastewater, Inc. (“Aqua”). SCH USA owns and operates a large commercial resort property (the “Resort”) in Aqua’s wastewater Rate Zone 4. SCH USA intervened in Aqua’s base rate case in order to address the billing method applied to SCH USA as a wastewater customer with unmetered water service. SCH USA’s water is provided by private wells that are not metered, and Aqua currently bills SCH USA a flat rate based on “Equivalent Dwelling Units,” or “EDUs.” As discussed in detail in SCH USA’s Main and Reply Briefs, the flat rate currently billed to SCH USA is based on an incorrect number of EDUs and has no relationship whatsoever to actual usage at the property. This results in SCH USA being charged for significantly more wastewater usage than Aqua is actually collecting or treating, and these inaccurate charges are unjust and unreasonable.

In support of its positions, SCH USA presented detailed expert testimony showing, *inter alia*, that it is technically feasible and reasonable for Aqua to bill SCH USA in a manner that reflects *actual* usage, either by installing wastewater meters or metering water consumption. In

fact, the record shows that Aqua already has customers in its system who are billed based on metered wastewater consumption, or metered water usage for customers whose water is from private wells. Unfortunately, the Recommended Decision (“RD”) issued on December 9, 2024 rejects SCH USA’s positions, in large part based on an incorrect understanding of how determinations in Aqua’s prior rate cases apply to the flat rate charged to SCH USA. For the reasons described in these Exceptions, the RD erred in denying SCH USA’s claims. The flat rate billing as applied to SCH USA – a large commercial Resort property – is not just and reasonable and cannot be permitted to continue.

Vice Chair Kimberly Barrow recently highlighted the fact that decisions made in prior rate cases “may sometimes feel esoteric or technical, but impact the lives of Commonwealth residents,” and urged the Commission and parties to “do a better job in raising and examining the downstream effects” of such decisions.¹ A similar issue is at play here – the Commission has previously approved flat rate billing provisions in Aqua’s tariff, but in doing so failed to appreciate the impact on customers like SCH USA. Given that occupancy at the Resort varies widely and the Resort is rarely if ever at full, 100% occupancy, application of a flat rate (which assumes 100% occupancy at all times) in this case results in rates that in no way reflect actual usage and may be detrimental to the customer’s ability to continue doing business in the Commonwealth. SCH USA has presented substantial evidence in this proceeding showing that the flat rate as applied to the Resort is not just and reasonable, and that other feasible alternatives exist that would allow for billing based on actual usage. The RD erred in rejecting SCH USA’s reasonable request to be billed based on metered usage.

¹ *Frank Toroney v. PECO Energy Co.*, Docket No. C-2024-3045932, Statement of Vice Chair Kimberly Barrow (Dec. 19, 2024), available at <https://www.puc.pa.gov/pcdocs/1860032.pdf>.

SCH USA respectfully requests that the Commission direct Aqua to implement metered service for SCH USA by: (1) measuring actual wastewater discharges to Aqua’s system; or (2) measuring actual water consumption, so as to permit SCH USA to be billed based on its actual usage. Further, Aqua should be directed to include language in its tariff explicitly providing for such billing options.

II. EXCEPTIONS

1. **Exception No. 1: The RD Erred by Finding that Aqua is Billing SCH USA based on Aqua’s Tariff (RD at 166-167).**

The RD erred in finding that Aqua is reasonably billing SCH USA based on the flat, EDU-based rate that simply because the Commission approved similar flat EDU-based rates in Aqua’s 2018 and 2021 base rate cases. RD at 166-167. In fact, as explained in SCH USA’s briefs, the number of EDUs currently charged to SCH USA were originally set by a Settlement Agreement between Split Rock’s original owner and the Township of Kidder in 2010 (“2010 Settlement”). SCH USA MB at 6-8. These EDUs are not based on actual usage by the Resort and are not calculated consistent with Aqua’s existing tariff language. Yet Aqua has inappropriately used them to bill SCH USA for wastewater service since SCH USA acquired the property in October 2020. This results in rates charged to SCH USA that are unjust, unreasonable, and in violation of Aqua’s tariff. SCH USA MB at 6-8; SCH USA St. No. 3 at 3-5.

The RD accepts Aqua’s claims that the Commission approved the EDU-based billing of SCH USA in the 2018 rate case and 2021 rate case. RD at 166-167; Aqua MB at 19. However, Aqua’s statements on this point are simply wrong and the RD errs in accepting these claims. As SCH USA witness Frank Lacey testified, a review of Aqua’s last two rate cases shows the Commission did not expressly approve an allocation of costs or EDUs specific to SCH USA in either of those proceedings. SCH USA RB at 4; SCH USA St. No. 3-SR at 2. Similarly, Aqua’s

Main Brief generically cites to these proceedings but does not provide any specific citation as to where it claims the Commission has approved the number of EDUs that it argues must be billed to SCH USA. *See* Aqua MB at 19. The RD also does not specifically cite any such approval in Aqua’s 2018 or 2021 base rate proceedings. Further, Aqua’s current tariff does not include any mention of EDUs specific to SCH USA. *See* SCH USA RB at 4. Aqua has failed to provide any support for this argument, let alone produce any substantial evidence to rebut SCH USA’s testimony, and the RD errs in accepting Aqua’s unsupported claims.

As discussed in SCH USA’s Main Brief, the 2010 Settlement (which is the basis for the number of EDUs currently bills to SCH USA) has long expired, and any terms related to EDU calculations for the Resort were not assumed by Aqua when it acquired the wastewater system. SCH USA MB at 7. The EDU determinations outlined in the 2010 Settlement have no bearing whatsoever on the calculation of EDUs for the Resort today or how SCH USA’s current wastewater bills should be calculated. By continuing to rely on these outdated and baseless EDU calculations, Aqua is imposing improper charges on SCH USA that are unjust and unreasonable.

In addition, the RD ignores the fact that Aqua’s position violates its own tariff by failing to calculate EDUs in the manner described in and consistent with the tariff. Aqua’s current tariff requires that EDUs be determined based upon the estimated average daily wastewater flow for the type of business, as calculated by the Pennsylvania Department of Environmental Protection (“PA DEP”) regulation at 25 Pa. Code § 73.17, divided by the typical estimated average daily wastewater flow from a current single-family unit. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25. As SCH USA’s expert testified, billing SCH USA based on EDUs originally determined in the inapplicable 2010 Settlement does not comport with the calculation method outlined in the tariff. SCH USA RB at 3-4. As such, the Commission should instead find that

Aqua's current flat rate billing process as applied to SCH USA is illegal and in violation of Aqua's tariff and must not be permitted to continue.

2. **Exception No. 2: The ALJs Erred by Finding that Billing SCH USA a Flat, EDU-Based Rate is Reasonable (RD at 167).**

The RD recognizes that SCH USA's Resort property is rarely at full, 100% occupancy and its actual consumption varies accordingly. RD at 167. However, the RD goes on to say that, because the SCH USA facilities are not *currently* metered, it is standard practice to use a flat rate for billing purposes. *Id.* The RD ignores the significant disparity that exists between SCH USA's actual usage and the 100% constant usage assumed by the EDUs billed to SCH USA, which as specifically applied to SCH USA results in rates that are not just and reasonable.

While there may be situations where flat rate billing can be applied in a reasonable manner, applying flat rate billing to a large commercial resort is entirely unreasonable. Billing on a per EDU basis assumes full occupancy of the Resort; however, due to various circumstances, the Resort is rarely if ever at 100% occupancy. SCH USA MB at 8; SCH USA St. No. 1 at 3. Flat rate billing causes SCH USA to be billed for amounts that significantly overestimate actual usage, resulting in rates that are unjust and unreasonable in violation of the Public Utility Code.

Additionally, the Commission has articulated a clear and consistent preference for charges based on actual metered usage, as opposed to estimated, flat rate billing. For example, in *Pa. PUC v. Little Washington Water Co. Southeast Consol. Div.*, the Commission stated that:

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

Pa. PUC v. Little Washington Water Co. Southeast Consol. Div., Docket Nos. R-2010-2207853 *et al.*, 2011 WL 3001699 (Pa.P.U.C.), Opinion and Order (entered June 9, 2011) (internal

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

Further, it is not the case for SCH USA that metered information is simply “unavailable.” Rather, as SCH USA’s expert witness Ronald Carrier explained, it is entirely possible and technically feasible to obtain metered usage data for billing purposes for SCH USA’s accounts. SCH USA MB at 10; SCH USA St. No. 2 at 7-10. Aqua simply refuses to cooperate with SCH USA’s reasonable and technically feasible proposals because its current practice is the way they have always done it. *See* SCH USA St. No. 3 at 12-16; SCH USA St. No. 3-SR at 1. This is despite the fact that Aqua itself has recognized that volumetric billing is preferable to flat rate billing. *See* Aqua St. No. 10 at 14; SCH USA Exhibit RC-1, Aqua Response to OCA-II-5. Aqua has even acknowledged that it currently has customers in its system who are billed based on metered wastewater service, as well as those who are billed based on metered water usage from private wells. SCH USA MB at 11; SCH USA St. No. 2 at 10; SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Responses to SCH-I-1 and SCH-I-2.

For these reasons and those discussed in SCH USA’s Main and Reply briefs, flat rate, EDU-based billing as applied to SCH USA results in rates that are not just and reasonable, and SCH USA requests that the Commission prevent this unreasonable billing practice from continuing to be applied to SCH USA.

3. **Exception No. 3: The RD Erred by Finding that Alternative Billing Methods Proposed by SCH USA are Not Feasible (RD at 168-169).**

The RD incorrectly finds that the alternative billing methods proposed by SCH USA are not feasible. The RD overlooks substantial evidence presented by SCH USA's expert witness Ronald Carrier showing that there are feasible and cost-effective methods to bill SCH USA for *actual* usage. The RD also ignores the undisputed fact that Aqua is already using water meters to measure water consumption from private wells, as well as wastewater meters to measure actual wastewater usage, in other parts of its system. SCH USA Exh. RC-1, Aqua Response to SCH-I-2; SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Response to Interrogatory SCH-I-1. This shows that it is entirely feasible for Aqua to bill SCH USA for metered usage, but Aqua simply refuses to work with SCH USA to implement these billing methods for the Resort. Under SCH USA's specific circumstances, billing the Resort for actual consumption is the only means of charging rates that are just and reasonable consistent with the Public Utility Code.

The record evidence in this proceeding shows that SCH USA's actual water consumption could be metered and Aqua could use water consumption as a proxy for wastewater usage for billing purposes. *See* SCH USA MB at 12-13; SCH USA St. No. 2 at 9-10. In this instance, water meters could be used to determine a more accurate, and more reasonable, quantity of wastewater being discharged to Aqua's system. *Id.* Basing wastewater bills on actual metered water usage is a common practice that provides a more accurate means of determining wastewater usage. SCH USA St. No. 2 at 9-10. While this is still a method of estimating wastewater usage (given that not all water going through the meters ends up in the sewer system), it is a significant improvement over estimating EDUs and would provide a more accurate wastewater bill than the current flat rate bill SCH USA receives. SCH USA St. No. 2 at 10. Aqua has admitted that it has customers

in its system who are billed for wastewater service based on reads for meters connected to private, customer-owned wells. *Id.*; SCH USA Exh. RC-1, Aqua Response to SCH-I-2.

As another option, Aqua could use wastewater meters to measure SCH USA's actual discharges into its wastewater system and bill SCH USA based on these actual measurements. As Mr. Carrier discussed, there are metering technologies available that allow for direct measurement of wastewater flow, negating the need for estimating the usage based on EDUs or from water meter readings. SCH USA St. No. 2 at 7. Two of the most common types of metering technologies used in measurement of sewage flow are ultrasonic flowmeters and electromagnetic flowmeters. *Id.* Mr. Carrier identified other utilities across the country that use such wastewater meters, including in Michigan, Indiana, and Washington. SCH USA St. No. 2 at 8-9.

The Commission itself has recognized wastewater metering as a viable option. For example, the Commission's sample wastewater tariff includes a provision wherein metered rates could be charged based on the metered volume of wastewater discharged at a property into the wastewater system. SCH USA St. No. 2 at 9; see https://www.puc.pa.gov/documents/utility-files/346/Sam_Tariff_Wastewtr.pdf at Page No. 8. SCH USA witness Lacey also noted that Aqua's existing and proposed wastewater tariffs allow for wastewater metering in different zones, and that Aqua has admitted in discovery that it currently serves customers whose wastewater output is metered for billing purposes. SCH USA St. No. 3 at 11-12; SCH USA Exh. FL-3, Aqua Response to Interrogatory SCH-I-1 (“[Aqua] has two commercial customers ... that are billed based on metered wastewater flows.”).

Other potential alternatives include adjusting SCH USA's EDUs used for billing purposes to better reflect actual usage and occupancy; or assigning some other proxy that more accurately reflects actual usage and occupancy. SCH USA St. No. 1 at 4. However, SCH USA maintains

that because metering actual wastewater discharge or actual water consumption is entirely feasible and provide a more accurate representation of usage, one of those options should be employed to provide accurate, just and reasonable bills to SCH USA for wastewater service. The RD erred in rejecting these reasonable metering methods that would provide bills based on actual usage. SCH requests that the Commission direct Aqua to implement one of these options. Further, Aqua should be directed to explicitly provide for such billing options in its tariff in order to allow currently unmetered customers such as SCH USA to be billed for actual usage

4. **Exception No. 4: The RD Erred by Finding that Aqua’s Proposed Change to the Definition of EDU in its Wastewater Tariff is Reasonable (RD at 169).**

The RD found that Aqua’s proposed revisions to the definition of EDU in its wastewater tariff would clarify the definition and provide a method for customers to charge their billing EDUs if the nature of the property changes. RD at 169. However, the RD overlooks the clear implications of the proposed change and erred by accepting it. In fact, the proposed tariff change is an attempt to solidify Aqua’s position and secure the Commission’s approval for the Resort’s EDUs to continue to be based on a “predetermined EDU allocation” as established in the 2010 Settlement discussed above. As previously explained, the 2010 Settlement is not a valid method of determining Split Rock Resort’s EDUs – let alone reflecting its actual usage – and this proposed definition change must be rejected.

In its current tariff, Aqua defines an EDU as “a measure based upon the estimated average daily wastewater flow for the type of business, as calculated by the Pennsylvania Department of Environmental Protection regulation at 25 Pa. Code § 73.17 divided by the typical estimated average daily wastewater flow from a current single-family unit. In the Company’s sole discretion, the Company may assign more than one (1) EDU for a residential Property.”

Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25. In its proposed tariff, Aqua proposes to revise the definition of EDU to provide as follows:

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

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

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

Proposed Aqua Tariff Sewer-PA P.U.C. No. 4, Original Page 26. SCH USA opposes the revised definition of EDU and maintains that it should be rejected.

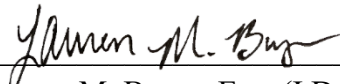
First, because SCH USA is a customer acquired through a purchase or acquisition, and Aqua’s position is that SCH USA has a “predetermined EDU allocation” under the 2010 Settlement, it appears that Aqua is attempting to modify the EDU definition to provide a basis for continuing to unreasonably bill SCH USA based on the 2010 Settlement. SCH USA St. No. 3 at 9. As explained above and in SCH USA’s briefs, there is no valid basis for using the 2010 Settlement to determine SCH USA’s EDUs for billing purposes, and continuing to bill SCH USA on this basis is unjust and unreasonable. SCH USA MB at 6-8.

Additionally, the new definition allows Aqua to be the sole “judge and jury” when it comes to evaluating requests for changes to EDU calculations. SCH USA St. No. 3 at 10. The proposed definition states “[Aqua] will consider a Customer’s request for a change in the number of assigned EDU’s upon presentation of substantial evidence, satisfactory to the Company in its sole discretion.” Proposed Aqua Tariff Sewer-PA P.U.C. No. 4, Original Page 26. It is unreasonable for Aqua to serve in this role, particularly without any clear guidelines. However, if the Commission is inclined to defer to Aqua in this manner, SCH USA submits that Aqua should be required to include clear definitions in its tariff to define what comprises “substantial” evidence and the specific criteria by which Aqua will make such determinations “in its sole discretion.” SCH USA MB at 15; SCH USA St. No. 3 at 10.

III. CONCLUSION

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

Respectfully submitted,



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

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

Date: December 23, 2024

Attorneys for SCH USA LLC