

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Isaac Scholle,
Complainant

v.

Docket No. C-2024-3050056
Aqua Pennsylvania Wastewater, Inc.,
Respondent

**RESPONSE BRIEF OF COMPLAINANT
REPLYING TO AQUA PENNSYLVANIA WASTEWATER'S MAIN BRIEF**

I. INTRODUCTION

Complainant, respectfully submits this response to Aqua Pennsylvania Wastewater, Inc.'s ("Aqua" or "Company") brief. Contrary to Aqua's contention that no refund or billing adjustment is warranted, Aqua's practice of charging a "minimum charge" (sometimes relabeled as "customer charge") while additionally billing for usage that should be included within that minimum charge constitutes improper and unjust billing. Such ambiguity violates Pennsylvania law, Commission regulations, and universally recognized utility billing standards. Accordingly, the Pennsylvania Public Utility Commission ("PUC" or "Commission") should require Aqua to revise its billing practices, grant refunds to affected customers, and ensure that future tariff provisions are clearly stated and fairly applied.

II. STATEMENT OF THE CASE

A. Procedural Background

1. On July 12, 2024, Complainant filed a Formal Complaint alleging that Aqua's billing for his Lower Makefield service location improperly includes both a "customer charge" and a "consumption charge," despite Aqua's tariff referring to a "minimum charge."
2. Complainant seeks refunds for overpayments due to this billing scheme, a directive requiring Aqua to correct its bills, and penalties against Aqua for noncompliance with the relevant tariff.
3. Aqua filed its Answer and New Matter on July 31, 2024, arguing that the term "customer charge" is synonymous with the "minimum charge" in its tariff—even though the tariff historically included usage under that term.
4. Both parties waived an evidentiary hearing and filed briefs, with Aqua contending that Complainant's relief should be denied. Complainant now files this Response Brief, explaining why Aqua's positions are without merit.

B. Factual Summary

- Prior to Aqua’s acquisition of the Lower Makefield Township wastewater system, the Township’s rates included a “minimum charge” with no explicit statement that usage was excluded.
- Following the acquisition, Aqua rebranded this “minimum charge” to a “customer charge” without granting any usage allowance.
- Complainant and similarly situated customers have been assessed charges for usage that should be encompassed within the minimum payment, causing overbilling and confusion.

III. RESPONSE TO AQUA’S ARGUMENTS

Aqua’s brief insists that there is no ambiguity in its tariff, alleging that no usage allowance ever existed for Lower Makefield residential customers and that the “minimum charge” is effectively identical to a “customer charge.” However, Aqua’s reliance on this conflation runs afoul of well-established legal principles, tariff-interpretation standards, and the doctrine of contra proferentem.

1. **Aqua’s Improper Reliance on “Customer Charge” vs. “Minimum Charge”**
 - **Aqua’s Position:** Aqua contends that relabeling “minimum charge” as a “customer charge” is permissible because the old Lower Makefield tariff did not explicitly offer a usage allowance.
 - **Counterargument:** As shown in Complainant’s opening brief, a “minimum charge” in standard utility practice generally includes at least some level of usage. Where a tariff uses the term “minimum charge” without unequivocally stating “no usage is included,” legal and regulatory precedent presumes that usage is included up to the dollar amount of that minimum.
 - **Pennsylvania Case Law:** *Brockway Glass Co. v. Pa. P.U.C*, 63 Pa. Commw. 238 (Pa. Cmwlth. 1981), establishes that ambiguities in a tariff must be construed against the utility.
 - **Industry Guidance:** Authorities such as the National Association of Regulatory Utility Commissioners (NARUC) and the American Water Works Association (AWWA) confirm that minimum charges typically incorporate some usage or must explicitly state otherwise.
2. **Ambiguity in the Tariff Language Must Be Construed in Favor of the Customer**
 - **Aqua’s Position:** Aqua relies on the statement that “there is no usage allowance for Rate Zone 12,” interpreting that as unequivocal.
 - **Counterargument:** Aqua’s own tariff references the term “minimum charge” (inherited from Lower Makefield’s language) but fails to clarify that zero usage is included for residential customers. This omission creates a critical ambiguity.
 - If Aqua intended to exclude all usage, it was incumbent on Aqua to revise the tariff to read “Customer Charge” (or “Minimum Charge with zero usage allowance”) clearly. Instead, Aqua maintained the term “minimum charge” while simultaneously reading in an exclusion for usage.

- Under *Lloyd v. Pa. P.U.C*, 904 A.2d 1010 (Pa. Cmwlth. 2006), any doubt or ambiguity in the tariff must be resolved in favor of the customer—not the utility.

3. **Standard Billing Practices Support an Inclusive Minimum Payment**

- **Aqua’s Position:** Aqua characterizes the monthly bill as “correctly rendered” because it interprets “minimum charge” to be functionally identical to “customer charge.”
- **Counterargument:** Standard utility billing principles, as recognized by bodies such as NARUC, FERC, and the AWWA, support that a “minimum charge” generally includes some baseline consumption or “usage allowance.” Indeed, FERC has held that utilities must be explicit if they exclude usage from a minimum charge.
- Aqua’s interpretation is thus contrary to standard industry practice and fails to provide customers with the baseline service that “minimum charge” ordinarily represents.

4. **Unjust and Unreasonable Rates under 66 Pa.C.S. § 1301**

- **Aqua’s Position:** Aqua argues that it has the right to collect for any usage above zero gallons.
- **Counterargument:** If a tariff is ambiguous, and Aqua is charging for consumption that should be subsumed under the minimum payment, Aqua’s rates become unjust or unreasonable. Pennsylvania law, under 66 Pa.C.S. § 1301, prohibits a public utility from imposing such charges on customers. Additionally, 66 Pa.C.S. § 1509 obligates utilities to issue clear and transparent bills.
- By conflating “customer charge” and “minimum charge,” Aqua diminishes the clarity required by Pennsylvania law and imposes excessive costs for minimal or no usage.

5. **Customer Expectations and Fair Billing**

- **Aqua’s Position:** Aqua insists that using “customer charge” on the monthly bill ensures clarity because there is “no included usage.”
- **Counterargument:** Customers in the Lower Makefield territory formerly knew only a “minimum charge,” which typically implied some included usage. If Aqua was truly substituting a new billing structure, it was required to (1) adopt unambiguous tariff language and (2) clearly communicate this shift to affected customers.
- The *doctrine of reasonable expectations* compels interpreting the “minimum charge” in a manner consistent with how a reasonable customer would expect that term to apply. See *Brockway Glass*, 63 Pa. Commw. at 241.
- Aqua’s lack of explicit disclaimers and rebranding only in the monthly bill (rather than in the tariff itself) undermines fairness and transparency.

IV. **RELIEF REQUESTED**

For these reasons, Complainant respectfully requests that the Commission:

1. **Order Aqua to Correct its Billing Practices**

Require Aqua to explicitly include in its monthly charge a stated usage allowance—up to the specified “minimum” amount—or, alternatively, to revise its tariff’s language to transparently clarify that the “minimum charge” includes zero usage.

2. **Grant Refunds to Affected Customers**

Pursuant to 66 Pa.C.S. § 1312 (refund procedures), direct Aqua to refund all improperly collected charges to customers who were charged for usage that should have been encompassed within the “minimum charge.” Such refunds should include interest where permitted by law.

3. **Mandate Enhanced Tariff Clarity**

Require Aqua to refile a tariff that leaves no ambiguity regarding whether the “minimum charge” (or “customer charge”) includes any consumption. This step is necessary under 52 Pa. Code §§ 53.21 and 53.25 to ensure all rates and terms are clearly stated.

4. **Consider Penalties for Noncompliance**

If the Commission finds Aqua’s behavior constitutes a pattern of willful or negligent noncompliance, it should consider imposing penalties under 66 Pa.C.S. § 3301 to encourage compliance with fair billing standards and protect the public interest.

V. CONCLUSION

Aqua’s arguments fail to reconcile the inherent ambiguity in its reliance on “minimum charge” as a supposed zero-consumption “customer charge.” Pennsylvania law, Commission regulations, and industry standards uniformly oppose such confusion in tariff language and billing. When a utility’s tariff does not clearly exclude an allowance, established law interprets a “minimum charge” as inclusive of usage—especially where no disclaimers exist. Consequently, the Complainant has demonstrated that Aqua’s billing practices are improper and result in undue charges for residential customers.

WHEREFORE, Complainant, respectfully requests that the Commission deny Aqua’s request to dismiss, sustain this Formal Complaint, order the billing corrections and refunds set forth above, and impose such additional relief as the Commission deems just and reasonable.

Respectfully submitted,

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