

December 31, 2024

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2024-3050056
Isaac Scholle v. Aqua Pennsylvania Wastewater, Inc.
Reply Brief of Aqua**

Dear Secretary Chiavetta:


Attached for filing is the Reply Brief of Aqua Pennsylvania Wastewater, Inc., in the above-referenced proceedings.

A copy of the Reply Brief has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosure

cc: The Hon. Eranda Vero, PA Public Utility Commission [w/encl.]
Heather S. D. Harrison, Aqua Pennsylvania, Inc. [w/encl.]
Isaac Scholle [w/encl.]

**Re: Docket No. C-2024-3050056
Isaac Scholle v. Aqua Pennsylvania Wastewater, Inc.
Reply Brief of Aqua**


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

Isaac Scholle
isaac.scholle@gmail.com

Dated: December 31, 2024


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ISAAC SCHOLLE

v.

AQUA PENNSYLVANIA WASTEWATER, INC. :

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Docket No. C-2024-3050056

REPLY BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

Date: December 31, 2024

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I. INTRODUCTION

Pursuant to the directive of the Honorable Eranda Vero, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) timely submits its Reply Brief in response to the timely filed Main Brief filed by Isaac Scholle (Complainant) in the above-referenced proceeding. The Complainant's Brief completely ignores his burden of proof and is nothing more than a collection of misconceptions, distortions of Commission precedent and irrelevant arguments. As more fully discussed below, the Complainant improperly expands the scope of his Complaint, seeks relief on behalf of other customers and draws unreasonable inferences that have no basis in fact or law. The Formal Complaint should be dismissed in its entirety.

II. SUMMARY OF ARGUMENT

The Complainant, for the first time, alleges that his Account is being improperly billed since he is not given a "usage allowance" that he contends is reflected in the Company's Commission-approved Tariff for Rate Zone 12. To support his position, he ignores the specific language in Rate Zone 12 and relies upon irrelevant federal and state precedent.¹ The Company's Commission-approved Rate Zone 12 language provides for a usage allowance of the first 4,400 gallons per month **only** for Commercial (Other than Customers in subsection B above), Industrial and Public Customers. See Aqua Exhibit 2 at page 8. Aqua is correctly billing the Complainant under Account No. 002896707-1520698 (Account), consistent with Commission Orders and its Tariff.

III. ARGUMENT

A. Procedural Issues

In his Brief, the Complainant, for the first time, requests that the Commission "order refunds to all customers adversely affected by [Aqua's] practices." It should be noted that the Complainant did not assert a claim on behalf of other customers in his Formal Complaint. Compl. Brief at 1 and 8. The Complainant lacks standing to request relief on behalf of other

¹ The Complainant also referenced two Commission dockets (Docket Nos. R-2018-3003558 and R-2015-2458056) in support of his position but a review of the respective opinion and order in each docket does not contain the referenced holding. The Complainant also referenced Docket No. C-2014-2451244 which does not exist.

customers. The Commission has held that a person or entity has standing when the person or entity has a direct, immediate, and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F01 (Ordered entered July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. P.U.C. 342 (1993); *Re Equitable Gas Co.*, 76 Pa. P.U.C. 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. P.U.C. 43 (1976); *Waddington v. Pennsylvania Public Utility Commission*, 670 A.2d 199 (Pa. Cmwlth. 1995), alloc. denied, 678 A.2d 368 (Pa. 1996).

Requiring a person or entity to have a direct, immediate, and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp.*, 73 Pa. P.U.C. 552 (1990). The Complainant's request to inappropriately amend his Formal Complaint in his Main Brief to request relief for others should be summarily rejected.

The Complainant also amends his Formal Complaint in his Main Brief to allege that he is entitled to a usage allowance since he was billed a "minimum charge." In his Formal Complaint, he alleged that Aqua "incorrectly charges a Customer Charge of \$53.49 per month in addition to a consumption charge despite the tariff schedule for rate zone 12 mentioning a minimum charge of \$53.49 and not a Customer Charge of \$53.49." Complaint at ¶ 4. The Complainant's attempt to inappropriately amend his Formal Complaint in his Main Brief to argue that he is entitled to a usage allowance should be summarily rejected.

B. Substantive Issues

The Complainant differentiates a "Minimum Monthly Payment" from a "Customer Charge" utilizing "standard interpretation of a minimum monthly payment and contradicts the expectations set by the tariff." Compl. Brief at 3. He argues that the Customer Charge is a "pure Access Fee while the Minimum Monthly Payment is inclusive of usage up to a set amount and

that “unless explicitly stated otherwise in the tariff, a minimum payment is considered to encompass both the fixed costs of service and a specified level of usage.” Compl. Brief, at 2.

The Complainant’s argument is without merit. Aqua’s Commission-approved Tariff for Rate Zone 12 specifically authorized a usage allowance for Commercial (Other than Customers in subsection B above), Industrial and Public Customers. There is no authorized usage allowance for residential customers. See Aqua Exhibit 2 at page 8. There is no ambiguity in Aqua’s Commission-approved Rate Zone 12 Tariff. The Complainant contends that “minimum charge typically includes a certain amount of usage within the fixed fee,” Compl. Brief at 2, completely ignores the specific language approved by the Commission after the acquisition of the Lower Makefield wastewater system that residential customers do not have a usage allowance.

Aqua avers, consistent with its Commission-approved tariff, the Complainant is billed monthly a Customer Charge. The Company’s Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa. C.S. § 1301; *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1967, 1070 (Pa. Cmwlth. 1981). Under Pennsylvania law, tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. Ct. 1979), *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. Ct. 1996), *Kossmann v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. Ct. 1997). Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Id.*; *Brockway Glass*. The Complainant has not met this burden.

The Complainant alleges that Aqua’s Commission-approved Tariff violates Commission regulations citing 52 PA Code 53.25 that “Pennsylvania regulations require that tariffs clearly state the terms and conditions of service, including rates and any included usage. A review of Section 53.25 of Commission regulations, Tariff for Noncommon Carrier, does support the Complainant’s position.

§ 53.25. Standard rules and regulations.

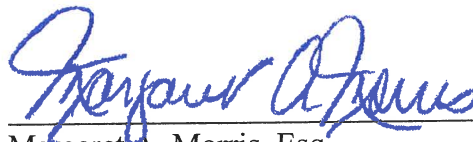
A utility shall set forth all rules and regulations which apply generally to all classes of service covered by the tariff, and definitions of technical terms and abbreviations used in the tariff, the meanings of which are not common knowledge and cannot be gathered exactly from the context in which used. Where practicable, special rules applying to a given class of service shall be included in the rate schedule covering the particular class.

IV. CONCLUSION

Aqua's monthly bill sets forth the distinction between a customer charge and a minimum charge. Aqua's Commission-approved Tariff for Rate Zone 12 correctly reflects that residential customers do not have a usage allowance; therefore, the use of the term minimum charges would be inaccurate and misleading. The Complainant has failed to establish by a preponderance of the evidence that the Company violated the Pennsylvania Public Utility Code, Commission regulations or order, or its Commission-approved tariffs. Specifically, the Complainant has not met his burden of proof that the Account was not properly billed and that he is due a refund.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania Wastewater, Inc. respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of Isaac Scholle at Docket No. C-2024-3050056 in its entirety.

Respectfully submitted,



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