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January 31, 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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find SCH USA's Motion to Strike 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 Motion to Strike upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa.

Code Section 1.54.

Via Email Only

Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
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2929 Arch Street
Philadelphia, PA 19104
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Dated: January 31, 2025

Lauren M. Burge

Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

To: Margaret A. Morris, Esq.
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You are hereby notified that a reply to the enclosed **Motion to Strike** of SCH USA, LLC (“SCH USA”) must be filed within 20 days of the date of service, or as directed by the Administrative Law Judge.

All pleadings, such as a response to a Motion to Strike, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the Authority and where applicable, the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

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/s/ *Lauren M. Burge*

Lauren M. Burge, Esquire

Date: January 31, 2025

Counsel for SCH USA, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SCH USA, LLC’S
MOTION TO STRIKE**

Pursuant to 52 Pa. Code § 5.103, SCH USA, LLC (“SCH USA”) submits this Motion to Strike portions of the Reply Brief filed by Aqua Pennsylvania Wastewater, Inc. (“Aqua”) on January 29, 2025. The material that SCH USA seeks to have stricken includes a lengthy excerpt from a Recommended Decision in Aqua’s base rate case – an entirely separate proceeding that is currently pending and has not yet been subject to review by the Pennsylvania Public Utility Commission (“Commission” or “PUC”). Aqua inappropriately includes argument about this separate, pending recommendation for the first time in its Reply Brief. This is impermissible for a number of reasons as discussed herein, including that it is a blatant violation of SCH USA’s due process rights and intentionally misrepresents the weight and relevance of the pending recommendation to which SCH USA filed Exceptions on December 23, 2024.¹ As such, SCH USA respectfully requests that ALJ John M. Coogan issue an Order striking Section VI of Aqua’s Reply Brief in this proceeding.

In support of this Motion, SCH USA avers as follows:

II. LEGAL STANDARDS

¹ <https://www.puc.pa.gov/pcdocs/1860510.pdf>.

1. The Commission has found that when parties “have been directed to file briefs and fail to include an issue in their briefs, the unbriefed issues may properly be viewed as having been waived.”²

2. Similarly, the Commission has found that asserting a claim for the first time in a reply brief leaves opposing parties “with no opportunity to respond – is inflammatory and inappropriate and will be disregarded.”³

3. A Motion to Strike is an appropriate way to address a situation in which a party advances an argument for the first time in its reply brief.⁴

III. ARGUMENT

Section VI of Aqua’s Reply Brief inappropriately includes a two-page block quote excerpting the Recommended Decision (“RD”) in Aqua’s currently pending base rate case.⁵ This section of Aqua’s Reply Brief is inappropriate because: (1) it raises arguments regarding Aqua’s rate case – which are unrelated to this complaint proceeding – for the first time in the Reply Brief, which prevents SCH USA from responding in violation of its due process rights; (2) fails to recognize that the RD is not a final decision, or that SCH USA has filed Exceptions to this portion of the RD which are currently pending; (3) incorrectly characterizes SCH USA’s

² *Pa. Pub. Util. Comm'n. v. Columbia Gas of Pa.*, Docket Nos. R-00049783 (Order entered Nov. 4, 2005), at 107, available at <https://www.puc.pa.gov/PcDocs/574895.doc> (citing *Jackson v. Kassab*, 812 A.2d 1233 (Pa.Super. 2002); see also *Browne v. Pa. Dep't. of Transp.*, 843 A.2d 429 (Pa.Cmwlth. 2004); *Borough of Glendon v. Dep't. of Envtl. Res.*, 603 A.2d 226 (Pa.Cmwlth. 1992); *Park v. Chronister*, 617 A.2d 863 (Pa.Cmwlth. 1992).

³ *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of the Proposed Susquehanna-Roseland 500 kV Transmission Line, et al.*, Docket No. A-2009-2082652 (Recommended Decision dated Nov. 12, 2009, at 132-133; relevant portion adopted by Commission Order entered Feb. 12, 2010, at 63-76).

⁴ *Id.* at 133, fn. 38; see also *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2017-2586783 (Order Granting Motion to Strike dated Aug. 24, 2017) (ALJs struck portions of a Reply Brief when the party had failed to raise the issues in its Main Brief).

⁵ Docket Nos. R-2024-3047822 and R-2024-3047824.

arguments in the rate case as being “identical” to its arguments in this proceeding, which is inaccurate; and (4) even if the Aqua’s proposed tariff were to be adopted in the rate case (which has not yet occurred), this tariff would only be effective going forward, and would not have any application to the past billings at issue here. For these reasons, SCH USA respectfully requests that Section VI of Aqua’s Reply Brief on pages 6-8 be stricken.

A. Aqua Inappropriately Raises Rate Case Matters for the First Time in its Reply Brief

Aqua’s base rate case is an entirely separate proceeding that is currently pending before the Commission. Despite the fact that there is no final decision on the rate case, Aqua inappropriately attempts to use the rate case RD as precedential here. Aqua is raising this discussion about the rate case RD for the first time in its Reply Brief, despite the fact that the RD was issued on December 9, 2024, a full month before Main Briefs were due in this complaint proceeding. Further, SCH USA filed Exceptions to the RD on December 23, 2024, also well in advance of Main Briefs being filed in this complaint proceeding on January 9, 2025. If Aqua wished to make an argument related to the rate case RD, it could have done so in its Main Brief, and SCH USA would have had an opportunity to respond. Instead, Aqua chose to wait and include this lengthy quote only in its Reply Brief, meaning that SCH USA does not have an opportunity to respond. This violates SCH USA’s due process rights and is wholly inappropriate and inconsistent with Commission precedent. Aqua cannot be permitted to raise new arguments at this late stage when SCH USA has no opportunity to respond.

B. Aqua Fails to Recognize that the Rate Case RD is Not a Final Order

Aqua misrepresents the relevance and impact of the RD in its reply brief when, in fact, the RD is not a final order and has no precedential effect. Indeed, SCH USA filed Exceptions to the exact language quoted in Aqua’s Reply Brief, and those Exceptions have not yet been

decided. Aqua's Reply Brief fails to mention this important context. It is inappropriate for Aqua to quote the RD at length when it has not yet been subject to Commission review. Further, even if the RD were a final order (which it is not), it has no impact on SCH USA's formal complaints filed years prior challenging Aqua's service and rates under Aqua's prior tariff not subject to disposition in the RD.

C. Aqua Incorrectly Characterizes SCH USA's Arguments in the Rate Case

Aqua also claims that SCH USA has raised "identical issues" in the rate case as in this complaint proceeding.⁶ This is blatantly false. While the claims are related and there is some overlap, SCH USA is seeking different relief in these proceedings and as a result has made different arguments in each case. For example, SCH USA is seeking relief from past overbillings in this complaint proceeding; this type of relief could not have been obtained in the rate case which is seeking changes to Aqua's future rates. Thus SCH USA has presented different testimony and different arguments in these separate proceedings to address the differing claims. Notably, Aqua previously attempted to consolidate SCH USA's complaint case with the rate case, but its motion was denied as the ALJ found that the complaint proceedings "...implicate matters related to individual account and billing issues that may not be adequately addressed in a base rate proceeding."⁷ Aqua's characterization of the RD in its reply brief is disingenuous and must be stricken.

D. Aqua Fails to Understand the Effect of Proposed Tariff in Aqua's Rate Case

Even if Aqua's proposed tariff were to be adopted in the rate case, the effect of that tariff is prospective only. 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

⁶ Aqua RB at 6.

⁷ Order Denying Motion to Consolidate and Motion to Stay (Aug. 12, 2024), at 5.

deficiencies raised in the complaint 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.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, SCH USA respectfully requests that ALJ John M. Coogan issue an Order striking Section VI of Aqua's Reply Brief.

Respectfully submitted,

/s/ Lauren M. Burge

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