

COMMONWEALTH OF PENNSYLVANIA



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February 24, 2025

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v.  
Aqua Pennsylvania, Inc. and Aqua Pennsylvania  
Wastewater, Inc.; Docket Nos. R-2024-3047822  
(Water), R-2024-3047824 (Wastewater)

Dear Secretary Chiavetta:

Enclosed please find the Answer of the Office of Consumer Advocate in Opposition to the Petition for Reconsideration in the captioned proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectively,

/s/ Jacob D. Guthrie  
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cc: Administrative Law Judge Gail M. Chiodo (Email: gchiodo@pa.gov)  
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Office of Special Assistants (ra-OSA@pa.gov)  
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :  
v. : Docket Nos. R-2024-3047822 (Water)  
Aqua Pennsylvania, Inc. and : R-2024-3047824 (Wastewater)  
Aqua Pennsylvania Wastewater, Inc. :

I hereby certify that I have this day served a true copy of the Answer of the Office of Consumer Advocate in Opposition to the Petition for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 24th day of February 2025.

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Dated: February 24, 2025

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2024-3047822 (Water)
	:	R-2024-3047824 (Wastewater)
Aqua Pennsylvania, Inc.	:	
Aqua Pennsylvania Wastewater, Inc.	:	

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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE  
IN OPPOSITION TO THE PETITION FOR RECONSIDERATION

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**I. INTRODUCTION**

In accordance with 52 Pa. Code Section 5.572(e), the Office of Consumer Advocate (OCA) files this Answer in Opposition to the Petition for Partial Reconsideration and/or Clarification (Petition) filed by Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) on February 14, 2025. Aqua seeks reconsideration of the Pennsylvania Public Utility Commission’s (Commission’s) February 6, 2025, Final Order (*February 6 Order*) regarding Aqua’s request for a general rate increase pursuant to Section 1308(d) of the Public Utility Code.

In the *February 6 Order*, the Commission denied Aqua’s request to increase rates to customers located in East Whiteland Township. Aqua serves these customers as a result of Aqua’s closing on a transaction prior to the running of the appeal period for a Commission order, which granted certificates of public convenience (CPC) regarding Aqua’s acquisition of the wastewater assets of East Whiteland Township and service to the East Whiteland customers. *February 6 Order* at 136-43; *see also Application of Aqua Pennsylvania Wastewater, Inc. to acquire the wastewater system assets of East Whiteland Township and related approvals pursuant to Sections 1102, 1329, and 507 of the Public Utility Code*, Docket No. A-2021-3026132 (Opinion and Order entered July 29, 2022) (*East Whiteland Order*). As stated in the *February 6 Order*, the Commonwealth Court

reversed the Commission’s *East Whiteland Order* in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, 320 A.3d 667 (Pa. June 14, 2024) (Nos. 47-49 MAP 2024), and, therefore, the CPC authority granted in the *East Whiteland Order* is properly treated as a nullity because no party to the *Cicero* appeal obtained a stay of the Commonwealth Court’s order. *February 6 Order* at 136-38.

In its Petition, Aqua requests the Commission to partially reconsider and/or clarify whether the Company may increase rates to East Whiteland customers if the Pennsylvania Supreme Court (1) reverses and vacates *Cicero*, (2) affirms the *East Whiteland Order*, and (3) does not remand the matter back to the Commission for further proceedings. Petition at ¶¶ 32-44. Aqua requests that if these three specific conditions are met, the Commission should authorize Aqua in its reconsideration order to be able to file a tariff supplement implementing rates consistent with Appendix G-1 and Paragraph 95 of the Settlement<sup>1</sup> to be effective on one days’ notice. *Id.* ¶ 38.

Aqua raised this issue in its Exceptions as an alternative form of relief. Aqua Exc. at 11-12. The Commission denied Aqua’s request because “it would not be possible to craft a specific remedy because it would require speculation on the actual language of the ultimate order” from the Court. *February 6 Order* at n. 35. Further, “the Supreme Court could reverse *and* remand the matter to the Commission for further proceedings. Under that scenario, it would be improper to immediately authorize any rate increase when it may be necessary to have further proceedings consistent with any directive of the Supreme Court.” *Id.* (emphasis in original).

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<sup>1</sup> In relevant part, Paragraph 95 of the Settlement states: “If the Commission authorizes Aqua PA to include the East Whiteland system in its ratemaking rate base and permits the establishment of new rates in this proceeding: a) The parties agree that Aqua PA will be permitted to collect an additional \$6.4 million in revenue from East Whiteland customers.” Settlement at ¶ 95. The Commission reached no ruling on whether the rate increase amount of \$6.4 million would be just and reasonable. *See Order* at 111-13, n. 26.

Aqua's Petition must be denied because Aqua's requested relief is legally deficient due to Aqua's failure to also request necessary precedent relief in its Petition. Additionally, while Aqua submitted a proposal in its Petition of carefully crafted language to address the Commission's reasoning set forth in the *February 6 Order*, Aqua did not raise an issue in its Petition which was new or novel, not previously heard, or a consideration which was overlooked or not addressed by the Commission; instead, Aqua raised a question which was specifically considered and decided against it in the Commission's ruling on Aqua's Exceptions. *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1985) (*Duick*). Accordingly, the OCA respectfully requests that Aqua's Petition be denied.

## II. ANSWER

### A. Aqua's Petition is legally deficient for failure to request whole and complete relief and, as a result, it must be denied.

Aqua's Petition must be denied because Aqua's requested relief is legally deficient due to Aqua's failure to also request the granting of necessary precedent relief in its Petition. Specifically, in its Petition, Aqua requests that the Commission permit it to implement a rate increase for East Whiteland customers, consistent with the increase identified in Paragraph 95 of the Joint Petition for Settlement, in the event that the Pennsylvania Supreme Court (1) reverses and vacates *Cicero*, (2) affirms the *East Whiteland Order*, and (3) does not remand the matter back to the Commission for further proceedings. Petition at ¶¶ 31-44. However, Aqua did not request in its Petition that the Commission rescind or modify its *February 6 Order* to find that the rate increase specified in Paragraph 95 of the Settlement for East Whiteland customers is just and reasonable.

The Commission and ALJs rightly determined that the East Whiteland settlement rates are not just and reasonable because Aqua failed to carry its burden of proof "that the wastewater assets acquired from East Whiteland can be projected to be included in its ratemaking rate base by the

end of the FPPTY.” *February 6 Order* at 142; R.D. at 149-50; *see also* 66 Pa. C.S. §§ 315(a), 315(e), 1301. Furthermore, the Commission did not explicitly or impliedly determine that the amount of the rate increase established in Paragraph 95 – \$6.4 million – would result in just and reasonable rates if a rate increase to East Whiteland customers were to go into effect if certain conditions are met in the Supreme Court’s decision.

Aqua pleads bold assertions of entitlement to relief without providing essential supporting facts to enable proper review of the same. Specifically, Aqua asks the Commission to enforce Settlement Paragraph 95 without asking a necessary and preliminary question in the analysis first, as explained above. However, Paragraph 95 begins with more than a mere prefatory statement; it begins with a necessary legal prerequisite – that there first be a finding that a rate increase is just and reasonable. More specifically, Paragraph 95 begins: “If the Commission authorizes Aqua PA to include the East Whiteland system in its ratemaking rate base and permits the establishment of new rates in this proceeding,” then Aqua may collect up to \$6.4 million in revenue from East Whiteland customers. *See February 6 Order* at 36, Partial Settlement at ¶ 95. Aqua PA is asking for reconsideration by glossing over the preliminary analysis required in the applicable settlement provision and asks that the rates contemplated therein be applied without the necessary analysis as to whether the rates are just and reasonable. Thus, Aqua’s Petition does not squarely summarize the necessary facts for a true review or reconsideration thereof. Thus, the Commission can and should deny Aqua’s petition as lacking in essential facts to support the same.

Notably, the Commission properly did not reach a determination in the *February 6 Order* on the appropriate amount of an increase because the Commission and ALJs had determined that any increase would be unjust and unreasonable based on the record in this case. *February 6 Order* at 142; R.D. at 149-50. If the Commission opined on the amount of the increase that would be just

and reasonable if certain conditions are met by the Pennsylvania Supreme Court's decision, it would have been issuing an advisory opinion, as the determination of the appropriate amount of the proposed rate increase was rendered moot by the Commission's determination that Aqua lacks CPC authority to increase rates at all. The Commission has consistently determined that it does not issue advisory opinions on future ratemaking issues, as they are best left to resolve in future requests for rate relief. *See Petition of Met. Edison Co. et al for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket Co. M-2009-2123950 (Order entered Aug. 3, 2010)<sup>2</sup> at 5 (modifying a Commission order to remove an advisory opinion which touched on future ratemaking issues). The appropriate amount of a rate increase to East Whiteland customers is best left to the first rate case wherein the Company can meet its burden of proof as to the justness and reasonableness of any increase. 66 Pa. C.S. § 315(a), (e).

Given that Aqua failed to request in its Petition that the Commission reconsider this determination of just and reasonable rates for East Whiteland customers, the Petition is legally deficient and the relief that Aqua did request in its Petition – the ability to implement the Settlement rates in the event certain conditions are met in the Supreme Court's ruling – must be denied.

**B. In determining that a rate increase for East Whiteland customers is not just and reasonable, the Commission already addressed the issue Aqua raised in its Petition; hence, Aqua failed to raise a new or novel argument or identify an issue which the Commission did not address.**

In the Petition, Aqua failed to advance a new or novel argument or identify an overlooked consideration. Instead, the issue identified by Aqua is one which was expressly acknowledged and rejected by the Commission and, therefore, is not deserving of a Commission action to modify its *February 6 Order*. Petition at ¶ 37 (Aqua admits that the Commission addressed and rejected the argument presented in the Petition); *February 6 Order* at n. 35. Because Aqua closed on the East

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<sup>2</sup> Available at: <https://www.puc.pa.gov/pcdocs/1089368.doc/>.

Whiteland acquisition and took title to the East Whiteland system assets before the end of the appeal period for the *East Whiteland Order*, Aqua knowingly took the risk of not recovering a certain level of return on its investment related to the East Whiteland system assets and the *February 6 Order* expressly and appropriately addressed the issue. *February 6 Order* at 141-42. Therefore, under *Duick*, the Commission should deny Aqua's Petition.

A party may seek reconsideration of a final order, and the Commission may “rescind or amend any order made by it.” 66 Pa. C.S. § 703(g). The Commission's standard for determining whether reconsideration or clarification is an appropriate relief was established in *Duick*. As the Commission has explained:

In *Duick*, the Commission reasoned that, while a petition under Section 703(g) of the Code may raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, at the same time “[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” Under the standards of *Duick*, such petitions for reconsideration and/or rehearing, are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

The considerations of *Duick*, on application, essentially, require a two-step analysis. The first step is that we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order.

*Commonwealth v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered July 11, 2019)<sup>3</sup> (*Blue Pilot*) at 8-9 (citations omitted).

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<sup>3</sup> Available at: <https://www.puc.pa.gov/pcdocs/1627141.docx>.

In sum, a petition for reconsideration must not only raise an issue which is new or novel and has not been previously addressed by the Commission, it must also be of sufficient merit for the Commission to rescind or modify its original order. *Pittsburgh v. Pa. Dep't of Transp.*, 416 A.2d 461, 465 (Pa. 1980) (modification or rescission of the Commission's orders "must be granted judiciously and only under appropriate circumstances.").

The Commission has previously denied petitions for reconsideration in situations like the case at bar, where a party is asking for reconsideration of an issue that the Commission has already expressly considered, including where the Commission summarized the positions of the parties and reached a determination on the issue. *Blue Pilot* at 20-21. In *Blue Pilot*, the Commission stated:

[W]e duly evaluated and considered [the *Rosi*] factors to determine whether the fine for violating a Commission order, regulation or statute is appropriate in this proceeding. *Blue Pilot* expressly articulated its objection to the civil penalty recommended by the presiding ALJs in the Initial Decision in its Exceptions to the *July 19 Order*. ***Blue Pilot*, in Exceptions, argued, *inter alia*, that the "proportionality" test of the limits of the constitutionality of a civil penalty and/or fine was violated in this matter.** *Blue Pilot* further cited to the proceedings in HIKO and other administrative proceedings in which the Commission imposed civil penalties in support of its position that the fines in its case was disproportionate to its conduct.

On consideration of the positions of the Parties, we disagree with *Blue Pilot* that its Petition meets the standards of *Duick* regarding this issue. **Our *July 19 Order* considered *Blue Pilot's* position and, in fact, granted in part, its Exceptions filed based on this argument.**

\* \* \* \* \*

Based on the foregoing, we shall deny reconsideration finding that the Petition does not meet the standards of *Duick*.

*Blue Pilot* at 20-21 (emphasis added). In evaluating petitions for reconsideration, as in *Blue Pilot*, where a party raises an issue in its exceptions, which the Commission then addresses in its order, reconsideration is properly denied.

Here, the Commission considered Aqua's position and adjudicated the same in its *February 6 Order*, in which the Commission restated Aqua's argument that it raised in Exceptions and expressly denied Aqua's position, stating:

A [sic] discussed above, Aqua makes the alternative argument that, if the Commission determines that the Company cannot increase rates to East Whiteland customers at this time and until the Supreme Court rules on the pending appeal, then the revenue increase agreed to in the Settlement should take effect immediately if the Supreme Court reverses the Commonwealth Court's decision in *Cicero*. Aqua Exc. at 11-12. Given the uncertainty of how the Supreme Court will rule in *Cicero* and the variety of possible outcomes, *see supra*, it would not be possible to craft a specific remedy because it would require speculation on the actual language of the ultimate order. For example, it is possible, although not certain, that the Supreme Court could reverse *and* remand the matter to the Commission for further proceedings. Under that scenario, it would be improper to immediately authorize any rate increase when it may be necessary to have further proceedings consistent with any directive of the Supreme Court. Accordingly, we shall deny Aqua's alternate request.

*February 6 Order* at 131, n. 35. In this passage, the Commission restated Aqua's argument, cited to where the argument was raised in Aqua's Exceptions, provided analysis, and then determined that the relief requested should not be granted. *Id.* Importantly, Aqua admits in its Petition that the Commission addressed its request for relief.<sup>4</sup> Petition at ¶ 37. Despite Aqua's characterization of the Commission's analysis of the issue as being "in passing," Aqua's position is without merit. Petition at ¶ 37.

As the Commission has frequently held, "our reconsideration of any prior Commission order is a narrow review that is judiciously granted. Absent the presentation of new and novel arguments not previously raised and considered, such a grant is inappropriate...the fact that we do not agree or adopt a party's position on a particular issue does not mean that we have overlooked

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<sup>4</sup> Aqua claims that the Commission only addressed its request for alternative relief "in passing." Petition at ¶ 37. However, as stated in the Commission's Order, "[t]he Commission is not required to consider expressly or at length each contention or argument raised by the parties." Order at 15 (citing *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

the evidence in reaching its decision.” *Pa. PUC v. Verizon Pa., Inc.*, Docket Nos. R-00994697 *et al* (Order entered Aug. 29, 2001)<sup>5</sup> at 8-9. Clearly, Aqua’s request for consideration fails to meet the *Duick* standard and their request for relief and/or clarification should be denied.

Furthermore, after conceding that the Commission did address its argument, Aqua goes on to propose language which the Commission could use in an order to permit Aqua to recover increased rates from East Whiteland customers. *Id.* at ¶ 38. Specifically, Aqua’s proposed ordering paragraph would apply “if the Supreme Court of Pennsylvania (1) reverses and vacates *Cicero*, (2) affirms the *East Whiteland Order*, and (3) does not remand the matter back to the Commission for further proceedings.” *Id.* Aqua contends that such a paragraph “requires no speculation as to the outcome on the Commission’s part.” *Id.* at ¶ 39.

However, in the Commission’s *February 6 Order*, it states that there are a “variety of possible outcomes.” *February 6 Order* at n. 35. Indeed, the evidentiary record reflects that there is no certainty regarding how or when the Pennsylvania Supreme Court may rule on *Cicero*. *See*, OCA St. 1 at 11-13; OCA St. 1SR at 15; OCA St. 2 at 26-27; OCA St. 2SR at 23. Under the Judicial Code, “[a]n appellate court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.” 42 Pa. C.S. § 706. While the Pennsylvania Supreme Court could issue an order which meets the conditions described by Aqua in the Petition, it may dispose of the *Cicero* case in any number of permutations of the relief available to the Court which may not entitle Aqua to the rate relief requested, as the Commission has previously explained in analyzing this very argument presented by Aqua during the course of the case. Furthermore, the Court may also reach a determination in the *Cicero*

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<sup>5</sup> Available at: <https://www.puc.pa.gov/pcdocs/1371333.pdf>.

proceeding after the time Aqua files its next Section 1308(d) request for rate relief, creating further concerns about the enforceability of the ordering paragraph Aqua proposes.

This is exactly the issue with Aqua's request, which was emphasized by the Commission in its *February 6 Order*, that "it would not be possible to craft a specific remedy because it would require speculation on the actual language of the ultimate order." *February 6 Order* at n. 35. Aqua is requesting the Commission to engage in speculation so that it may recover increased rates which the Commission determined are not, based on the record, just and reasonable. *Id.* at 136-43. It would not be in the public interest to engage in such speculation and, as a result, the Commission properly determined that an increase in rates for East Whiteland customers is not just and reasonable.

Additionally, while Aqua explains in its Petition that, until it is permitted to increase rates for East Whiteland consumers it will be prevented from having an opportunity to recover a return on its investment in the East Whiteland system since closing, the Commission already heard and rejected this argument. Petition at ¶ 35. As the Commission stated:

Regarding Aqua's fairness argument, we agree with the ALJs that although Aqua was not prohibited from closing on the transaction before the expiration of the appeal period, in doing so, the Company assumed the risks of its actions. In contrast, the Company did not assume such a risk during the 2017 acquisition proceeding to acquire the wastewater assets of New Garden Township and the New Garden Township Sewer Authority (collectively, New Garden). In that proceeding, between the time the Commission issued an initial CPC to Aqua and the remand of the appeal back to the Commission following the denial of allocatur, Aqua and New Garden did not close on the transaction. Indeed, Aqua did not claim New Garden assets in a rate proceeding until its 2021 general rate increase request, which was well after the relevant appeal periods.

We further agree with the ALJs that Aqua was in the best position to assess and choose its risk. It would be unfair to require East Whiteland customers to bear the risk of the Company's decision while the *East Whiteland Order* remained subject to appeal and modification or reversal.

*February 6 Order* at 141 (citations omitted). In other words, Aqua should have considered the risks associated with not being able to “recoup the return and depreciation incurred with respect to those assets, and the increased expenses incurred to provide service to East Whiteland Township customers, between the time of increased rates in this case and the next base rate case” when it elected to take title to the East Whiteland system assets without being in possession of a final, unappealable Commission order granting Aqua CPC authority to do so. Petition at ¶ 35. Instead, Aqua seeks to inequitably shift the risk of its own decision to consumers. The Commission and ALJs in this proceeding correctly found that it would not be just and reasonable to permit Aqua to shift that risk to consumers. *February 6 Order* at 141.

Furthermore, Aqua has indicated that it anticipates that it will be filing its next request for a general rate increase under Section 1308(d) of the Public Utility Code approximately two years from the filing date of the instant proceeding, or around March of 2026. Aqua St. 3-R at 13. This means that there will be little to no lag between the fully projected future test year (FPFTY) in this proceeding, ending December 31, 2025, and the historic test year which will be used in the following rate proceeding. OCA St. 1SR at 12-13. Between rate cases, Aqua will collect revenue in excess of its actual expenses and the return on used and useful plant in service at the time of the Commission’s order in this proceeding through the use of its FPFTY and the Distribution System Improvement Charge (DSIC). OCA St. 1 at 21-29. So, while denying the Petition will not permit Aqua to raise rates on one days’ notice to East Whiteland consumers before Aqua’s next rate case, Aqua will maintain the opportunity to earn sufficient revenue through the use of frequent rate case filings and the DSIC in order to provide its customers with adequate service.

While Aqua claims that permitting it to increase East Whiteland rates between rate cases if *Cicero* is vacated and the *East Whiteland Order* is reinstated “would actually maintain the *status*

*quo*,” Aqua fails to describe how the Commission’s *February 6 Order* fails to maintain the *status quo*. Petition at ¶¶ 40-41. Namely, East Whiteland customers are paying the rates which were in effect at the time that Aqua closed on the transaction, as required by the Public Utility Code. 66 Pa. C.S. § 1329(d)(1)(v). That rate cannot be increased “until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission.” 66 Pa. C.S. § 1329(d)(4). Because new rates have not been approved for Aqua pursuant to a base rate case proceeding, East Whiteland rates remain in effect: this is the *status quo* pursuant to the Public Utility Code. Permitting Aqua to increase East Whiteland customers’ rates between rate cases would not be maintaining the *status quo* but would subvert the requirements of the Public Utility Code by granting a highly speculative increase – which has not been explicitly approved by the Commission, though it was agreed-to in settlement – upon the condition that the Pennsylvania Supreme Court take a particular action. The number of qualifying conditions precedent which would have to be attached to an order of the Commission to grant Aqua the relief it seeks create too much attenuation from the *status quo* to be just and reasonable.

The Commission explicitly considered and rejected Aqua’s arguments regarding fairness and maintenance of the *status quo* in the *February 6 Order*. *February 6 Order* at 139-42. The Commission correctly determined in the *February 6 Order* that the public interest weighed against an increase in rates to East Whiteland customers and, furthermore, the Commission did not state that the \$6.4 million increase contained in the Settlement would have been just and reasonable if Aqua had certificate authority to increase rates. Aqua presented no meritorious basis in its Petition to warrant modification of the Commission’s *February 6 Order*; rather, Aqua merely reiterated its baseless arguments from its Briefs and Exceptions. Aqua assumed the risk its Petition describes as “unfair,” and ratepayers should not be responsible for funding Aqua’s assumption of that risk, as

the Commission has rightfully analyzed and already decided. Therefore, Aqua's Petition should be denied as insufficient in merit to warrant a modification of the Commission's *February 6 Order*.

**C. To the extent Aqua's Petition is read as requesting the Commission to rescind its finding that the Settlement rates are not just and reasonable for East Whiteland customers, the Commission's *February 6 Order* is clear and correct as to denying a rate increase to East Whiteland Township at this time.**

In the Petition, Aqua attempts to mask its request that the Commission rescind its determination in its *February 6 Order* that the rate increase in Paragraph 95 of the Settlement is not just and reasonable as a question of gradualism. This is improper and incorrect.

Aqua, in its Petition, raises the concern that:

While the Commission claims that Aqua PA can seek to increase these rates in a future base rate proceeding if the Supreme Court of Pennsylvania reverses *Cicero* and affirms the *East Whiteland Order*, this reasoning ignores that this outcome will result in a substantially larger, single rate increase for East Whiteland Township customers in that later base rate proceeding. Conversely, Aqua PA's alternative proposal would more gradually implement rate increases for East Whiteland Township customers.

Petition at ¶ 42.

Aqua did not address this issue in its Briefs or Exceptions. Nevertheless, Aqua is not entitled to reconsideration merely because it raised the argument of rate gradualism for the first time in its Petition.

The Commission recently determined that a complainant was not entitled to reconsideration on her claim merely because she raised an argument for the first time in her petition for reconsideration. *Edwards v. Duquesne Light Company*, Docket No. C-2018-3002741 (Order entered Jan. 8, 2025)<sup>6</sup> (*Edwards*) at 14-15. In *Edwards*, the complainant argued, for the first time in her Petition for Reconsideration, that Electric Distribution Companies should warn consumers and protect them from smart meter danger before installation thereof and that the installation of

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<sup>6</sup> Available at: <https://www.puc.pa.gov/pcdocs/1861657.pdf/>.

smart meters violated her rights under Article I, Section 27 of the Pennsylvania Constitution (the Environmental Rights Amendment). *Id.* However, the Commission determined that the complainant should have raised these issues prior to the close of the record or at hearing, as the complainant was able to do so. *Id.* Thus, even when a new angle is presented, under *Duick*, the Commission is bound to consider if the arguments should have been raised during the course of the case and in the context of the case for purposes of granting reconsideration. *Id.*

Here, Aqua's attempt to paint its request for increased rates as a way to mitigate future increases to rates should be rejected. First, Aqua is in control of the increases to rates that it proposes; if Aqua is concerned about rate shock, then it should propose lower rates in its next proceeding for East Whiteland customers, should it have legal authority to do so. Second, Aqua's alleged concern for the gradual implementation of rate increases for East Whiteland customers is internally inconsistent and is directly at odds with the final sentence in the Petition's Paragraph 42: "In addition, awaiting a later rate case would deprive Aqua PA of its right to increase rates to recover investments and return immediately if the Supreme Court affirms the Commission's *East Whiteland Order*." Petition at ¶42. In essence, Aqua's argument is nothing more than a repackaging of its fundamental fairness concern already heard and rejected by the Commission (as discussed above). *See supra*. As in *Edwards*, Aqua's Petition may appear to raise new issues, but that does not mean that the "new or novel" arguments standards established in *Duick* are satisfied.

The Commission has correctly ruled that Aqua is not authorized to include the East Whiteland system in its ratemaking rate base at this time. The Commission's *February 6 Order* does not require clarification to that end, as Aqua has not offered anything new for the Commission to consider. As the *Edwards* case demonstrates, the *Duick* standard for reconsideration is a very high standard to prove. Aqua is simply trying to take a second bite at the apple in this case, of

which it is unauthorized to do so by law, even if it attempts to thinly veil its old arguments as new concerns.

Furthermore, the Commission should dismiss Aqua's argument that the Commission's *February 6 Order* did not clearly address "the effective date of the East Whiteland settlement rates if the Supreme Court supports the Commission's *East Whiteland Order* and reverses the Commonwealth Court's *Cicero* decision." Petition at ¶ 31. Aqua's request for a rate increase for Rate Zone 13 has been denied by the Commission; in other words, Aqua does not have authorization to implement the East Whiteland settlement rates if the Supreme Court reverses *Cicero*. Rates that are not just and reasonable cannot go into effect. *See* 66 Pa. C.S. § 1301. The Commission has rightly determined that the East Whiteland settlement rates are not just and reasonable because Aqua failed to carry its burden of proof "that the wastewater assets acquired from East Whiteland can be projected to be included in its ratemaking rate base by the end of the FPFTY." *February 6 Order* at 142; *see also* 66 Pa. C.S. §§ 315(a), 315(e), 1301.

Thus, Aqua is not entitled to the relief requested in its Petition, and the Petition should be denied as legally deficient under *Duick*.

### III. CONCLUSION

Aqua's Petition for Partial Reconsideration and/or Clarification is a clear attempt to relitigate the arguments raised by Aqua in its Briefs and Exceptions. A petition for reconsideration is not a second bite at the apple. Aqua's Petition should be denied because it fails to meet the *Duick* standard. Aqua's Petition also attempts to relitigate issues regarding the risk it assumed in closing prematurely on the East Whiteland transaction, arguments which the Commission rejected in the *February 6 Order*. Therefore, because Aqua's Petition fails to meet the *Duick* standard and the arguments presented by Aqua on why it should receive the relief requested are without merit, the OCA respectfully requests that the Commission deny the Petition.

Respectfully submitted,

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Dated: February 24, 2025