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January 9, 2025

**Via Electronic Filing**

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

Re: SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.  
Docket Nos. C-2022-3036893 and C-2022-3037118

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find SCH USA's Main Brief 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/jls

Enclosure

cc: Hon. John M. Coogan w/enc.  
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

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

**Via Email Only**

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Dated: January 9, 2025

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC :  
 :  
 v. : Docket Nos. C-2022-3036893  
 : C-2022-3037118  
 Aqua Pennsylvania Wastewater, Inc. :

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**MAIN BRIEF OF  
SCH USA LLC**

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## **I. INTRODUCTION**

SCH USA, LLC (“SCH USA”) owns and operates a large resort property that is a commercial wastewater customer of Aqua Pennsylvania Wastewater, Inc. (“Aqua”). SCH USA filed formal complaints against Aqua because Aqua’s methodology for billing is unreasonable as applied to SCH USA. Because SCH USA’s water usage is not metered, Aqua currently bills SCH USA a flat rate based on “Equivalent Dwelling Units.” Billing SCH USA on a flat, per EDU basis assumes that the Resort is always at 100% full occupancy. However, the Resort’s occupancy rates are typically significantly lower than 100%. This results in SCH USA being charged for significantly more wastewater usage than Aqua is actually collecting or treating. These inaccurate charges are unjust and unreasonable. As discussed herein, SCH USA respectfully requests that the Commission direct Aqua to implement metered service or a similar proxy such that SCH USA’s bills more accurately reflect actual usage. Further, Aqua should be directed to adjust SCH USA’s prior bills, since SCH USA acquired the property on October 29, 2020, to reflect the average occupancy rate.<sup>1</sup>

### **A. Background**

SCH USA owns and operates a large commercial resort property known as the Split Rock Resort, which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. SCH USA purchased the Resort property on October 29, 2020. The Resort consists of the following buildings and amenities: (1) The Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; (2) Willowbrook, a resort hotel with 256 guest rooms; (3) the Galleria, a resort hotel with 77 guest rooms and 8 VIP rooms, as well as other features including a food court and

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<sup>1</sup> SCH USA notes that it is also a party to Aqua’s currently pending base rate proceeding at Docket No. R-2024-3047824. A Recommended Decision (“RD”) was issued in that proceeding on December 9, 2024, and SCH USA filed Exceptions to the RD on December 23, 2024. These Exceptions are currently pending before the Commission.

shops, restaurants, movie theater, racquetball court, waterpark, indoor pool, lobby, bar, and large meeting space; and (4) a laundry that serves the Resort properties.<sup>2</sup>

Water for the Split Rock Resort is provided by private wells which SCH USA also acquired when it purchased the Resort. The Resort receives non-residential wastewater service from Aqua as part of Rate Zone 4. Because SCH USA does not currently have metered water service, Aqua bills SCH USA a flat rate for unmetered wastewater service on a per Equivalent Dwelling Unit (“EDU”) basis.<sup>3</sup>

**B. Procedural History**

On November 21 and 29, 2022, SCH USA filed two Formal Complaints regarding unjust and unreasonable bills for wastewater service provided by Aqua for four (4) of SCH USA’s accounts related to the Lodge, Willowbrook, the Galleria, and Laundry.<sup>4</sup> Aqua filed separate Answers with New Matter to each of the Formal Complaints, and SCH USA filed separate Replies to Aqua’s New Matter. On January 6, 2023, Administrative Law Judge John M. Coogan (“ALJ”) consolidated the Formal Complaints.

A detailed procedural history is set out in the Briefing Order issued by ALJ Coogan on September 26, 2024, and that procedural history is incorporated here by reference.

SCH USA submitted its written Direct Testimony on April 3, 2024. Aqua served its Direct Testimony on May 15 and 16, 2024, as well as its Rebuttal Testimony on July 12, 2024. SCH USA submitted Surrebuttal Testimony on August 23, 2024.

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<sup>2</sup> SCH USA St. No. 1 at 2.

<sup>3</sup> SCH USA St. No. 1 at 2-3.

<sup>4</sup> SCH USA notes that the bills for the Laundry are no longer in dispute. SCH USA St. No. 1 at 6.

An evidentiary hearing was held on September 24, 2024, at which time the parties' preserved testimony and exhibits were admitted to the record. SCH USA now submits this Main Brief pursuant to the Briefing Order issued by the ALJ on September 26, 2024.

## **II. SUMMARY OF ARGUMENT**

Aqua's current method of billing SCH USA on a flat, per-EDU basis results in bills that do not reflect actual usage at the property and are unjust and unreasonable. Because SCH USA's water usage is not metered, Aqua bills the Resort a flat rate for wastewater usage on a per EDU basis. The EDUs assessed to SCH USA: (1) are improperly based on a 2010 Settlement Agreement that has long since expired and is no longer applicable to the properties; and (2) assume full occupancy at the Resort at all times, even though, since SCH USA purchased the Resort and coming out of the COVID-19 pandemic, the Resort's occupancy rates have been significantly lower than 100%. As a result, SCH USA is being charged for more wastewater usage than Aqua is actually collecting and treating which is both unjust and unreasonable. The EDUs overcharged to SCH USA have no relationship whatsoever to actual usage at the property, and therefore are unjust and unreasonable.

SCH USA respectfully requests that the Commission direct Aqua to charge SCH USA for wastewater service in a manner that is based on the actual wastewater service being provided. This could be accomplished in a number of ways, including: (1) measuring actual water consumption and billing for wastewater service based on metered water consumption; (2) measuring actual wastewater discharges to Aqua's system; (3) adjusting the EDUs used for billing purposes in compliance with Aqua's tariff which better reflects actual usage and occupancy at the property; or (4) assigning a different proxy that more accurately reflects actual usage and occupancy. Further, Aqua should be directed to adjust SCH USA's prior bills (since SCH USA acquired the property on October 29, 2020) to reflect the average occupancy rate.

### III. FLAT RATE BILLING OF SCH USA

Section 1301 of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.”<sup>5</sup> As discussed herein, Aqua’s charges for wastewater service as applied to SCH USA are not just and reasonable because: (1) Aqua currently bills SCH USA based on a number of EDUs originally determined in a Settlement Agreement that Aqua did not assume when purchasing the system and which has long since expired;<sup>6</sup> (2) Aqua’s practice of billing SCH USA on a flat, per EDU, basis results in charges that have no relationship to actual usage at the property and may significantly overstate wastewater usage at the Resort, as occupancy at the Resort varies widely and is often significantly less than 100%;<sup>7</sup> and (3) there are other reliable and technically feasible options to bill SCH USA for actual usage at the property.<sup>8</sup>

For these reasons, Aqua’s current flat rate for unmetered wastewater service as imposed on SCH USA is unjust and unreasonable in violation of Section 1301 of the Public Utility Code. Aqua should instead be directed to implement one of the alternative methods described below to more accurately and equitably bill SCH USA for wastewater usage based on actual consumption at the property, and also to adjust SCH USA’s prior bills (since SCH USA acquired the property on October 29, 2020) to reflect the average occupancy rate.

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<sup>5</sup> 66 Pa. C.S. § 1301; *see also Popowsky v. Pa. PUC*, 665 A.2d 808 (Pa. 1995) (stating that the Commission has an “overriding responsibility to balance the consumer and investor interest in the establishment of just and reasonable rates,” citing 66 Pa. C.S. § 1301); *Pa. Elec. Co. v. Pa. PUC*, 502 A.2d 130, 133 (Pa. 1985), *citing Pa. PUC v. Pa. Gas and Water Co.*, 424 A.2d 1213, 1219 (Pa. 1980) (noting that, in determining just and reasonable rates, the Commission has “the power to make and apply policy concerning appropriate balance between prices charges to utility customers and return on capital to utility investors consonant with constitutional protections applicable to both.”).

<sup>6</sup> SCH USA St. No. 3 at 3-5.

<sup>7</sup> SCH USA St. No. 1 at 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6.

<sup>8</sup> SCH USA St. No. 2 at 6-9.

**A. Background on EDUs**

Aqua currently bills SCH USA a flat rate based on Equivalent Dwelling Units, or “EDUs.” An EDU is an estimated measurement of how much wastewater a customer produces when a means to meter the actual water or wastewater flow is not available.<sup>9</sup> In general, EDUs are calculated by taking the estimated wastewater produced by an unmetered wastewater customer and dividing it by the average wastewater produced by a single-family residence.<sup>10</sup>

Aqua uses EDUs for billing purposes when a wastewater customer does not have metered water service upon which volumetric charges can be based.<sup>11</sup> Aqua’s tariff currently uses the sewage flows for the type of business as outlined in the Pennsylvania Department of Environmental Protection regulation at 25 Pa. Code § 73.17 and then divides that value by the estimated average daily wastewater flow from a single-family unit to calculate the EDUs for the property.<sup>12</sup>

Aqua’s per EDU charge is a flat rate charge based on estimated usage, rather than actual usage, relying on assumptions about the use of the property. While there may be instances where flat rate billing based on EDUs may be reasonable, applying this method to calculating bills for SCH USA’s Resort significantly overstates the volume of wastewater that is produced at the property. Further, the number of EDUs that are currently billed to SCH USA and which would be billed to SCH USA under Aqua’s proposed wastewater tariff have no relationship whatsoever to actual wastewater flows from the Resort.<sup>13</sup>

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<sup>9</sup> SCH USA St. No. 2 at 2.

<sup>10</sup> SCH USA St. No. 2 at 2-3.

<sup>11</sup> SCH USA St. No. 2 at 3.

<sup>12</sup> Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 3.

<sup>13</sup> SCH USA St. No. 3 at 3, 5.

**B. The Current EDUs Assessed to SCH USA are Baseless and Have No Relationship to Actual Usage at the Resort**

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. These EDUs are not based on actual usage by the Resort and result in rates charged to SCH USA that are inaccurate, unjust and unreasonable.<sup>14</sup>

The EDUs assigned to SCH USA were determined during litigation initiated in 2007 between a prior owner of Split Rock Resort and the Township of Kidder ("Kidder Township"). During the course of that proceeding, the litigants reached a Settlement Agreement ("2010 Settlement") on several issues, including the number of EDUs that would be used in calculating Split Rock Resort's wastewater charges.<sup>15</sup> Later, in 2012, Little Washington Wastewater Company d/b/a Suburban Wastewater Company ("LWWC") entered into an Asset Purchase Agreement ("APA") with Kidder Township to purchase the wastewater system.<sup>16</sup> Under this APA, only two paragraphs from that Settlement were transferred from Kidder Township to LWWC – and those paragraphs did not include the EDUs for the Split Rock Resort.<sup>17</sup>

Specifically, the APA states: "LWWC shall not assume any rights or obligations of Seller under any contract, agreement, commitment, lease, certificate, permit or other instrument, whether oral, written, express or implied, except with respect to: (i) those agreements, contracts, permits and other instruments listed on Schedule 1.4 attached hereto...." Schedule 1.4 of the APA states "Seller shall assign to LWWC Seller's right to collect the payments still to be made

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<sup>14</sup> SCH USA St. No. 3 at 3-5.

<sup>15</sup> SCH USA Exh. FL-1, Release and Settlement Agreement, *Vacation Charters LTD., Split Rock Country Club, Inc., Summit Management & Utilities, Inc., v. Kidder Township*, In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079.

<sup>16</sup> SCH USA Exh. FL-2 provides a copy of the Asset Purchase Agreement.

<sup>17</sup> SCH USA St. No. 3 at 4-5.

by the Plaintiff to Kidder Township under paragraphs nine and ten of that certain Release and Settlement Agreement entered by and between Vacation Charters LTD as Plaintiff and Kidder Township pursuant to the civil action filed in the Court of Common Pleas of Carbon County, Pennsylvania at Docket No. CV-07-4079....” The payments outlined in paragraphs nine and ten of the Settlement were to resolve disputed charges from the wastewater system between 2002 and 2010 and did not include EDU calculations for the Resort. As such, LWWC did not assume the portions of the 2010 Settlement related to the Resort’s EDU calculations, and Aqua likewise did not assume those EDU provisions when it later acquired the system.<sup>18</sup>

Based on the plain language of these agreements, the 2010 Settlement has long expired, and any terms related to EDU calculations for the Resort were not assumed by Aqua when it acquired the wastewater system. 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.

**C. The EDUs Aqua Currently Bills to SCH USA Violate its Tariff and Charge Nearly Double the EDUs Authorized Under the Tariff**

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

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<sup>18</sup> SCH USA St. No. 3 at 4-5.

current single-family unit.<sup>19</sup> Billing SCH USA based on the inapplicable 2010 Settlement does not comport with the calculation method outlined in the tariff.

Further, SCH USA witness Ronald Carrier analyzed SCH USA's accounts for Willowbrook and the Galleria in order to compare the number of EDUs currently billed to SCH USA with the number of EDUs that would be calculated based on 25 Pa. Code § 73.17 under Aqua's tariff.<sup>20</sup> His calculation shows that the Willowbrook should only be billed for 64 EDUs under the tariff, which is half the 128 EDUs currently billed by Aqua. Mr. Carrier also calculated that the Galleria should only be billed for 85.2 EDUs, not the 145 currently billed by Aqua.<sup>21</sup> This analysis shows that Aqua is currently billing SCH USA nearly double the EDUs authorized under its tariff.

As such, the Commission should 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.

**D. Billing SCH USA on a Flat Rate Results in Charges that are Not Just and Reasonable**

Aqua's current practice of billing SCH USA on a flat, per EDU basis results in rates being charged to SCH USA 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.<sup>22</sup> Flat rate billing causes SCH USA to be billed for amounts that significantly

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<sup>19</sup> Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25.

<sup>20</sup> SCH USA St. No. 2 at 9-10; SCH USA Exh. RTC-2.

<sup>21</sup> SCH USA St. No. 2 at 10; SCH USA Exh. RTC-2.

<sup>22</sup> SCH USA St. No. 1 at 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6.

overestimate actual usage,<sup>23</sup> 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. It is entirely possible here for SCH USA to be billed based on actual usage, but Aqua simply refuses to cooperate with SCH USA's reasonable and technically feasible proposals.<sup>24</sup>

Aqua's flat rate billing methodology inherently assumes that the Resort is at full occupancy, every single day of the year, making this approach unreasonable as applied to SCH USA. As SCH USA witness Frank Lacey explained, occupancy is one of the primary drivers of water and wastewater consumption. Occupancy drives both direct consumption (i.e., consumption from bathing, use of toilets, sinks, etc.), as well as indirect consumption (i.e., consumption from food preparation, laundry, etc.).<sup>25</sup> Particularly at a large commercial resort like SCH USA's property, actual consumption will vary significantly based on occupancy rates. However, EDU-based billing results in SCH USA receiving the same bill every month, whether occupancy is at zero percent or 100%. The Resort's average occupancy rates are significantly lower than 100%,<sup>26</sup> and as a result the Resort's actual wastewater usage is much lower than what is being billed by Aqua. As such, Aqua's practice of billing SCH USA a flat rate is unjust and unreasonable.

Importantly, the Commission has consistently stated that volumetric billing based on actual, measured usage is clearly preferable to flat rate billing. For example, in *Pa. PUC v. Little Washington Water Co. Southeast Consol. Div.*, the Commission stated that:

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<sup>23</sup> SCH USA St. No. 2 at 9-10.

<sup>24</sup> See SCH USA St. No. 3 at 10.

<sup>25</sup> SCH USA St. No. 3 at 5-7.

<sup>26</sup> SCH USA. St. No. 1 at 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6.

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.”)

In Aqua’s 2022 base rate case, the Commission reiterated its preference for volumetric billing, while noting specifically in the context of unmetered residential wastewater service that “where metered information is unavailable, we acknowledge the standard industry practice of basing the flat rate on a system-wide average usage per month plus a customer charge.” *Pa. PUC v. Aqua Pennsylvania Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2021-3027385 *et al.*, Opinion and Order (entered May 16, 2022), at 272. However, it is not the case for SCH USA that metered information is simply “unavailable.” Rather, as SCH USA witness Ronald Carrier explained, it is entirely possible and technically feasible to obtain metered usage data for billing purposes for SCH USA’s accounts.<sup>27</sup> The Commission’s statement in Aqua’s 2022 base rate case also specifically related to unmetered *residential* customers, which is very different from SCH USA’s large commercial resort at which occupancy and usage may vary widely throughout the year. As discussed further below, SCH USA has identified various

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<sup>27</sup> SCH USA St. No. 2 at 6-9.

practical, reasonable and accurate means of measuring actual flows such that SCH USA could be billed based on actual metered usage going forward.<sup>28</sup>

**E. Other Reliable, Accurate and Technically Feasible Options are Available Such That SCH USA Can Be Billed for Actual Consumption**

As explained by SCH USA witness Mr. Carrier, there are a number of reliable, accurate and technically feasible options available that would allow SCH USA to be billed based on actual metered usage, or at a minimum, provide a more accurate proxy for SCH USA's actual usage.<sup>29</sup>

First, 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.<sup>30</sup> Two of the most common types of metering technologies used in measurement of sewage flow are ultrasonic flowmeters and electromagnetic flowmeters.<sup>31</sup> Mr. Carrier identified other utilities across the country that use such wastewater meters, including in Michigan, Indiana, and Washington.<sup>32</sup>

The Commission 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

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<sup>28</sup> SCH USA St. No. 2 at 6-9.

<sup>29</sup> SCH USA St. No. 2 at 6-9.

<sup>30</sup> SCH USA St. No. 2 at 6-8.

<sup>31</sup> SCH USA St. No. 2 at 6-8.

<sup>32</sup> SCH USA St. No. 2 at 7-8.

system.<sup>33</sup> SCH USA witness Lacey also noted Aqua’s wastewater tariff allows for wastewater metering in different zones.<sup>34</sup>

As a second option, SCH USA’s actual water consumption could be metered and Aqua could use water consumption as a proxy for wastewater usage for billing purposes.<sup>35</sup> 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. Basing wastewater bills on actual metered water usage is a common practice that provides a more accurate means of determining wastewater usage.<sup>36</sup> 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 calculating EDUs and would provide a more accurate wastewater bill than the current flat rate bill SCH USA receives.<sup>37</sup>

Other potential alternatives include adjusting SCH USA’ 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.<sup>38</sup> However, SCH USA submits 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. SCH requests that the Commission direct Aqua to implement one of these options.

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<sup>33</sup> SCH USA St. No. 2 at 8-9; see [https://www.puc.pa.gov/documents/utility-files/346/Sam\\_Tariff\\_Wastewtr.pdf](https://www.puc.pa.gov/documents/utility-files/346/Sam_Tariff_Wastewtr.pdf) at Page No. 8.

<sup>34</sup> SCH USA St. No. 3 at 9.

<sup>35</sup> SCH USA St. No. 2 at 9.

<sup>36</sup> SCH USA St. No. 2 at 9.

<sup>37</sup> SCH USA St. No. 2 at 9.

<sup>38</sup> SCH USA St. No. 1 at 5-6.

**F. SCH USA's Bills from October 29, 2020 to the Present Should Be Adjusted to More Accurately Reflect Average Occupancy**

Based on the foregoing, and as demonstrated by an analysis provided by SCH USA witness Ronald Carrier,<sup>39</sup> SCH USA has been billed for significantly more wastewater usage than it actually consumed. This has been the case since SCH USA purchased the Resort property on October 29, 2020, as Aqua's bills have assumed full occupancy at the Resort at all times, even though, since SCH USA purchased the Resort and coming out of the COVID-19 pandemic, the Resort's occupancy rates have been significantly lower than 100%.<sup>40</sup> To correct this overbilling, Aqua should be directed to adjust SCH USA's prior billings to reflect the average occupancy at the Resort during this time.<sup>41</sup>

**IV. CONCLUSION**

For the foregoing reasons, SCH USA submits that 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 implement metered service for SCH USA by: (1) measuring actual wastewater discharges to Aqua's system; (2) measuring actual water consumption, so as to permit SCH USA to be billed based on its actual usage; (3) adjusting the EDUs used for billing purposes to better reflect actual occupancy; or (4) assigning a different proxy that more accurately reflects actual occupancy of the Resort. Further, Aqua should be directed to adjust SCH USA's prior bills (since SCH USA acquired the property on October 29, 2020) to reflect the average occupancy rate.

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<sup>39</sup> SCH USA St. No. 2 at 9-10.

<sup>40</sup> SCH USA St. No. 1 at 3, 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6.

<sup>41</sup> The Resort's average occupancy data is provided in SCH USA Exhibit CP-2 (Confidential).

Respectfully submitted,

*/s/ Lauren M. Burge*

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Date: January 9, 2025

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## Appendix A – Proposed Findings of Fact

1. SCH USA owns and operates a large commercial resort property known as the Split Rock Resort, which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. SCH USA St. No. 1 at 2.
2. SCH USA purchased the Split Rock Resort property on October 29, 2020. SCH USA St. No. 1 at 2.
3. The Split Rock Resort consists of the following buildings and amenities: (1) The Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; (2) Willowbrook, a resort hotel with 256 guest rooms; (3) the Galleria, a resort hotel with 77 guest rooms and 8 VIP rooms, as well as other features including a food court and shops, restaurants, movie theater, racquetball court, waterpark, indoor pool, lobby, bar, and large meeting space; and (4) a laundry that serves the Resort properties. SCH USA St. No. 1 at 2.
4. Water for the Split Rock Resort is provided by private wells which SCH USA also acquired when it purchased the Resort. SCH USA St. No. 1 at 2.
5. The Resort receives non-residential wastewater service from Aqua. SCH USA St. No. 1 at 2-3.
6. Aqua currently bills SCH USA a flat rate for unmetered wastewater service on a per Equivalent Dwelling Unit (“EDU”) basis. SCH USA St. No. 1 at 3.
7. An EDU is an estimated measurement of how much wastewater a customer produces when a means to meter the actual water or wastewater flow is not available. SCH USA St. No. 2 at 2.
8. In general, EDUs are calculated by taking the estimated wastewater produced by an unmetered wastewater customer and dividing it by the average wastewater produced by a single-family residence. SCH USA St. No. 2 at 2-3.
9. Aqua uses EDUs for billing purposes when a wastewater customer does not have metered water service upon which volumetric charges can be based. SCH USA St. No. 2 at 3.
10. Aqua’s tariff currently uses the sewage flows for the type of business as outlined in the Pennsylvania Department of Environmental Protection regulation at 25 Pa. Code § 73.17 and then divides that value by the estimated average daily wastewater flow from a single-family unit to calculate the EDUs for the property. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 3.

11. Applying flat rate, per EDU billing to SCH USA's Resort significantly overstates the volume of wastewater that is produced at the property. SCH USA. St. No. 3 at 3, 5.
12. The number of EDUs that are currently billed to SCH USA have no relationship whatsoever to actual wastewater flows from the Resort. SCH USA. St. No. 3 at 3, 5.
13. 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. SCH USA St. No. 3 at 3-5.
14. The EDUs currently billed to SCH USA are not based on actual usage by the Resort. SCH USA St. No. 3 at 3-5.
15. The EDUs currently billed to SCH USA are not calculated consistent with Aqua's existing tariff language. SCH USA St. No. 2 at 10; SCH USA St. No. 3 at 3-5; SCH USA Exh. RTC-2.
16. SCH USA's Willowbrook account is currently charged for 128 EDUs, but under Aqua's tariff, should only be billed for 64 EDUs. SCH USA St. No. 2 at 10; SCH USA Exh. RTC-2.
17. SCH USA's account for the Galleria is currently charged for 145 EDUs, but under Aqua's tariff, should only be billed for 85.2 EDUs. SCH USA St. No. 2 at 10; SCH USA Exh. RTC-2.
18. During litigation initiated in 2007 between Split Rock Resort and the Township of Kidder a Settlement Agreement ("2010 Settlement") was reached on several issues, including the number of EDUs that would be used in calculating Split Rock Resort's wastewater charges. SCH USA St. No. 3 at 3-4; SCH USA Exh. FL-1, Release and Settlement Agreement, *Vacation Charters LTD., Split Rock Country Club, Inc., Summit Management & Utilities, Inc., v. Kidder Township*, In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079.
19. In 2012, Little Washington Wastewater Company d/b/a Suburban Wastewater Company ("LWWC") entered into an Asset Purchase Agreement ("APA") with Kidder Township to purchase the wastewater system. SCH USA Exh. FL-2.
20. Under the APA, only two paragraphs from the 2010 Settlement were transferred from Kidder Township to LWWC, and those paragraphs did not include the EDUs for the Split Rock Resort. SCH USA St. No. 3 at 4-5; SCH USA Exh. FL-2.

21. Aqua likewise did not assume the EDU provisions in the 2010 Settlement when it later acquired the system. SCH USA St. No. 3 at 4-5.
22. 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. SCH USA St. No. 3 at 4-5.
23. Billing SCH USA based on the inapplicable 2010 Settlement does not comport with the calculation method outlined in Aqua's wastewater tariff. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 4.
24. Billing on a per EDU basis assumes full occupancy of the Resort. SCH USA St. No. 1 at 3.
25. The Resort is rarely if ever at 100% occupancy. SCH USA. St. No. 1 at 3, 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6; SCH USA Exh. CP-1 (Confidential).
26. It is entirely possible for SCH USA to be billed based on actual usage, but Aqua simply refuses to cooperate with SCH USA's reasonable and technically feasible proposals. *See* SCH USA St. No. 3 at 10.
27. Occupancy is one of the primary drivers of water and wastewater consumption. SCH USA St. No. 3 at 5-7.
28. Occupancy drives both direct consumption (i.e., consumption from bathing, use of toilets, sinks, etc.), as well as indirect consumption (i.e., consumption from food preparation, laundry, etc.). SCH USA St. No. 3 at 5-7.
29. The Resort's average occupancy rates are significantly lower than 100%, and as a result the Resort's actual wastewater usage is much lower than what is being billed by Aqua. SCH USA. St. No. 1 at 3, 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6.
30. It is entirely possible and technically feasible to obtain metered usage data for billing purposes for SCH USA's accounts. SCH USA St. No. 2 at 6-9.
31. 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 6-8.

32. Two of the most common types of metering technologies used in measurement of sewage flow are ultrasonic flowmeters and electromagnetic flowmeters. SCH USA St. No. 2 at 6-8.
33. Other utilities across the country use wastewater meters, including utilities in Michigan, Indiana, and Washington. SCH USA St. No. 2 at 7-8.
34. 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 8-9; *see* [https://www.puc.pa.gov/documents/utility-files/346/Sam\\_Tariff\\_Wastewtr.pdf](https://www.puc.pa.gov/documents/utility-files/346/Sam_Tariff_Wastewtr.pdf) at Page No. 8.
35. Aqua's wastewater tariff allows for wastewater metering in different zones. *See* SCH USA St. No. 3 at 9.
36. SCH USA's actual water consumption could be metered and Aqua could use water consumption as a proxy for wastewater usage for billing purposes. SCH USA St. No. 2 at 9.
37. 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.

## **Appendix B – Proposed Conclusions of Law**

1. Section 1301 of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa. C.S. § 1301.
2. The number of EDUs that Aqua currently charges to SCH USA results in rates that are unjust and unreasonable in violation of 66 Pa. C.S. § 1301.
3. The number of EDUs currently charged to SCH USA do not comply with Aqua’s current wastewater tariff. Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 3 at 3-5.
4. The 2010 Settlement has expired and cannot be used to determine the EDUs to be charged to SCH USA. SCH USA Exhs. FL-1 and FL-2; SCH USA St. No. 3 at 3-5.
5. The Commission has consistently stated that volumetric billing based on actual, measured usage is clearly preferable to flat rate billing. *See, e.g., 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); *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).
6. Aqua’s application of flat rate billing based on EDUs to SCH USA results in rates that are unjust and unreasonable in violation of the Public Utility Code. 66 Pa. C.S. § 1301.

### **Appendix C – Proposed Ordering Paragraphs**

1. Aqua is directed to bill SCH USA for wastewater service based on actual measured usage, by: (1) measuring actual wastewater discharges to Aqua's system; (2) measuring actual water consumption, so as to permit SCH USA to be billed based on its actual usage; (3) adjusting the EDUs used for billing purposes to better reflect actual occupancy; or (4) assigning a different proxy that more accurately reflects actual occupancy of the Resort.
  
2. Aqua is directed to adjust SCH USA's prior bills from October 29, 2020 to the present to reflect the average occupancy rate.