

January 9, 2025

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

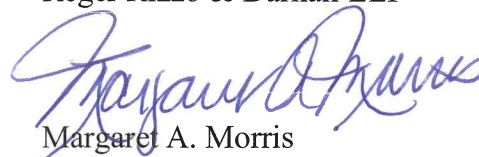
Attached for filing is the Main Brief of Aqua Pennsylvania Wastewater, Inc., in the above-referenced proceedings.

A copy of the Main Brief has been provided to the relevant parties 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. John Coogan, PA Public Utility Commission [w/encl.]  
Heather S. D. Harrison, Aqua Pennsylvania, Inc. [w/encl.]  
Service List [w/encl.]

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

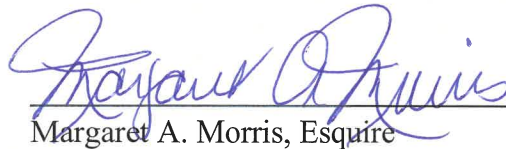
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Dated: January 9, 2025

  
Margaret A. Morris, Esquire

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCH USA, LLC :  
 :  
 v. : Docket Nos. C-2022-3036893  
 : C-2022-3037118  
 :  
 AQUA PENNSYLVANIA WASTEWATER, INC. :

**MAIN BRIEF OF**  
**AQUA PENNSYLVANIA WASTEWATER, INC.**

Date: January 9, 2025

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**I. STATEMENT OF THE CASE**

Introduction

The above-captioned proceeding concerns the Formal Complaints filed by SCH USA, LLC (“SCH” or “Complainant”) alleging incorrect charges billed by Aqua Pennsylvania Wastewater, Inc. (“Respondent”, “Company” or “Aqua”) for commercial wastewater service in the Complainant’s name under the following accounts (“Accounts”):

<b>Account No.</b>	<b>Service Location</b>
0026322581138095	159 Willowbrook Dr.
0026322581138038	1 Lake Dr.
0026322581138096	100 Moseywood Rd.
0026322561100826	634 Route 940

For the reasons set forth below, the Formal Complaint should be dismissed and the relief requested by the Complainant should be denied.

History of the Proceeding

On November 21, 2022, SCH filed a Formal Complaint against Aqua at Docket Number C-2022-3036893 concerning unmetered wastewater service to three separate accounts at three separate service locations. On November 29, 2022, SCH filed a Formal Complaint against Aqua at Docket Number C-2022-3037118 concerning unmetered wastewater service to one account at one service location. In both Formal Complaints, Complainant is alleging Aqua is threatening to shut off its service and is incorrectly charging for unmetered wastewater service. SCH claims it is being incorrectly charged because it is being charged pursuant to a Settlement Agreement that neither SCH nor Aqua were party to, and its actual wastewater usage is far less

than the volume reflected in the unmetered rate. Complainant requests a payment arrangement (“PAR”)<sup>1</sup> and that it be charged on a metered basis going forward.

In both filed answers, Aqua avers SCH is billed pursuant to the Commission-approved Rate Zone 4 tariff and denies there are any incorrect charges on any account. Aqua denies that the Commission can direct a PAR for SCH, a commercial customer. In both new matters Aqua avers Complainant does not allege Respondent has violated the Public Utility Code (“Code”), Commission regulations or orders, or its Commission-approved tariff.

On December 29, 2022, SCH filed a Reply to New Matter at both dockets. In both replies to new matters, although SCH admits it is being billed pursuant to Aqua’s Rate Zone 4 tariff, SCH alleges that it is being incorrectly charged based on a number of Equivalent Dwelling Units (“EDU”) included in a settlement agreement rather than applying the definition of EDU contained in Aqua’s tariff.

On January 4, 2023, the Commission issued an Initial Telephonic Hearing Notice setting a formal call-in telephonic hearing for this matter for Friday, March 17, 2023 at 10:00 a.m. and assigned Judge Coogan as the presiding officer. A Consolidation and Prehearing Order dated January 6, 2023, was issued setting forth various rules that would govern the March 17, 2023 evidentiary hearing, as well as consolidating hearing of the two Formal Complaints.

By Order dated March 10, 2023, the evidentiary hearing was converted to a prehearing conference. Also on March 10, 2023, a Notice converting the evidentiary hearing to a prehearing conference was issued. Pursuant to the March 10, 2023 Order, the parties were

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<sup>1</sup> The request for a Commission PAR was withdrawn.

directed to file respective prehearing memoranda by March 15, 2023. Both SCH and Aqua timely filed their respective prehearing memorandum.

A Prehearing Conference was held on March 17, 2023. Counsel for both parties appeared. During the Prehearing Conference, the parties discussed settlement, witnesses, presently identified issues, and a litigation schedule. Consistent with its prehearing memorandum, Aqua raised issues it asserted should be resolved prior to scheduling an evidentiary hearing.

By Order dated March 10, 2023, a Scheduling Order, setting April 17, 2023 as the date by which Aqua should file a motion regarding issues it wishes to resolve prior to scheduling an evidentiary hearing; May 8, 2023 was the due date for a response of SCH.

On April 17, 2023, Aqua filed a Motion for Judgment on the Pleadings. On May 8, 2023, SCH filed an Answer to the Motion for Judgment on the Pleadings. By Order dated May 22, 2023, Judge Coogan, denied Aqua's Motion for Judgment on the Pleadings.

By Order dated May 31, 2023, Judge Coogan stayed this proceeding and directed each party to provide a status report by June 30, 2023. Subsequent to the May 31, 2023 Order, the parties continued to engage in settlement discussions and provided several status reports by e-mail indicating that settlement discussions were ongoing. By Order dated January 11, 2024, the litigation schedule agreed to by the parties was memorialized and provided further instructions regarding this proceeding.

By Order dated June 5, 2024, a new litigation schedule as agreed to by the parties was issued.

On July 11, 2024, Aqua filed a Motion to Consolidate the present Formal Complaints of SCH with Aqua's pending base rate proceeding for its wastewater service at Docket No. R- 2024-3047824. Also on July 11, 2024, Aqua filed a Motion to Stay the Procedural Schedule in the Formal Complaint proceedings (Motion to Stay) because of its pending Motion to Consolidate.

On July 31, 2024, SCH filed an Answer to Aqua's Motion to Consolidate and Motion to Stay. On August 12, 2024, Judge Coogan issued an Order denying Aqua's Motion to Consolidate and Motion to Stay.

Parties submitted pre-served testimony and exhibits consistent with the above litigation schedule. An evidentiary hearing was held on September 24, 2024. During the hearing, the pre-served testimony of the parties and exhibits were admitted into the record. Parties agreed that Main Briefs would be due on January 9, 2025, and Reply Briefs would be due January 29, 2025. The evidentiary hearing adjourned on September 24, 2024, and the hearing scheduled for September 25, 2024, was cancelled. No further hearings are scheduled to take place in this proceeding.

## **II. SUMMARY OF ARGUMENT**

The issues in this case pertain to the Company's billing of SCH and whether Aqua's billing of SCH on a flat EDU-basis is just and reasonable. SCH seeks an adjustment to the charges billed before October 29, 2020, when SCH purchased the property. SCH also proposed a variety of changes to the Company's billing method as applied to SCH. In particular, SCH suggested that Aqua alter the flat EDU-based billing method applicable to it and implement alternative metering and/or billing arrangements for SCH. Aqua is simply billing SCH consistent

with its Commission-approved tariff. SCH has failed to carry its burden of proof. SCH has wholly failed to show that the rates charged to it under the Company's Commission-approved tariff are unjust or unreasonable or that the EDUs billed to it are inaccurate or unreasonable. SCH also failed to demonstrate that it is reasonable – or even feasible – to move SCH to metered wastewater service. SCH's arguments should be rejected.

### III. LEGAL BURDEN

Section 701 of the Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.<sup>2</sup>

To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint.<sup>3</sup> Such a showing must be by a preponderance of the evidence.<sup>4</sup> A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party.<sup>5</sup> Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>6</sup> Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as

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<sup>2</sup> 66 Pa.C.S. § 701.

<sup>3</sup> *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

<sup>4</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa. Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 602 A.2d 863 (1992).

<sup>5</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>6</sup> *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa. Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa. Cmwlth. 21, 623 A.2d 6 (1993).

adequate to support a conclusion.<sup>7</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>8</sup>

Under these principles, the Complainant, as the party seeking relief, has the burden of proof. In this case, the Complainant has the burden of proving, by a preponderance of the evidence, that Aqua is responsible or accountable for the problem described in the Complaint, i.e., incorrect charges on the Accounts.<sup>9</sup>

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the Company. If the evidence presented by Aqua is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now must provide some additional evidence to rebut the evidence of the Respondent.<sup>10</sup>

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.<sup>11</sup>

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<sup>7</sup> *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992).

<sup>8</sup> *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

<sup>9</sup> See, *Feinstein, supra*.

<sup>10</sup> *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

<sup>11</sup> *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

#### **IV. RECORD EVIDENCE**

##### Complainant's Evidence

In addition to the written statements of its 3 witnesses, SCH introduced 6 exhibits, all of which were admitted into the record.

##### **SCH Exhibit Number - Description of Exhibit**

- CP-1: Aqua Accounts and December 2023 Bills
- CP-2: Average Monthly Occupancy Rate for Split Rock Resort
- RTC-1: 25 Pa. Code § 73.17
- RTC-2: Calculation of SCH USA EDUs Using Aqua Tariff Language
- 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.
- FL-2: Asset Purchase Agreement Between the Township of Kidder and Little Washington Wastewater Company d/b/a Suburban Wastewater Company, dated March 15, 2012.

##### Respondent's Evidence

In addition to the written statements of its 2 witnesses, Aqua introduced 8 exhibits, all of which were admitted into evidence.

##### **Aqua Exhibit Number- Description of Exhibit**

- CM-1: 2012 PUC Order approving Acquisition
- CM-2: 2012 Compliance Tariff
- CM-3: Secretarial Letter approving Compliance Tariff
- CM-4: Current Rate Schedule for Zone 4
- CM-5: 2021 Billing determinants for Rate Zone 4
- CM-6: 2021 Compliance Tariff to 2021 Base rate Order
- SC-1: Willowbrook: Statement of Account
- SC-2: Lodge: Statement of Account

#### **V. ARGUMENT**

SCH owns and operates a large commercial resort property known as the “Split Rock Resort.” SCH St. No. 1, at p. 2. Split Rock Resort is located in the Lake Harmony area, in

Kidder Township (the “Township”), Carbon County, Pennsylvania. SCH St. No. 1, at p. 2; SCH obtains its water from their privately-owned wells. SCH St. No. 1, at p. 2.

SCH is an unmetered wastewater customer of Aqua in Rate Zone 4 and is billed on a flat per equivalent dwelling unit or “EDU” basis monthly. In other words, SCH pays a flat rate for its wastewater service each month regardless of consumption. SCH St. No. 1, at p. 3. This is because SCH does not have meters present to measure water usage to bill on that basis. Aqua St. No. 2-R, at p. 4. The EDU method considers the sewer capacity needed to treat wastewater from the customer/ premises served at all times. Aqua St. No. 2-R, at pp. 1-2.

Prior to Aqua’s acquisition of the Township’s wastewater assets, a Settlement Agreement between Split Rock Resort’s previous ownership and the Township resulted in a set number of EDUs being billed to the resort by the Township. Exhibit FL-1. Aqua became the wastewater service provider for the Split Rock Resort as a result of Aqua’s Commission-approved acquisition of the Township’s wastewater assets on July 19, 2012, at Docket No. A-2012-2298067. Aqua Exhibit CM-1. The Settlement Agreement was assigned to Aqua as a result of its acquisition. Aqua St. No. 1, at p. 4. As a result of that acquisition, Aqua filed a compliance tariff at the same docket which contained the EDUs that would be charged for the properties currently owned by SCH. Aqua Exhibit CM-2. The following EDUs were allotted to SCH pursuant to the Settlement Agreement: (1) 128 EDUs billed to the Willowbrook at Lake Harmony; (2) 145 EDUs billed to the Galleria and Water Park; and (3) 53 EDUs billed to the Lodge-Remaining Uses. SCH Exhibit FL-1. An additional 4 EDUs were billed to the Laundromat added after the acquisition. SCH Exhibit FL-1; Aqua Statement 1, at p.4. Thereafter, the wastewater assets that were acquired by Aqua were placed into Aqua’s rate base

in the Company's 2018 Base Rate Case. Aqua St. No. 1, at p. 4. Critically, the number of EDUs billed to SCH were reviewed and authorized in the approved revenue requirements in both the 2018 Base Rate Case Order entered May 9, 2019, and the 2021 Base Rate Case Order entered on May 16, 2022.

Subsequent to Aqua's acquisition of the Township's wastewater assets, and the Commission's approval of the EDU-based billing of SCH in the acquisition docket, the 2018 Base Rate Case and the 2021 Base Rate Case, SCH filed two complaints against its existing, thrice-Commission-approved rate and the wastewater service it obtains from Aqua. *See SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. C-2022-3036893 and C-2022-3037118. The three disputed accounts before the Commission involve significant delinquencies, in the amount of \$1,000,075.43 for the period May 2021 through March 2023 that SCH has accrued as a result of non or partial payments for wastewater service provided. Aqua Statement 2-R at p. 3; SC-1, SC-2 and SC-3.

The crux of SCH's claims in this proceeding is that its existing Commission-approved rate for wastewater service, as applied to SCH, is unjust and unreasonable. Specifically, SCH believes that it is "being charged for more wastewater usage than what Aqua is collecting and treating" and that its "actual usage is consistently much lower than what is being billed by Aqua." SCH St. No. 1, at p. 3. As such, SCH proposes a number of alternative rates and methods of billing, including:

- (1) measuring actual water consumption;
- (2) measuring actual wastewater discharges to Aqua's system;
- (3) adjusting the EDUs used for billing purposes to better reflect actual usage and occupancy; or
- (4) assigning a different proxy that more accurately reflects actual usage and occupancy. SCH St. No. 1, at p. 4.

It further asserts that Aqua should be required to bill SCH for actual usage, rather than EDUs. SCH St. No. 1, at p. 5-6.

For the reasons more fully explained below, SCH's claims should be rejected, and none of the relief it has requested in this consolidated complaint proceeding should be granted.

SCH claims that the rate it pays Aqua for wastewater service is unjust and unreasonable. SCH asserts that the EDU-based bill is "unreasonable as applied to SCH because our actual wastewater usage is much lower than what is being billed by Aqua, since our occupancy rates are significantly lower than 100%." SCH St. No. 1, at p. 4. They also dispute the number of EDUs billed to them pursuant to the Settlement Agreement and assert "these EDUs have no relation to actual usage by the Resort, resulting in rates that are unjust and unreasonable." SCH St. No. 1, at p. 5; *see also* SCH St. No. 3, at pp. 5-7. SCH's claims that the current EDU-based rate, as applied, is unjust and unreasonable and should be rejected.

As a regulated public utility, the Company's rates and terms of service are reviewed and approved by the Commission. The Company's rates and terms of service are set forth in the Company's Commission approved tariff which is amended from time to time at the conclusion of a base rate proceeding filed with the Commission. Customers are billed based on their service conditions. While the Complainant asserts its opinions and suggestions on how the Company should bill them for service, these statements involve suggestions related to rate design and billing determinants that are considered in base rate proceedings and cannot be considered changed in individual customer complaint proceedings because it would impact the rates charged to other customers and the Company's overall approved rate design. Aqua Statement No. 1-4, at pp.1-2.

SCH's claims about the existing rates it pays fails because Aqua must bill SCH pursuant to its Commission-approved tariff. It is well accepted that a tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Elec. Utils. Corp. v. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa. C.S. § 1302; 52 Pa. Code § 53.25; *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002).

It is important to recognize that SCH does not dispute that it is being billed by Aqua pursuant to Aqua's Commission-approved tariff. SCH does not deny that (1) the tariffs in effect prior to the 2018 Base Rate Case and approved in the 2018 Base Rate Case and 2021 Base Rate Case apply to its service, or (2) it has been billed or is being billed consistent with those tariffs. Aqua is bound by the rates and terms of service provided for in its tariff and is not permitted to deviate from its tariff in billing SCH for wastewater service. Any assertion by SCH that its current rates are unjust and unreasonable must be rejected because Aqua's current and prior tariffs only authorized it to bill SCH on an EDU basis and do not permit Aqua to bill SCH on a volumetric basis.

- 1. SCH has failed to demonstrate that the flat, EDU-based rate for Rate Zone 4 is unreasonable as applied.**

Aqua has fully justified the use of a flat, EDU-based rate for the unmetered wastewater service provided to SCH. The Commission has specifically approved this type of flat rate as a reasonable and appropriate billing method for unmetered customers. Aqua St. No. 1, at p. 4.

SCH effectively argues that it should be provided a special rate or method of billing not otherwise available to other unmetered Rate Zone 4 commercial customers. Aqua submits that granting such a request would be undue and unreasonable rate discrimination as SCH would be afforded special and possibly preferential treatment as compared to other commercial customers in this rate zone, to the detriment of other customers in Rate Zone 4. *See* 66 Pa. C.S. § 1304. SCH's requested relief also ignores the potential impacts that it would have on the rates of other wastewater customers. Aqua St. No. 1-R, at p. 3.

**2. SCH has failed to substantiate its claims that the EDUs billed to it are inaccurate or unreasonable**

SCH claims that the EDUs assigned to it are inaccurate or unreasonable for two reasons. First, it disputes Aqua's method for calculating the EDUs for Split Rock Resort. SCH St. No. 1, at pp. 4-5; SCH St. No. 2, at pp. 3-7. SCH St. No. 3, at pp. 3-5. Second, it claims that the actual monthly wastewater consumption at Split Rock Resort is less than the total average monthly consumption assumed by the assigned EDUs. SCH St. No. 1, at p. 4; SCH St. No. 3, at p. 6. Neither of these claims are substantiated.

With respect to Aqua's method for calculating the EDUs for Split Rock Resort, SCH has not shown that the EDUs assigned to it are incorrect or inaccurate. As an initial point, SCH's predecessor and the Township voluntarily agreed on these values. Aqua St. No. 1, at p. 4.

Since it acquired the Township's wastewater assets, Aqua has continued to apply agreed upon values pursuant to the Settlement Agreement which was assigned to Aqua by the Township.

SCH witness Mr. Padilla disputes the method by which Aqua calculates the bill because "[b]illing SCH on a flat, per EDU basis assumes that the Resort is always at 100% full occupancy." SCH St. No. 1, at p. 3. He then claims that the resort's occupancy rates in all of its operations have been lower than 100%. SCH St. No. 1, at p.4. The design of the system is to accommodate the maximum capacity of its wastewater flows 365 days a year, 24 hours a day. Whether the flows being discharged from SCH are at 20% of normal occupancy or 100%, the Company's facilities are providing service, the occupancy is irrelevant. The Company cannot simply flip a switch and drop treatment capacity and then flip it back to full treatment capacity.

### **3. SCH's Requests For Metered Wastewater Service Is Neither Feasible Nor Reasonable**

As previously noted, SCH has requested that Aqua be ordered to provide it with metered wastewater service. SCH St. No. 1, at p. 4. SCH specifically proposes that it could be billed for usage based on (1) measuring actual water consumption, or (2) measuring actual discharges into Aqua's wastewater system. SCH St. No. 1, at p. 4. While SCH has expressed a preference for these alternatives, it has not substantiated the feasibility or reasonableness of them in this proceeding.

The SCH referenced metering technologies can only be used on pumped flow where the pipe has a consistent velocity and is full-flow to get an accurate read. The technologies do not work on non-pressurized flow. Gravity based pipes are not designed for full flow operation. SCH's wastewater flow is a gravity flow system where it connects to Aqua's system.

SCH has not provided any information to support that its internal system could be properly metered with a large flow wastewater meter. SCH has not presented a feasible way for wastewater consumption to be measured.

The Complainant is requesting a change to how they are billed and is requesting that their wastewater discharge be metered for billing purposes. While it is possible to bill wastewater customers based on metered water usage that is only possible where the customer has metered water usage. The Complainant does not have metered water usage nor does the Company have the ability to accurately meter wastewater volumes for SCH. Should the Company pursue using wastewater meters to bill usage it would be required to change a number of internal systems and operations and would be required to obtain approval from the Commission. The Commission did not authorize metering wastewater service in the 2021 Base Rate Order. Included in the rates authorized in the 2021 Base Rate Order is the recovery of costs to operate and maintain the treatment plant for the Rate Zone 4 customers. The wastewater treatment plant was designed to treat 100% of every customers' flow. The Complainant's testimony includes various scenarios for what it believes would be acceptable for wastewater meters, including a deduction for the pool and waterpark backwash and other discharge. This is not appropriate since that discharge must be treated. Any consideration of a deduction for certain usage is not relevant as the wastewater service provided to Complainant is not metered.

## **VI. PROPOSED FINDINGS OF FACT**

1. Aqua Pennsylvania Wastewater, Inc. ("Respondent", "Aqua" or the "Company") provide wastewater public utility service to approximately 57,000 wastewater customers in a

certificated service territories across the Commonwealth of Pennsylvania. Aqua PA is a “public utility” as that term is defined under the Public Utility Code, 66 Pa. C.S. § 102.

2. SCH USA, LLC (“SCH”) owns and operates a large commercial resort property known as the “Split Rock Resort.” SCH St No. 1, at p. 2.

3. Split Rock Resort is located in the Lake Harmony area, in Kidder Township (the “Township”), Carbon County, Pennsylvania. SCH St. No. 1, at p. 2.

4. SCH obtains its water from their privately-owned wells. SCH St. No. 1, at p. 3;

5. SCH is an unmetered wastewater customer of Aqua in Rate Zone 4 and is billed on a flat per equivalent dwelling unit or “EDU” basis monthly. Aqua St. No. 1, at p. 5; CM-4.

6. This is because SCH does not have meters present to measure water usage to bill on that basis. Aqua St. No. 2-R, at p. 1.

7. The EDU method considers the sewer capacity needed to treat wastewater from the customer / premises served at all times. Aqua St. No. 1-R, at p. 3.

8. Prior to Aqua’s acquisition of the Township’s wastewater assets, a Settlement Agreement between Split Rock Resort’s previous ownership and the Township resulted in a set number of EDUs being billed to the resort by the Township. SCH Exhibit FL-1; Aqua St. No. 1, at p. 4.

9. Aqua became the wastewater service provider for SCH’s Split Rock Resort as a result of Aqua’s Commission-approved acquisition of the Township’s wastewater assets on July 19, 2012, at Docket No. A-2012-2298067. Aqua St. No. 1, at p. 3; CM-1.

10. The Settlement Agreement was assigned to Aqua as a result of its acquisition. Aqua St. No. 1, at pp. 3-4.

11. As a result of that acquisition, Aqua filed a compliance tariff at the same docket which contained the EDUs that would be charged for the properties currently owned by SCH. Aqua St. No. 1, at p. 4.

12. At this time, the following EDUs were allotted to SCH pursuant to the Settlement Agreement: (1) 128 EDUs billed to the Willowbrook at Lake Harmony; (2) 145 EDUs billed to the Galleria and Water Park; and (3) 53 EDUs billed to the Lodge-Remaining Uses. Aqua St. No. 1, at p. 4.

13. The 4 EDUs were billed to the Laundromat are not in dispute. SCH St. No. 1, at p. 6.

14. The wastewater assets acquired by Aqua were placed into Aqua rate base in the Company's 2018 Base Rate Case. *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., et al.*, Docket Nos. R-2018-3003558, R-2018-3003561, *et al.* (Order entered May 9, 2019) ("2018 Base Rate Case"); Aqua St. No. 1, at p. 4.

15. Aqua has fully justified the use of a flat, EDU-based rate for the unmetered wastewater service provided to SCH. The Commission has specifically approved this type of flat rate as a reasonable and appropriate billing method for unmetered customers. Aqua St. No. 1, at p. 3; CM-3.

16. Wastewater based on metered usage is only available to customers who have metered water service. Bills. SCH's water is from its private well(s) which is not metered. Aqua St. No. 2-R, at p. 4.

17. The Company plans and constructs its facilities to provide sewer service 365 days a year, 24 hours a day, whether customers use the service or not. Aqua St. No. 2-R, at p. 2.

18. Aqua has no control over when its customers are present or whether a multi-use facility is operating at full capacity. Aqua St. No. 1-R, at p. 4.

19. Aqua is required to have its sewer service available for whenever the customer desires to use it, and to be available to accommodate the full capacity of that customer's operations. Aqua St. No. 1-R, at p. 4.

20. While the Company bills a wastewater customer using a fixed charge plus actual water usage recorded by a Company-owned meter when possible, there are a variety of circumstances where the Company cannot bill based on water usage in this fashion. Aqua St. No. 1-R, at p. 4.

21. The wastewater treatment plant was designed to treat 100% of every customer's flow. Aqua St. No. 2-R, at p. 2.

22. The Formal Complaints filed by SCH USA, LLC. should be dismissed in their entirety.

### **VIII. PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 102, 107, 1501.

2. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

3. To satisfy the burden of proof, the complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, alloc. den., 602 A.2d 863 (1992).

5. Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

6. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

7. Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

8. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102 and 1501.

9. The Complainant has failed to carry his burden of proof establishing that Aqua violated the Public Utility Code, or a Commission regulation or order of the Commission or its Commission-Approved Tariff. 66 Pa.C.S. § 701, 332.

10. It is well accepted that a tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006).

11. Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa. C.S. § 1302; 52 Pa. Code § 53.25; *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002).

12. Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995).

13. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002).

14. SCH failed to provide substantial and legally credible evidence in support of its contentions regarding Aqua's rates and service.

15. SCH failed to demonstrate with substantial evidence that Aqua violated the Public Utility Code, the Commission's regulations or orders, or the Company's Commission- approved tariff.

16. Aqua did not provide unreasonable or inadequate service in violation of 66 Pa.C.S. § 1501.

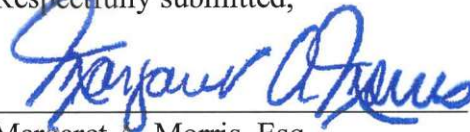
## IX. CONCLUSION

The Complainant has failed to establish by a preponderance of the evidence that the Respondent violated the Code, Commission regulation or order. Specifically, the Complainant has not met its burden of proof that the Accounts were not properly billed and that an adjustment for prior bills is warranted. Accordingly, the Commission should dismiss, with prejudice, the Formal Complaints of SCH.

**WHEREFORE**, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of SCH USA, Inc. at Docket Nos. C-2022-3036893 and C-2022-3037118 in its entirety.

Dated: January 9, 2025

Respectfully submitted,



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