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PENNSYLVANIA
UTILITY LAW PROJECT

February 24, 2025

VIA E-FILE

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

**Re: Pa. PUC v. Aqua Pa., Inc., and Aqua Pa. Wastewater, Inc.,
R-2024-3047822 & R-2024-3047824**

***Letter of CAUSE-PA in lieu of Answer to Petition of Aqua Pennsylvania, Inc.
and Aqua Pennsylvania Wastewater, Inc. for Partial Reconsideration and/or
Clarification of the February 7, 2025, Order of the Pa. Public Utility Commission***

Dear Secretary Chiavetta:

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) submits the following Letter in lieu of a formal Answer to the Petition of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. for Partial Reconsideration and/or Clarification of the February 7, 2025 Order of the Pennsylvania Public Utility Commission (Petition). As explained herein, CAUSE-PA opposes the Petition of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (Aqua). We urge the Commission to reject Aqua's Petition and uphold the Order in this matter entered February 7, 2025.

On November 7, 2024, a Joint Petition for Settlement (Settlement) was filed in the instant matter. The parties to the Settlement specifically reserved for litigation issues of whether Aqua should be permitted to include East Whiteland Township in its ratemaking rate base and whether increased rates for East Whiteland Township operations should be established in the present proceeding.¹ In the Settlement, parties agreed to specific rate effects if the Commission authorized a rate increase for East Whiteland Township operations.²

¹ Order at 36.

² Settlement ¶ 95(a, b-c).

On December 9, 2024, the Administrative Law Judges (ALJ) Gail M. Chiodo and Alphonso Arnold, III issued a Recommended Decision (RD) in this matter.³ The RD found that Aqua’s proposed increase to East Whiteland Township rates was not permissible because of the Commonwealth’s holding in the *Cicero* matter.⁴ The RD further found that “on balance, the best course of action is to maintain the status quo of the East Whiteland rates while this issue is resolved with certainty.”⁵ Parties to this proceeding filed exceptions to the RD on December 23, 2024, with reply exceptions being filed on December 30, 2024. In its Main Brief and Exceptions, Aqua argued that it should be permitted to increase its rates to East Whiteland Township customers, subject to customer refunds if *Cicero*⁶ is reversed.⁷

On February 7, 2025, the Commission entered its Order, which adopted the RD and approved the Settlement, as modified by the Order. In its Order, the Commission agreed with the RD that the proposed increase to East Whiteland Township’s rates was impermissible given the Commonwealth Court’s holding in *Cicero*.⁸ The Order denied the rate increase with respect to East Whiteland Township to “maintain the status quo” until ownership of East Whiteland Township can be determined.⁹

On February 14, 2025, Aqua filed the instant Petition. In its Petition, Aqua seeks reconsideration and/or clarification of whether Aqua PA will be authorized to increase rates related to East Whiteland Township’s operations if the Supreme Court of Pennsylvania reverses the *Cicero* decision.¹⁰ Aqua argues that, until it is permitted to increase rates to East Whiteland Township customers, it will be prevented from being able to recover on the investment approved by the Commission in its East Whiteland Order.¹¹ Aqua also argues that, without confirmation that it may immediately implement East Whiteland rates if the Supreme Court reverses *Cicero*, it is not aware of any process by which it can recoup return and depreciation of assets, and increased expenses incurred related to providing service to East Whiteland Township customers between base rate proceedings.¹² Aqua requests that the Commission implement a conditional approach – whereby

³ *Pa. PUC, et al., v. Aqua Pa. Inc. and Aqua Pa. Wastewater, Inc.*, Docket Nos. R-2024-3047822 and R-2024-3047824, *et al.* (Recommended Decision issued December 9, 2024).

⁴ RD at 149-152.

⁵ RD at 150.

⁶ *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023) alloc. granted *Cicero v. Pa. PUC*, Nos. 47-49 MAP 2024 (Pa. June 14, 2024). See OCA Reply Exceptions at 1, FN 1. “The *Cicero* case is an appeal of a Commission order which authorized Aqua to acquire the wastewater system assets of East Whiteland Township, in which the Commonwealth Court reversed the decision of the Commission, which has since been appealed to the Pennsylvania Supreme Court and is currently pending before that Court. See Application of Aqua Pennsylvania Wastewater, Inc. to acquire the wastewater assets of East Whiteland Township, Docket No. A-2021-3026132 (Order entered July 29, 2022) (East Whiteland Order).”

⁷ Aqua Main Brief at 16, 21; Aqua Exceptions at 10-12.

⁸ Order at 136-142.

⁹ Order at 140, 142.

¹⁰ Pet. at 1-2; 14.

¹¹ Pet. at 13, ¶ 42.

¹² Pet. at 11; ¶ 35.

Aqua would be permitted to increase its rates as outlined in Paragraph 95 and Appendix G-1 of the Settlement if the *Cicero* is reversed, vacated, and not remanded.¹³

CAUSE-PA strongly opposes the requests set forth in Aqua’s Petition. As a threshold matter, Aqua wholly fails to meet the standard required for reconsideration and/or clarification of a Commission decision. As discussed in *Duick v. Pennsylvania Gas and Water Co.*, parties should not be permitted “to raise the same questions which were specifically considered and decided against them” and petitions should raise “new and novel arguments, not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.”¹⁴

The Petition requests that the Commission issue an Order which conditions rate increases for East Whiteland Township customers on the outcome of the *Cicero* appeal. While Aqua attempts to reframe the argument advanced in Exceptions, both are reliant on prejudgment of the Supreme Court’s decision in *Cicero*. Aqua has argued this point extensively through the course of this proceeding. In its Main Brief, Aqua raised extensive arguments that the Commission should approve Aqua to increase the rates for East Whiteland Township customers, and that – absent its requested relief – Aqua would be at risk for the costs of obligations to East Whiteland customers once closed on the acquisition.¹⁵ Similarly, in its Exceptions filed in this matter, Aqua argued that it would be irreparably harmed if it is not permitted to increase rates for East Whiteland customers, and that it is “not aware of any process by which it can recoup the return and depreciation incurred with respect to those assets, and the increased expenses incurred to provide service to East Whiteland customers, between the time of increased rates in this case and the next base rate case.”¹⁶ In the instant Petition, Aqua merely reiterates the same arguments it has maintained through the entirety of this proceeding. The arguments that underlie Aqua’s Petition are neither new nor novel – and do not raise considerations which were otherwise overlooked by the Commission. Thus, Aqua’s Petition for Reconsideration must be denied because it fails to meet the standards set forth in *Duick* to warrant reconsideration and/or clarification.

Even if the Commission ultimately determines that the instant Petition warrants reconsideration and/or clarification pursuant to the *Duick* standard, Aqua’s requests in its Petition should be denied as they require the Commission to engage in extensive speculation and prejudgment of the Supreme Court’s decision in *Cicero*. Aqua argues that the Commission can enter a conditional order which permits Aqua to increase its rates if *Cicero* affirms the Commission’s underlying East Whiteland acquisition order and does not remand the matter.¹⁷ However, as the Commission points out in its Order, Aqua’s Certificate of Public Convenience (CPC) is “uncertain, speculative, and tenuous at best.”¹⁸ It is inappropriate to grant relief based on the speculative possibility that the *Cicero* matter is reversed and not remanded when it is “undisputed that there are multiple

¹³ Pet. at 11-12; ¶ 38.

¹⁴ *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C.553, 558-559 (1982).

¹⁵ Aqua Main Brief at 16.

¹⁶ Aqua Exceptions at 10.

¹⁷ Pet. at 11-12; ¶ 38.

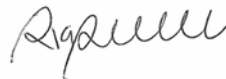
¹⁸ Order at 138, citing RD at 150.

possible outcomes of the case on appeal...”.¹⁹ Doing so would run contrary to the very heart of due process.

If *Cicero* is ultimately reversed in a manner which makes it appropriate for Aqua to seek to increase East Whiteland Township customers’ rates, Aqua can file a subsequent request with the Commission. Aqua argues that requiring a subsequent filing is improper because Aqua should be able to recover its investments related to East Whiteland “immediately”.²⁰ However, as the Commission points out, Aqua assumed the risks of its actions when it chose to close on the East Whiteland transaction before expiration of the appeal period.²¹ We note that Aqua also argues in its Petition that requiring a subsequent filing will cause East Whiteland Township customers to experience a large, single rate increase compared to a more gradual increase.²² However, Aqua’s arguments again to fail to consider the broad range of possibilities that may result from the *Cicero* appeal, including remand for further proceedings. CAUSE-PA opposes any suggestion that it would be just and reasonable to allow Aqua to recover rates for services it provided before a final, *unappealable* decision was reached regarding Aqua’s proposed East Whiteland acquisition.

For the foregoing reasons, CAUSE-PA opposes Aqua’s Petition for Reconsideration in this matter. We urge the Commission to reject Aqua’s Petition for Reconsideration and uphold its Order entered on February 7, 2025.

Respectfully submitted,
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¹⁹ Order at 138.

²⁰ Pet. at 13, ¶ 42; 11, ¶ 35.

²¹ Order at 141.

²² Pet. at 13, ¶ 42.

Verification

I, Elizabeth R. Marx, Esq., legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



On behalf of the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)

Date: February 24, 2025

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I hereby certify that I have, on this day, served copies of the **Letter in lieu of Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania to Petition of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. for Partial Reconsideration and/or Clarification** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party), as modified by the Scheduling Order in this matter dated July 12, 2024, in the manner and upon the persons listed below.

VIA EMAIL

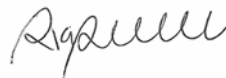
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