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January 29, 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 Reply 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/lww

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 Reply 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 29, 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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**REPLY BRIEF OF  
SCH USA LLC**

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Date: January 29, 2025

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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 SCH USA on a flat, per-EDU basis is unreasonable as applied to SCH USA. This billing method assumes that the Resort is always at 100% full occupancy, when in reality the Resort’s occupancy rates are typically significantly lower than 100%. As a result, SCH USA is being charged for significantly more wastewater usage than Aqua is actually collecting or treating, which is unjust and unreasonable.

In its Main Brief, Aqua argues that SCH USA has not met its burden of proof to show that the flat, per-EDU rate it is being charge is inaccurate or unreasonable, or that the EDUs themselves are unjust and unreasonable. In fact, as demonstrated herein and in SCH USA’s Main Brief, SCH USA has clearly shown that the EDUs it is currently being charged have no relationship to actual usage at the property, are improperly based on a long-expired settlement agreement, and are inconsistent with Aqua’s tariff. As noted herein, much of SCH USA’s testimony went unrefuted by Aqua, and Aqua has failed to meet its burden to rebut the facts and testimony SCH USA’s experts offered.<sup>1</sup> As such, the EDUs result in significant overbilling, and Aqua’s current billing approach as applied to SCH USA is unjust and unreasonable. While Aqua attempts to hide behind its tariff to avoid correcting these errors, its arguments are meritless and must be rejected.

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<sup>1</sup> Upon presentation of evidence by SCH USA that is sufficient to initially satisfy its burden of proof, the burden of going forward to rebut SCH USA’s evidence shifts to Aqua. As discussed herein, Aqua failed to refute much of SCH USA’s expert testimony and thus has failed to meet its burden. *See Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Commw. Ct. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

For the reasons discussed in the Main Brief and 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>2</sup>

## II. REPLY TO AQUA'S MAIN BRIEF

### A. The EDUs Aqua Currently Bills to SCH USA are Inaccurate and In Violation of Aqua's Tariff

In its Main Brief, Aqua claims that it is billing SCH USA consistent with its PUC-approved tariff.<sup>3</sup> It also claims that customers are billed based on the tariff, and therefore any changes must be addressed in a rate case and not in this complaint proceeding.<sup>4</sup> Aqua is incorrect on these points – the EDUs currently charged to SCH USA are not consistent with Aqua's tariff, and correction to past overbillings or other billing issues are appropriately addressed in this complaint proceeding.<sup>5</sup>

First, as discussed in detail in SCH USA's Main Brief, Aqua is not currently billing SCH USA consistent with its tariff.<sup>6</sup> Aqua's position violates its own tariff by failing to calculate

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<sup>2</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.

<sup>3</sup> Aqua Main Brief ("MB") at 4-5, 11.

<sup>4</sup> Aqua MB at 10.

<sup>5</sup> See fn. 2, *supra*. SCH USA's issues that are appropriately addressed in a base rate case are being addressed in currently pending base rate proceeding at Docket No. R-2024-3047824. SCH USA notes that Aqua cannot rely on any changes in the compliance tariff that may eventually be approved as part of that base rate proceeding to cure any past violations or deficiencies regarding the unreasonableness of Aqua's flat, per EDU basis for billing SCH USA. Doing so would, of course, constitute retroactive ratemaking and cannot be allowed by the Commission. Tariffs are only applicable after their effective date. 66 Pa. C.S. §§ 1302, 1303. The issue of the unreasonableness of Aqua's future compliance tariff as applied to SCH USA is an issue that cannot be resolved in this proceeding.

<sup>6</sup> SCH MB at 7-8.

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 current single-family unit.<sup>7</sup> SCH USA’s bills are not calculated in the manner described, but rather are based on the inapplicable 2010 Settlement. This does not comport with the calculation method outlined in the tariff.

Second, SCH USA expert 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>8</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>9</sup> This analysis shows that Aqua is currently billing SCH USA nearly double the EDUs authorized under its tariff.<sup>10</sup> Aqua did not dispute these calculations in its testimony.

Aqua also claims that “...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.”<sup>11</sup> However, Aqua does not provide any specific citation identifying where the EDUs specifically applicable to SCH

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<sup>7</sup> Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25.

<sup>8</sup> SCH USA St. No. 2 at 9-10; SCH USA Exh. RTC-2.

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

<sup>10</sup> *See* SCH USA MB at 8.

<sup>11</sup> Aqua MB at 9.

USA were reviewed and authorized in these proceedings. Indeed, SCH USA expert witness Mr. Frank Lacey testified that he reviewed the documents filed by Aqua in the 2021 base rate proceeding and that he “did not see any reference to the allocation of EDUs to SCH USA, the Split Rock Resort or any of its billed entities.”<sup>12</sup> He also “did not see any reference to EDUs allocated to SCH USA in the 2021 Base Rate Order.”<sup>13</sup> Further, as Mr. Lacey explained, by approving a revenue requirement, the Commission is not guaranteeing recovery of those revenues, and certainly does not justify overcharging a customer.<sup>14</sup> The fact that the Commission has approved a revenue requirement and a tariff that includes the ability to bill on a per EDU basis is not relevant and provides no basis for continuing to bill SCH USA based on a number of EDUs that is inaccurate, inconsistent with the tariff and has no relationship to actual usage at the property.

Relatedly, Aqua incorrectly claims that its tariff only authorizes it to bill SCH USA on a per-EDU basis and does not permit Aqua to bill SCH USA on a volumetric basis.<sup>15</sup> Again, this is simply wrong. The tariff does not include any language specific to SCH USA, and Aqua’s Main Brief fails to cite to any such provision. The tariff does, in fact, allow for billing based on metered service.<sup>16</sup> For example, if water meters were to be installed as SCH USA requests (as further discussed below), the tariff clearly provides that Rate Zone 4 customers can be billed based on metered water service. Basing wastewater bills on actual metered water usage is a common practice that provides a more accurate means of determining wastewater usage.<sup>17</sup> While

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<sup>12</sup> SCH USA St No. 3-SR at 6.

<sup>13</sup> SCH USA St No. 3-SR at 6.

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

<sup>15</sup> Aqua MB at 11.

<sup>16</sup> *See* SCH USA MB at 11-12.

<sup>17</sup> SCH USA St. No. 2 at 9.

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>18</sup>

Aqua also claims that SCH USA is arguing that that it should be provided a “special rate” or method of billing not otherwise available to other Rate Zone 4 commercial customers.<sup>19</sup> Again, this statement mischaracterizes SCH USA’s position and is wholly inaccurate. As discussed in detail in SCH USA’s Main Brief, SCH USA is simply seeking to pay rates that reflect actual usage consistent with Aqua’s tariff, and to correct past overbillings. Based on the unrefuted analysis by SCH USA witness Mr. Carrier,<sup>20</sup> SCH USA has been billed for significantly more wastewater usage than it actually consumed, and more than it would have been billed if its EDUs were based on the current tariff language. This has been the case since SCH USA purchased the Resort property on October 29, 2020.<sup>21</sup> To correct this overbilling, SCH USA is seeking to have its prior billings adjusted to reflect the average occupancy at the Resort during this time.<sup>22</sup> This correction is entirely proper and does not create any rate discrimination as Aqua alleges.

Aqua further attempts to support its position based on system capacity, stating that “[t]he EDU method considers the sewer capacity needed to treat wastewater from the customer/ premises served at all times.”<sup>23</sup> Further, Aqua claims that it “cannot simply flip a switch and

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<sup>18</sup> SCH USA St. No. 2 at 9.

<sup>19</sup> Aqua MB at 12.

<sup>20</sup> SCH USA St. No. 2 at 9-10. *See also* fn. 1, *supra*.

<sup>21</sup> SCH USA St. No. 1 at 3, 5; SCH USA St. No. 2 at 6; SCH USA St. No. 3 at 6.

<sup>22</sup> The Resort’s average occupancy data is provided in SCH USA Exhibit CP-2 (Confidential).

<sup>23</sup> Aqua MB at 8; *see also* Aqua St. No. 2-R at 1-2.

drop treatment capacity and then flip it back to full treatment capacity.”<sup>24</sup> This argument is a red herring that has nothing to do with SCH USA’s complaints. As SCH USA witness Mr. Lacey explained, “[n]one of SCH USA’s requests or concerns has anything to do with the treatment capacity of the facility.”<sup>25</sup> Billing SCH USA based on actual consumption would simply provide just and reasonable rates for actual service provided and has no bearing on capacity of Aqua’s treatment system.

**B. The EDUs Currently Billed to SCH USA Have No Relationship to Actual Usage at the Resort and are Based on a Long-Expired Settlement**

Aqua inaccurately claims that SCH USA has failed to substantiate its claims that the EDUs currently charged to the Resort are inaccurate or unreasonable.<sup>26</sup> In fact, SCH USA has provided detailed testimony explaining how its current EDUs are incorrect and result in significant overcharges, and that the Settlement Agreement used as a basis for these EDUs has long since expired and has no relevance here. Aqua failed to respond to these arguments in its testimony and now attempts to simply ignore the overcharges and unfounded basis for EDUs that SCH USA has presented here.

As discussed above, the unrefuted testimony by SCH USA witness Mr. Carrier shows that the EDUs billed to SCH USA are inaccurate and are not consistent with the language in Aqua’s tariff.<sup>27</sup> As a result, Aqua is currently billing SCH USA nearly double the EDUs authorized under its tariff.<sup>28</sup>

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<sup>24</sup> Aqua MB at 13.

<sup>25</sup> SCH USA St. No. 3-SR at 7-8.

<sup>26</sup> Aqua MB at 5, 12.

<sup>27</sup> See Aqua Tariff Sewer-PA P.U.C. No. 3, Original Page 25; SCH USA St. No. 2 at 9-10; SCH USA Exh. RTC-2. See also fn. 1, *supra*.

<sup>28</sup> See SCH USA MB at 7-8.

Aqua also claims that the current EDUs billed to SCH USA are appropriate because SCH USA's predecessor "voluntarily agreed to these values."<sup>29</sup> This refers to the EDUs outlined in the Settlement Agreement between Split Rock's original owner and the Township of Kidder in 2010 ("2010 Settlement"), which Aqua states is the basis for the SCH USA's current EDUs. As explained in SCH USA's Main Brief, the EDUs in the 2010 Settlement are not based on actual usage by the Resort.<sup>30</sup> Additionally, Aqua did not assume the portions of the 2010 Settlement related to the Resort's EDU calculations when it acquired the system.<sup>31</sup> Based on the plain language of the relevant 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 this outdated and baseless EDU calculations, Aqua is imposing improper charges on SCH USA that are unjust and unreasonable, and in violation of its own tariff.

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

Aqua claims in its Main Brief that SCH USA has not demonstrated that it is reasonable or feasible for it to move to metered service.<sup>32</sup> In fact, SCH USA has provided detailed testimony providing multiple options that are reliable, accurate and technically feasible to allow it to be

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<sup>29</sup> Aqua MB at 12.

<sup>30</sup> SCH USA MB at 6.

<sup>31</sup> SCH USA St. No. 3 at 4-5; SCH USA MB at 6-7.

<sup>32</sup> Aqua MB at 5, 13-14.

billed based on actual metered usage, or at a minimum, provide a more accurate proxy for SCH USA's actual usage.<sup>33</sup>

As SCH USA witness 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>34</sup> Mr. Carrier identified other utilities across the country that use such wastewater meters, including in Michigan, Indiana, and Washington.<sup>35</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 system.<sup>36</sup> SCH USA witness Lacey also noted Aqua's wastewater tariff allows for wastewater metering in different zones.<sup>37</sup>

Alternatively, 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>38</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. 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>39</sup>

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<sup>33</sup> SCH USA St. No. 2 at 6-9; SCH USA MB at 11-12.

<sup>34</sup> SCH USA St. No. 2 at 6-8.

<sup>35</sup> SCH USA St. No. 2 at 7-8.

<sup>36</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>37</sup> SCH USA St. No. 3 at 9.

<sup>38</sup> SCH USA St. No. 2 at 9.

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

Other potential alternatives include adjusting SCH USA's 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>40</sup> In any case, SCH USA has clearly demonstrated that metering actual wastewater discharge or actual water consumption is entirely feasible and would provide a more accurate representation of usage, and therefore, 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>40</sup> SCH USA St. No. 1 at 5-6.

### III. CONCLUSION

For the reasons discussed in SCH USA's Main Brief and above, 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.

Respectfully submitted,

*/s/ Lauren M. Burge*

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