
Garrett P. Lent

glent@postschell.com
717-612-6032 Direct
717-731-1985 Direct Fax
File #: 204823

March 6, 2025

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265


**Re: Pennsylvania Public Utility Commission, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2024-3047822, et al.**

Dear Secretary Chiavetta:

Attached for filing is the Answer of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., to the Petition for Reconsideration of SCH USA, LLC in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/dmc
Attachment

cc: The Honorable Gail Chiodo (*via email; w/attachment*)
The Honorable Alphonso Arnold III (*via email; w/attachment*)
Office of Special Assistants (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL

Steven C. Gray, Esquire
Rebecca Lyttle, Esquire
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Forum Place
Harrisburg, PA 17101
sgray@pa.gov
relyttle@pa.gov

Melanie El Atieh, Esquire
Jacob Guthrie, Esquire
Katherine Kennedy, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
melatieh@paoca.org
jguthrie@paoca.org
kkennedy@paoca.org
ocaaqua2024@paoca.org

Carrie B. Wright, Esquire
Michael A. Podskoch, Jr.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265
carwright@pa.gov
mpodskoch@pa.gov

John W. Sweet, Esquire
Ria M. Pereira, Esquire
Elizabeth R. Marx, Esquire
Lauren Berman, Esquire
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Karen O. Moury, Esquire
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellot, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
cshultz@eckertseamans.com
Counsel for New Wilmington Municipal Authority

Renardo L. Hicks, Esquire
Bryce R. Beard, Esquire
Eckert Seaman Cherin & Mellott, LLC
213 Market Str., 8th Floor
Harrisburg, PA 17101
rhicks@eckertseamans.com
bbeard@eckertseamans.com
Counsel for SCH USA, LLC

Lauren M. Burge, Esquire
Eckert Seaman Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com
Counsel for SCH USA, LLC

Adeolu A. Bakare, Esquire
Charis Mincavage, Esquire
Harrison Ryan Block, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mcneeslaw.com
cmincavage@mcneeslaw.com
rblock@mcneeslaw.com
Counsel for Large Users Group

Scott T. Wyland, Esquire
Elana D. Schnall, Esquire
Salzmann Hughes, P.C.
1801 Market Street, Suite 300
Camp Hill, PA 17011
swyland@salzmannhughes.com
eschnall@salzmannhughes.com
*Counsel for Sandy Township, Treasure
Lake Property Owners Association,
Inc., Barry Abbott and Richard Whitaker*

Robert J. Fogarty
628 Fair Street
Nescopeck, PA 18635
Rjf12@verizon.net

Susan Unvarsky and Sharon Ellis
151 Brook Street
Sugar Notch, PA 18706
Sunvarsky24@gmail.com

Steven Boyanowski
34 Willow Way
Dallas, PA 18612
judyccd@gmail.com

State Representative Christina Sappey
698 Unionville Road
Kennett Square, PA 19348
scooper@pahouse.net

John Day
614 Runyon Avenue
Piscataway, NJ 08854
john@johnday.us

Date: March 6, 2025


Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* :
 :
v. : Docket Nos. R-2024-3047822, *et al.*
 :
Aqua Pennsylvania, Inc. :

Pennsylvania Public Utility Commission, *et al.* :
 :
v. : Docket Nos. R-2024-3047824, *et al.*
 :
Aqua Pennsylvania Wastewater, Inc. :

**ANSWER OF AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA
WASTEWATER, INC. TO THE PETITION FOR RECONSIDERATION OF SCH USA,
LLC**

Kimberly A. Joyce, Esq. (ID # 86605)
Alexander R. Stahl, Esq. (ID # 317012)
762 W. Lancaster Ave
Bryn Mawr, PA 19010
Phone: 610-645-1077
Phone: 610-645-1130
E-mail: kajoyce@essential.co
E-mail: astahl@aquaamerica.com

Michael W. Hassell, Esq. (ID # 34851)
Garrett P. Lent, Esq. (ID # 321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
Phone: 717-731-1970
E-mail: mhassell@postschell.com
E-mail: glent@postschell.com

Dated: March 6, 2025

*Counsel for Aqua Pennsylvania, Inc., and
Aqua Pennsylvania Wastewater, Inc.*

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND	1
III. LEGAL STANDARDS	4
IV. ARGUMENT	5
A. SCH USA’S REQUESTS FOR RECONSIDERATION SHOULD BE DENIED.....	5
1. SCH USA’s Argument That Aqua PA Did Not Assume SCH USA’s EDUs From A Prior, 2010 Settlement Agreement With The Township Of Kidder Is Neither New Nor Novel, And Was Reviewed By Both The RD And The <i>2024 Base Rate Case Order</i>	5
2. Neither The RD Nor The <i>2024 Base Rate Case Order</i> Overlook The Commission’s Prior Review And Approval Of The Flat-Rate Billing Method Used By Aqua PA To Charge SCH USA For Wastewater Service In The <i>2018 Base Rate Case Order</i> or the <i>2021 Base Rate Case Order</i>	6
3. Aqua’s Current Billing Practices For SCH USA Do Not Violate Aqua’s Tariff.....	7
4. Both The RD And The <i>2024 Base Rate Case Order</i> Fully Reviewed And Correctly Rejected SCH USA’s Arguments Regarding The Feasibility And Reasonableness Of Its Proposed Alternatives To Flat-Rate Billing.....	8
V. CONCLUSION.....	10

I. INTRODUCTION

Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, “Aqua PA,” “AP” or the “Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submit this Answer to the Petition for Reconsideration filed by SCH USA, LLC (“SCH USA”) on February 26, 2025. In its Petition, SCH USA requests reconsideration and clarification of the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order entered on February 7, 2025, at Docket Nos. R-2024-3047822 and R-2024-3047824, *et al.* (“*Aqua 2024 Base Rate Case Order*”). SCH USA specifically requests that the Commission grant reconsideration to (a) reverse its decision regarding Aqua PA’s current practice of billing SCH USA a flat rate for unmetered wastewater service based on equivalent dwelling units (“EDUs”), (b) reverse its decision that Aqua PA’s wastewater billing practices for SCH USA does not violate Aqua PA’s wastewater tariff, and (c) reverse its decision that SCH USA failed to demonstrate reasonable and feasible alternatives exist that would allow Aqua PA to bill SCH USA for wastewater service on actual usage.

As explained herein, SCH USA’s requests for reconsideration fail to raise any new arguments not previously heard by the Commission. For these reasons, and as explained further herein, SCH USA’s Petition fails to meet the Commission’s *Duick* standard for reconsideration, and should be denied.

II. BACKGROUND

1. This proceeding was initiated on May 23, 2024, when Aqua PA filed on a consolidated basis Tariff Water – PA P.U.C. No. 4 and Tariff Sewer – PA P.U.C. No. 4 with the Commission to be effective for service rendered on or after July 22, 2024. Therein, the Company proposed changes to Aqua PA’s base water and wastewater rates designed to produce a total increase in annual revenues of \$126,675,472 based upon data for a fully projected future test year

(“FPFTY”) ending December 31, 2025. The filing was made in compliance with the Commission’s regulations and contains all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

2. As a part of its filing, Aqua PA proposed to maintain its existing, flat-rate billing method based upon EDUs for unmetered wastewater customers in Rate Zone 4, which is SCH USA’s Rate Zone for wastewater service. Importantly, the flat-rate billing method maintained by Aqua PA is based on EDUs that are applicable to SCH USA, pursuant to the tariffs and rates approved by the Commission in Aqua PA’s *2018 Base Rate Case Order*¹ and its *2021 Base Rate Case Order*.²

3. Aqua PA also proposed to revise the definition of EDU in its wastewater tariff.

4. SCH USA filed a Petition to Intervene in this proceeding on June 27, 2024.

5. On June 13, 2024, the Commission issued an Order suspending Tariff Water – PA P.U.C. No. 4 and Tariff Sewer – PA P.U.C. No. 4 until February 22, 2025, unless otherwise permitted by Commission Order to become effective at an earlier date.

6. As a part of its testimony in this proceeding, SCH USA challenged Aqua PA’s existing practice of billing SCH USA a flat rate for unmetered wastewater service based on EDUs. SCH USA argued Aqua PA’s billing practices for SCH USA violate Aqua PA’s wastewater tariff, and proposed alternatives to flat-rate billing that SCH USA argued would reasonably and feasibly allow Aqua PA to bill SCH USA for wastewater service on actual usage.

¹ *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., et al.*, Docket Nos. R-2018-3003558, R-2018-3003561, *et al.* (Order entered May 9, 2019) (“*2018 Base Rate Case Order*”).

² *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., et al.*, Docket Nos. R-2021-3027385, R-2021-3027386, *et al.* (Order entered May 16, 2022) (“*2021 Base Rate Case Order*”).

7. On December 9, 2024, the Administrative Law Judges Gail M. Chiodo and Alphonso Arnold III (collectively, the “ALJs”) issued a Recommended Decision (“RD”).³ Pertinent to SCH USA’s Petition for Reconsideration, the RD correctly concluded “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.” RD, at p. 166. In addition, the RD explained that “the facilities at the Resort are not individually metered” and 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.” RD, at p. 167 (citing *2021 Base Rate Case Order*, at p. 272). In addition, the RD concluded that SCH USA had failed to demonstrate reasonable and feasible alternatives to flat-rate wastewater billing existed with respect to SCH USA, and also noted that the complications arising from installing water meters at SCH USA’s facilities would result in substantial costs “which would ultimately be borne by Aqua wastewater customers at large.” RD, at p. 168.

8. Exceptions to the RD were filed on December 23, 2024.

9. Replies to Exceptions were filed on December 30, 2024.

10. The Commission entered the *Aqua 2024 Base Rate Case Order* on February 27, 2025. The Commission affirmed the RD in all respects regarding SCH USA’s issues and denied SCH USA’s exceptions. *Aqua 2024 Base Rate Case Order*, at pp. 159-167.

11. On February 22, 2025, SCH USA filed its Petition for Reconsideration.

12. For the reasons explained below, the SCH USA’s Petition should be denied.

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).

III. LEGAL STANDARDS

13. The Commission’s standard for reviewing petitions for rehearing, reopening of the record, and reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 et al., 1982 Pa. PUC LEXIS 4, at *11-13 (Opinion and Order Upon Reconsideration dated Dec. 17, 1982) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[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....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Consequently, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard—“by the Commission”—focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

14. A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the

Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (Pa. 1980).

IV. **ARGUMENT**

A. **SCH USA'S REQUESTS FOR RECONSIDERATION SHOULD BE DENIED**

1. **SCH USA's Argument That Aqua PA Did Not Assume SCH USA's EDUs From A Prior, 2010 Settlement Agreement With The Township Of Kidder Is Neither New Nor Novel, And Was Reviewed By Both The RD And The 2024 Base Rate Case Order**

15. SCH USA first argues that “the Order overlooks the fact that Aqua did not assume the provisions of the settlement related to SCH USA's EDUs, and therefore the EDUs were not appropriately transferred from [the Township of] Kidder to Aqua as the Order states.” SCH USA Petition, ¶ 5. It then rehashes the same arguments from its Briefs⁴ that were rejected by the RD,⁵ and the same arguments from its Exceptions⁶ that were rejected by the Commission.⁷

16. The Commission did not overlook whether or not Aqua PA assumed the provisions of the settlement related to SCH USA's EDUs. Instead, the Commission explained, as Aqua PA did below, that those EDUs had been included in Aqua PA's tariff as a result of a number of prior proceedings. Indeed, “the Commission approved Aqua's acquisition of the Kidder Township wastewater system in 2012 at Docket No. A-2012-2298067, and the Compliance Tariff that was filed as part of that proceeding explicitly lists out the number of EDUs associated with the Resort.”

2024 Base Rate Case Order, at p. 160. Thereafter:

⁴ SCH USA MB, at pp. 6-8; SCH USA RB, at pp. 2-4.

⁵ RD, at pp. 155-156, 166-167.

⁶ SCH USA Exc., at pp. 3-4.

⁷ *2024 Base Rate Case Order*, at p. 160.

the Commission has reviewed the EDUs billed to SCH USA's accounts as part of Aqua's previous two base rate proceedings in 2018 and 2021, which were included in the revenue requirements as set forth in the respective Commission Orders in both the Aqua 2018 Rate Case and the Aqua 2021 Rate Case. The Commission approved those rates through the Compliance Tariffs filed in the referenced dockets and those rates were determined by the Commission to be just and reasonable.

Id., at p. 160.

17. SCH USA does not raise any new or novel arguments with respect to the EDUs its bills are based upon pursuant to Aqua PA's Commission-approved wastewater tariff. Rather, SCH USA's argument regarding the "assignment" of EDUs is an attempt to rehash an issue that was first disposed of in 2012—when the EDUs charged to SCH USA were approved as a part of the Commission's approval of Aqua PA's compliance tariff in Docket No. A-2012-2298067—and affirmed twice over by the Commission's approval of the compliance tariffs filed pursuant to the *2018 Base Rate Case Order* and the *2021 Base Rate Case Order*.

18. For these reasons, SCH USA's first argument fails to satisfy the *Duick* standard for reconsideration and should be denied.

2. Neither The RD Nor The 2024 Base Rate Case Order Overlook The Commission's Prior Review And Approval Of The Flat-Rate Billing Method Used By Aqua PA To Charge SCH USA For Wastewater Service In The 2018 Base Rate Case Order or the 2021 Base Rate Case Order

19. SCH USA's second argument fails for the same reasons as its first argument. SCH USA Petition, ¶ 9. As an initial matter, this argument is neither new or novel. It was raised in

SCH USA's Briefs⁸ and rejected by the RD,⁹ and it was raised in SCH USA's Exceptions¹⁰ and denied by the *2024 Base Rate Case Order*.¹¹

20. In addition, as explained above, SCH USA's claim that "[t]he Order also overlooks the fact that neither the 2018 nor 2021 Aqua rate cases specific approved an allocation of costs or number of EDUs applicable to SCH USA" fails to acknowledge that the EDUs applicable to SCH USA were approved as a part of Aqua PA's compliance tariff at Docket No. A-2012-2298067. *2024 Base Rate Case Order*, at p. 160. Those same EDUs were also approved as a part of Aqua PA's compliance tariffs in the *2018 Base Rate Case* and *2021 Base Rate Case*.

21. SCH USA's further assertion that "[t]he Order ignores that there was no specific discussion of SCH USA's EDUs or costs in Aqua's previous rate cases" does not provide a basis for reconsideration. SCH USA Petition, ¶ 11. SCH USA raised this argument below, and it was considered and rejected. SCH USA Exc., at pp. 3-4; *2024 Base Rate Case Order*, at pp. 160, 162 (specifically noting the approval of billing determinants in prior rate cases that were based upon SCH USA's EDUs). In addition, SCH USA's argument is simply incorrect for the reasons stated above.

22. For these reasons, SCH USA's second argument fails to satisfy the *Duick* standard for reconsideration and should be denied.

3. Aqua's Current Billing Practices For SCH USA Do Not Violate Aqua's Tariff

23. SCH further claims that "[t]he Order also overlooks the fact Aqua's billing practices as applied to SCH USA violates the clear terms of Aqua's tariff." SCH USA Petition, ¶

⁸ See SCH USA MB, at p. 10; SCH USA RB, at p. 4.

⁹ RD, at pp. 166-167.

¹⁰ SCH USA Exceptions, at pp. 3-4.

¹¹ *2024 Base Rate Case Order*, at p. 160.

12. Again, this is not a new or novel argument and was not overlooked.

24. Rather, this argument was raised by SCH USA as a part of its challenge of the EDU's assigned to it in Briefs. SCH USA MB, at p. 8; SCH USA RB, at pp. 3-4.

25. Similarly, the Commission reviewed SCH USA's Exceptions and explained that one of SCH USA's contentions was "that the ALJs ignored the fact that Aqua's position violates its own tariff by failing to calculate EDUs in the manner described in, and consistent with, the tariff." *2024 Base Rate Case Order*, at pp. 152-153. However, the Commission "found no basis to reverse or modify the ALJs' recommendation" and denied SCH USA's Exceptions. *Id.*, at p. 167.

26. Moreover, as explained in Aqua PA's Reply Brief and Aqua PA's Replies to Exceptions, this argument rests upon SCH USA's assertion that the EDUs assigned to it by the settlement agreement with the Township of Kidder should not apply. Aqua PA RB, at p. 17; Aqua PA Replies to Exc., at p. 3. It also ignores the fact that SCH USA's rate has been approved previously by the Commission. Aqua PA RB, at p. 17; Aqua PA Replies to Exc., at p. 3. Both the ALJs and the Commission reviewed and disposed of these arguments.

27. For these reasons, SCH USA's third argument fails to satisfy the *Duick* standard for reconsideration and should be denied.

4. Both The RD And The 2024 Base Rate Case Order Fully Reviewed And Correctly Rejected SCH USA's Arguments Regarding The Feasibility And Reasonableness Of Its Proposed Alternatives To Flat-Rate Billing

28. Finally, SCH USA asserts that "the Order overlooks substantial evidence presented by SCH USA's expert witness Ronald Carrier showing that there are feasible and cost-effective methods that would allow SCH USA to be billed for actual usage." SCH USA Petition, ¶ 16. This is not correct.

29. Rather, the *2024 Base Rate Case Order* reviewed SCH USA arguments and evidence regarding the alternatives to flat-rate billing that it advanced in testimony. *2024 Base Rate Case Order*, at pp. 155-157 (describing SCH USA Exc. No. 3 regarding this issue). The Commission “agree[d] with the ALJs that SCH USA has failed to meet its burden to prove that any option is actually viable as it pertains to the Resort.” *Id.*, at p. 163.

30. SCH USA attempts to specifically focus on the fact that “Aqua is already using water meters to measure water consumer from private wells, as well as wastewater meters to measure actual water usage, in other parts of its system.” SCH USA Petition, ¶ 17. However, this statement, and each of the following arguments advanced in the Petition regarding SCH USA’s proposed alternatives, disregard the fact that Aqua PA fully explained why each specific alternative offered by SCH USA could not be applied to its system. The Commission then reviewed each of the alternatives offered, and fully explained why SCH USA failed to carry its burden. *2024 Base Rate Case Order*, at pp. 163-167.

31. Contrary to SCH USA’s claims, the Commission did not overlook any evidence. It simply found SCH USA’s evidence fell short because (a) it disregarded the makeup of its specific system and (b) it effectively seeks a special rate from Aqua PA that is not provided for in its tariff. *Id.*, at p. 166.

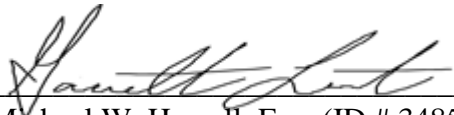
32. For these reasons, SCH USA’s fourth argument fails to satisfy the *Duick* standard for reconsideration and should be denied.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. respectfully request that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration filed by SCH USA, LLC.

Respectfully submitted,

Kimberly A. Joyce, Esq. (ID # 86605)
Alexander R. Stahl, Esq. (ID # 317012)
762 W. Lancaster Ave
Bryn Mawr, PA 19010
Phone: 610-645-1077
Phone: 610-645-1130
E-mail: kajoyce@essential.co
E-mail: astahl@aquaamerica.com


Michael W. Hassell, Esq. (ID # 34851)
Garrett P. Lent, Esq. (ID # 321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
Phone: 717-731-1970
E-mail: mhassell@postschell.com
E-mail: glent@postschell.com

Dated: March 6, 2025

Counsel for Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc.