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January 29, 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.
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 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.
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).

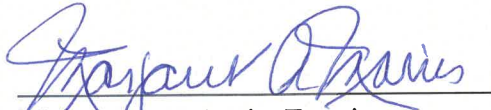
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Dated: January 29, 2025



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCH USA, LLC

v.

AQUA PENNSYLVANIA WASTEWATER, INC. :

:
:
:
:
:
:

Docket Nos. C-2022-3036893
C-2022-3037118

REPLY BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

Date: January 29, 2025

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I. INTRODUCTION

On January 9, 2025, pursuant to the *Briefing Order* issued by Administrative Law Judge John M. Coogan (Judge Coogan), Aqua Pennsylvania Wastewater, Inc. (“Respondent”, “Company” or “Aqua”) and SCH USA, LLC (“SCH USA” or “Complainant”) timely filed their respective main briefs in this consolidated complaint proceeding. Aqua, in its Main Brief, explained its position on the issues pending before the Honorable John Coogan. Aqua files this Reply Brief in response to the Main Brief of SCH USA. Aqua has anticipated and responded to many of SCH USA arguments in its Main Brief and will endeavor to avoid repeating those responses.

II. SUMMARY OF ARGUMENT

SCH USA alleges Aqua’s billing on a flat equivalent dwelling unit (“EDU”) basis, as set forth in Aqua’s Tariff for Rate Zone 4, as applied to three (3) of its nonresidential Accounts is unjust and unreasonable. SCH USA seeks an adjustment to the charges billed since October 29, 2020, when SCH USA purchased the resort property, to lower the number of EDUs they are charged based on average occupancy, not their assigned number of flat-rate EDUs. SCH USA also proposed a variety of changes to the Company’s billing method as applied to SCH USA. In particular, SCH USA suggested that Aqua alter the flat EDU-based billing method applicable to it and implement alternative metering and/or billing arrangements for SCH USA.

Contrary to SCH USA’s claims, it has failed to carry its burden of proof that (1) the billed charges for wastewater service, based on Commission-approved existing rates, are unjust and unreasonable as applied to their “particular circumstances;” or (2) it is entitled to an

alternative billing/adjustment or a rate method different than the EDU-based flat rate authorized by the Commission should be used. Aqua is billing SCH USA consistent with its Commission-approved Tariff and the EDUs billed to SCH USA are not inaccurate or unreasonable. SCH USA has not substantiated any of its claims regarding its wastewater usage. SCH USA also failed to demonstrate that it is reasonable – or even feasible – to move SCH USA to metered wastewater service. SCH USA’s arguments should be rejected.

III. REPLY TO SCH USA

SCH USA alleges that Aqua’s current flat rate for unmetered wastewater service as imposed on SCH USA violates Section 1301 of the Pennsylvania Public Utility Code (“Code”) and contends that Aqua should be directed to implement one of the alternative methods described in its Main Brief to bill SCH USA for wastewater usage based on actual consumption at the property, and to adjust SCH USA’s prior bills (since SCH USA acquired the property on October 29, 2020) to reflect the average occupancy rate.

SCH USA continues to dispute the number of EDUs assigned to Split Rock Resort. It claims that these EDUs were originally determined in a Settlement Agreement between Split Rock’s original owner and the Township of Kidder in 2010 and that the Settlement Agreement has long since expired. SCH USA also argues that Aqua did not assume that portion of the Settlement Agreement which reflected the agreed upon EDUs when it acquired the System from the Township of Kidder. Aqua notes that SCH USA’s predecessor and the Township of Kidder voluntarily agreed on these values; Aqua has continued to apply those historically agreed upon values. Moreover, as indicated in Aqua’s Main Brief, it is important to recognize that Aqua

is billing SCH USA pursuant to its Commission-approved Tariff. While SCH USA primarily focuses upon the Settlement Agreement between Split Rock Resort’s original owner and the Township of Kidder, arguing that it no longer applies, the fact remains that the rate charged to SCH USA was approved in the 2018 Base Rate Case¹ and again in the fully-litigated 2021 Base Rate Case.² Even if SCH USA’s argument regarding the applicability of the Settlement Agreement had any merit, and it does not, this argument does not address the fact that, the rate SCH USA pays is a Commission-made rate that Aqua must charge SCH USA—as well as the other customers in its class in its rate zone—pursuant to Aqua’s tariff. The argument that Aqua’s Commission-approved Tariff violates Section 1301 of the Code is without merit and should be rejected.

SCH USA asserts that Aqua’s position violates its own tariff by failing to calculate EDUs in the manner described in and consistent with the tariff. Again, this argument rests upon SCH USA’s assertion that the EDUs reflected in the Settlement Agreement should not apply. It also ignores the fact that the Commission has previously approved SCH USA’s rate.

SCH USA argues that the flat, unmetered rate it pays is unjust and unreasonable because it is “a large commercial resort” and that billing on a per EDU basis assumes fully occupancy of the Resort, but “the Resort is rarely if ever at 100% occupancy.” SCH USA is a commercial customer without a meter and must be billed on the same basis as other unmetered commercial customers in Rate Zone 4; billing SCH USA differently from other commercial

¹ *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., et al.*, Docket Nos. R-2018-3003558, R-2018-3003561, et al. (“2018 Base Rate Case”).

² *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., et al.*, Docket Nos. R-2021-3027385, R-2021-3027386, et al. (“2021 Base Rate Case”).

customers could result in undue and unreasonable rate discrimination. Furthermore, such requested relief is not appropriate in the context of a complaint proceeding given the ramifications on the rate design authorized by the Commission in the 2021 Base Rate Case. SCH USA also did not substantiate any of its claims regarding its occupancy rate. While it claims it is “rarely if ever at 100% occupancy,” none of its witnesses produced any evidence regarding its actual occupancy rate. Relatedly, none of its witnesses has actually produced any information regarding its actual wastewater usage. Indeed, “bald assertions, personal opinions or perceptions do not constitute evidence.” *Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Bureau of Corrections v. City of Pittsburgh, Pittsburgh City Council*, 532 A.2d 12, 14 (Pa. 1987)); see also *West Penn Power Co. v. Pa. PUC*, 219 A.3d 716, 2019 Pa. Commw. Unpub. LEXIS 532, at *24-25 (Pa. Cmwlth. 2019). SCH USA merely speculates that the Resort’s actual wastewater usage is much lower than the number of EDUs assigned to the respective account in dispute.

Furthermore, SCH USA has not claimed that it does not need to have access to a system that can accommodate 100% of the EDUs it is billed. Under the Code, Aqua is required to operate and to maintain the treatment plant for the Rate Zone 4 customers, which was designed to treat 100% of every customer’s flow. The Company cannot simply flip a switch and drop treatment capacity and then flip it back to full treatment capacity. 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.

SCH USA reiterates that the Commission has consistently stated that volumetric billing based on actual, measured usage is clearly preferable to flat rate billing. Aqua acknowledges that volumetric billing may be preferable, but the Commission also has recognized in the 2021 Base Rate Case Order that there are circumstances where it is not feasible or reasonable and that in those circumstances a flat EDU-based rate is a reasonable rate. While the Commission reached this specific conclusion with respect to the requested relief from residential customers in Rate Zone 4, it equally applies to non-residential customers “where metered water information” is not available. No metered water information is available from SCH USA at this time and, therefore, it is appropriate for Aqua to utilize “the standard industry practice of basing the flat rate on a system-wide average usage per month plus a customer charge.” 2021 Base Rate Case Order, at p. 272. Again, SCH USA merely speculates that the Resort’s actual wastewater usage is much lower than the number of EDUs assigned to the respective account in dispute but metered water information is not available from SCH USA to prove this as a fact.

As an alternative to continuing to utilize the flat EDU-based rate, SCH USA argues that Aqua could use wastewater meters to measure SCH’s actual discharges into its wastewater system. SCH USA bases this argument on the testimony of Mr. Carrier, who identified ultrasonic flowmeters and electromagnetic flowmeters as potential technologies that could be used to determine its actual wastewater usage.

While SCH USA argues that the Commission encourages billing wastewater customers based on actual wastewater usage, and that Aqua does bill certain customers in this

way, these arguments do not demonstrate that the identified metering technologies are actually feasible for SCH USA. Indeed, this is because those technologies are not actually feasible for the type of system at the Split Rock Resort. The SCH USA 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 USA's wastewater flow is a gravity flow system where it connects to Aqua's system. SCH USA has not provided any information to support that its internal system could be properly metered with a large flow wastewater meter. SCH USA has not presented a feasible way for wastewater consumption to be measured. SCH USA's position that identified wastewater metering technologies are "feasible" with respect to its system is unsupported and should be rejected.

Finally, SCH USA provides no legal support for its request that billed charges since the 3 disputed Accounts were established be rebilled based on average occupancy level. It should be noted that SCH USA did not participate in the Aqua's 2021 Base Rate Case, rather SCH USA simply stopped paying billed charges and the outstanding Account balance, as of July 12, 2024, was \$1,000,075.34. Aqua Statement 2-R, at p. 3.

VI. PENDING 2024 BASE RATE CASE

Aqua's 2024 Base Rate Case³ is presently pending before the Commission. There, SCH USA raised identical issues that are present in this Consolidated Complaint Proceeding. It should be noted that SCH USA's positions were soundly rejected in the Recommended Decision

³ *Pa. Pub. Util. Comm'n et al. v Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047822 and R-2024-3047824. (hereinafter "2024 Base Rate Case")

issued by the Honorable Gail M. Chiodo and Alphonso Arnold III. The relevant disposition of SCH USA's claims that are also present in the instant proceeding are set forth below:

Disposition⁴

The issues addressed by the Aqua and SCH USA above, centering around the application of the flat EDU-based billing method to SCH USA's wastewater service, are issues raised by SCH USA and not presented by Aqua in its base rate filing. SCH USA requests that the Commission alter the flat EDU-based billing method and implement an alternative billing method. As the proponent of a rule or order, SCH USA bears the burden of proof. We find that SCH USA has not met its burden of proof in proving that the Commission should order Aqua to alter its flat EDU-based billing method applicable to SCH USA and apply a different billing method.

Kidder Settlement

As discussed above, there is contention between Aqua and SCH USA with respect to whether the Kidder Settlement, particularly the portion of the Kidder Settlement which set the EDUs applicable to the Resort, is applicable to Aqua. We do not find the question as to the applicability of the Kidder Settlement relevant here, because the Commission approved the flat, EDU-based rate applicable to SCH USA in the *2018 Base Rate Case* and in the *2021 Base Rate Case*. Thus, Aqua is billing SCH USA not based on the Kidder Settlement but is billing SCH USA based on its Commission- approved tariff.

Reasonableness of flat, EDU-based rate for SCH USA wastewater service

Regarding the reasonableness of the flat, EDU-based rate applied to SCH USA, SCH USA's point that the Resort rarely runs at full occupancy and its actual consumption varies is well taken. We also agree with SCH USA that the Commission has stated its preference for volumetric billing over flat-rate billing. However, the facilities at the Resort are not individually metered. In approving the flat, EDU-based rate applied to SCH USA, the Commission explained 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." Therefore, it is both standard industry practice, and Commission practice, to utilize a flat rate when metered information is unavailable, as is the case here.

Further regarding SCH USA's claim that its facilities are not fully occupied and that its actual consumption varies, we are persuaded by Aqua's point that its system is designed to be able to accommodate the maximum capacity of its wastewater flows 365 days a year, 24 hours a day. Without a way to measure the actual usage at the Resort, Aqua has no way of knowing when a facility is occupied or not occupied.

⁴ 2024 Base Rate Case, Recommended Decision at 166-69 (Dec. 9, 2024) (footnotes omitted).

Given that it is both standard Commission and industry practice to apply a flat rate when metered usage information is unavailable and given that the Commission approved Aqua's flat rate methodology in the *2018 Base Rate Case* and the *2021 Base Rate Case*, we cannot make a finding here that the flat rate charged to SCH USA for its wastewater service is unreasonable.

Alternatives to flat, EDU-based rate for SCH USA wastewater service

SCH USA presented four ways for Aqua to acquire information on the actual usage at the Resort, so that SCH USA could be billed based on actual usage and not a flat rate. Those ways were: (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.

With respect to the first alternative, Aqua presented credible testimony with respect to why it would not be possible to bill a wastewater customer based upon water meter reads where the water is provided by a private well. Aqua also presented credible testimony with respect to the complications in installing water meters at SCH USA's facilities. If Aqua were to undertake a project to install water meters at the Resort, it would almost certainly take a great undertaking, the costs of which would ultimately be borne by Aqua wastewater customers at large.

Regarding the second alternative, we find that Aqua successfully rebutted SCH USA's suggestion that Aqua could measure wastewater usage at the Resort using ultrasonic flowmeters and electromagnetic flowmeters. SCH USA in its testimony has not present a feasible way for wastewater consumption to be measured.

Concerning the third and fourth alternatives, SCH USA did not present any evidence that Aqua is not billing SCH USA in compliance with its Commission-approved tariff. SCH USA is being billed the same as other commercial customers in Rate Zone 4 and if Aqua were to deviate from its tariff, then it would then be charging SCH USA rates which are discriminatory in violation of Section 1304 of the Code. Furthermore, concerning adjusting the EDUs used for billing purposes, the revised language to Aqua's wastewater tariff provides an avenue for SCH USA to petition Aqua for a change in its EDUs if it modifies their property. As it stands currently, SCH USA did not present evidence to show that the Resort's rooms or occupancy capacity have changed since its EDUs were initially assigned.

We find that SCH USA has not met its burden of proving that any of the four alternatives it presented are feasible. As such, we will not recommend that the Commission order Aqua to deviate from its flat EDU-rate based methodology in favor of one of the presented alternatives.

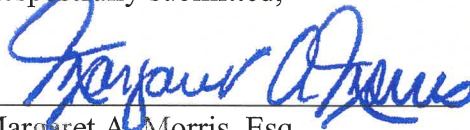
RD at pp. 166-169.

VII. CONCLUSION

The Complainant has failed to establish by a preponderance of the evidence that Aqua violated the Code, Commission regulation or order or Aqua's Commission-approved Tariff for Rate Zone 4. Specifically, the Complainant has not met its burden of proof that the three disputed 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 USA.

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

Respectfully submitted,



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