BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson	:	
	:	C-2023-3043108
v.	:	C-2023-3043109
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the consolidated Formal Complaints of William Ferguson against Aqua Pennsylvania Wastewater, Inc. because he failed to prove that the public utility violated a statute, regulation, Commission order or tariff and because the claims he raises are barred by law and no relief can be granted.

HISTORY OF THE PROCEEDING

Revenue Complaint – Docket No. C-2023-3043108

On September 19, 2023, William Ferguson (Mr. Ferguson or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania Wastewater, Inc. (Aqua, the Company, or Respondent) alleging that there are irregularities in how Aqua set New Garden

wastewater tariffs in its rate case at Docket No. R-2021-3027386 (2021 Rate Case). In support of his claim, Complainant attached extensive documentation to the Complaint. As relief, the Complainant sought as follows: (1) revision of the accuracy of Aqua's compliance data; (2) a Commission investigation into whether Aqua is exceeding its allowed revenue; (3) a revision of Aqua's tariff schedule for New Garden that conforms to an allowed revenue of $4,428,399 per year based on actual use volumes; and (4) a recalculation of all ratepayer bills based on the revised tariffs, from the start of the May-2022 rate increase on, as well as a refund of all overcharges to its customers. This Complaint was docketed at C-2023-3043108 (Revenue Complaint).

October 10, 2023, Aqua filed an Answer and New Matter to the Revenue Complaint. In its Answer Aqua denied the material allegations of the Complaint, whereas in the New Matter Aqua averred that the Complainant participated in the public input hearings held in the 2021 Rate Case. Specifically, Aqua averred that, at the public input hearing held on November 12, 2021, at 1:00 p.m., Mr. Ferguson provided testimony under oath regarding the proposed rate increase and its applicability to New Garden customers. Mr. Ferguson presented no testimony challenging the *pro forma* usage data for New Garden customers. *See* New Matter ¶ 8.

In addition, Aqua averred that the Company addressed Mr. Ferguson's testimony in its testimony and its briefs, and that no party challenged the *pro forma* usage data specific to New Garden wastewater customers. On February 18, 2022, the Administrative Law Judge (ALJ) issued the Recommended Decision in the 2021 Rate Case. According to Aqua, the Recommended Decision addressed the issues raised by the Complainant at the public input hearings. On May 16, 2022, the Commission entered the Rate Case Order. The Rate Case Order authorized Aqua to file tariffs reflecting, among other things, a revenue requirement for New Garden wastewater operations of $4,428,399, as part of the overall allowed revenue requirement of Aqua of $18,740,978 for wastewater service. Aqua argued that the authorized revenue requirement of

$4,428,399 reflected the impacts of the Commission-approved Act 11 allocation of certain wastewater revenues to water customers. On May 23, 2022, Aqua submitted its Compliance Tariff in accordance with the Rate Case Order and the Commission's regulations. Aqua maintains that the usage data used in the Compliance Tariff filing for New Garden operations was the same as the usage data presented in Exhibit 5-B, Part I, Schedules A-NG through E-NG as submitted as a part of its initial filing in the 2021 Rate Case proceeding. The Commission issued a Secretarial Letter dated June 3, 2023, which stated that "Commission Staff reviewed the [Compliance Tariff] revisions and proof of revenues and found that suspension or further investigation does not appear warranted at this time," and permitted the Compliance Tariff to become effective by operation of law. *See* New Matter ¶¶ 12-15.

In its New Matter, Aqua requested that Mr. Ferguson's Revenue Complaint be denied in its entirety because the issues raised in the Complaint are barred by the application of 66 Pa.C.S. § 316, as well as by the legal doctrine of *collateral estoppel* or issue preclusion.

On October 25, 2023, Mr. Ferguson filed a Response to New Matter.

Trucking Expense Complaint - Docket No. C-20023-3043109

On September 19, 2023, Mr. Ferguson filed a second Formal Complaint with the Commission against Aqua Pennsylvania Wastewater, Inc. alleging that Aqua was collecting revenue from New Garden ratepayers for a cost it was not incurring. As relief, the Complainant requested that the Commission investigate Aqua's "Purchased Wastewater" expenses. If the excess charge was verified, the Complainant requested that it be removed from the revenue Aqua was allowed to collect from New Garden ratepayers. This Complaint was docketed at C-2023-3043109 (Trucking Expense Complaint or Expense Complaint).

On October 10, 2023, Aqua filed an Answer and New Matter to the Expense Complaint. In its Answer, Aqua denied the material allegations of the Expense Complaint, whereas in the New Matter, Aqua averred that the Complainant participated in the 2021 Rate Case and that Aqua's Main Brief submitted in the 2021 Rate Case addressed Mr. Ferguson claims. By way of further response, Aqua stated that Mr. Ferguson testified under oath at the public input hearing held on November 12, 2021, at 1:00 p.m. regarding the rates proposed in the 2021 Rate Case for New Garden wastewater operations. In that testimony, Mr. Ferguson did not challenge the Company's claimed expenses for Purchased Wastewater. Moreover, no other parties to the 2021 Rate Case challenged this expense. The Recommended Decision dated February 18, 2022, specifically considered Mr. Ferguson's testimony, and the Rate Case Order issued in the 2021 Rate Case disposed of all issues related to Aqua's proposed rates for New Garden wastewater operations. New Matter ¶¶ 1-23. Aqua further argued that the Second Complaint is barred by Section 316 of the Code, 66 Pa.C.S. § 316, and the doctrine of collateral estoppel.

On October 25, 2023, Mr. Ferguson filed a Response to New Matter.

By Hearing Notice dated October 27, 2023, a telephonic hearing was scheduled for December 12, 2023, for both Complaints, and the matters were assigned to me.

On November 3, 2023, I issued a Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On November 15, 2023, Aqua filed a Motion seeking the continuance of the scheduled hearing and referral of the two matters to the Mediation Unit. In its

Motion, Aqua indicated that the Complainant was aware of its requests and did not object to them.

By order dated November 21, 2023, I granted Aqua's Motion for a continuance of the scheduled hearing. I also consolidated the two Complaints and referred the matters to the Mediation Unit.

The parties were unable to resolve the consolidated matters through mediation. By Hearing Notice dated June 12, 2024, a telephonic hearing was scheduled for July 23, 2024, for the consolidated Complaints.

A second Prehearing Order was issued on June 27, 2024.

On July 10, 2024, Aqua filed a Motion seeking to consolidate Mr. Ferguson's Complaints with the pending base rate proceeding of *Pennsylvania Public Utilities Commission v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.,* at Docket Nos. R-2024-3047822 and R-2024-3047824 (2024 Base Rate Case), pursuant to 52 Pa. Code § 5.81, for purposes of adjudication because they raise common issues of fact and law (Motion to Consolidate).[1]

A Hearing Cancellation Notice was issued on July 12, 2024, informing the parties that the telephonic hearing scheduled for July 23, 2024, on Mr. Ferguson's Complaints was cancelled.

On July 24, 2024, Mr. Ferguson filed his Answer in opposition to Aqua's Motion to Consolidate.

[1] Aqua's Motion to Consolidate was filed at each of the four dockets involved, and it was separately served upon the Administrative Law Judges assigned to each docket and the parties to each docket.

On August 8, 2024, Mr. Ferguson testified at a Public Input Hearing for Aqua's 2024 Rate Case. His testimony did not touch directly on the claims raised in his present Complaints.[2]

On October 22, 2024, I issued an Order denying Aqua's Motion to Consolidate Mr. Ferguson's Complaints with Aqua's 2024 Rate Case and setting the cases for a hearing.

By Initial Call-In Telephonic Hearing Notice dated October 22, 2024, a telephonic hearing was scheduled for November 25, 2024.

On October 24, 2024, I issued a third Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On November 15, 2024, Aqua filed a Motion to convert the evidentiary hearing scheduled for November 25, 2024, to a prehearing conference or to delay the hearing for approximately 30 days. On November 18, 2024, Mr. Ferguson filed a response to Aqua's November 15, 2024 Motion.

By Order dated November 20, 2024, I denied Aqua's Motion.

The hearing convened as scheduled on November 25, 2024. Mr. Ferguson appeared *pro se* and testified in support of his Complaints. Mr. Ferguson sponsored 14 exhibits (Complainants Exhibits A through N) which were admitted into the record. Garrett P. Lent, Esq. represented the Respondent, Aqua Pennsylvania Wastewater, Inc.,

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[2] *See* 2024 Base Rate Case, Tr. 542-52.

and presented the testimony of Erin Feeney, who is the Manager of Rates for Aqua, in charge of preparing various financial regulatory filings submitted to the Commission. Respondent sponsored seven exhibits (Aqua Exhibits A through E, 1-G, and 5-B) which were admitted into the record.

The record in this matter closed on December 30, 2024, upon receipt of my copy of the hearing transcript.

FINDINGS OF FACT

1. Complainant is William Ferguson, who resides at 313 Hyde Park Road, Landenberg, Pennsylvania, 19350. Tr. 9.

2. Respondent is Aqua Pennsylvania Wastewater, Inc.

3. On August 20, 2021, Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc. filed for an increase in water and wastewater rates based on a fully projected future test year (FPFTY) ending March 31, 2023, at Docket Nos. R-2021-3027385 and R- 2021-3027386, respectively. Tr. 34, 42.

4. At the time of the initial filing on August 20, 2021, the Company was aware that it was incurring a large "Purchased Wastewater" expense for hauling wastewater between two facilities in the New Garden division. Tr. 143.

5. At the time of the initial filing, the Company was actively searching for a solution to hauling wastewater between facilities, but no solution had been found yet. Tr. 143.

6. The Company's initial filing reflected its belief that the trucking expense would continue to occur until the end of the FPFTY. Tr. 143.

7. Aqua's 2021 Rate Case was fully litigated, with four rounds of testimony presented by the active parties, six public input hearings and one evidentiary hearing held on December 21, 2021. Tr. 121.

8. In Aqua's 2021 Rate Case, Mr. Ferguson provided testimony at the public input hearing on November 21, 2021, at the one o'clock session. Tr. 106, 121.

9. In Aqua's 2021 Rate Case, none of the active parties challenged the *pro forma* usage data presented by the Company with respect to the New Garden wastewater operations. Tr. 122.

10. In Aqua's 2021 Rate Case, no party challenged the *pro forma* wastewater treatment and disposal costs with respect to the New Garden rate division. Tr. 122.

11. In Aqua's 2021 Rate Case, Main Briefs were filed on January 11, 2022, and Reply Briefs were filed on January 21, 2022. Tr. 122.

12. Aqua addressed Mr. Ferguson's sworn public input testimony in the briefs the Company filed in the 2021 Rate Case. Tr. 122-23.

13. In Aqua's 2021 Rate Case, a Recommended Decision was issued on February 18, 2022, which *inter alia* addressed the issues raised by Mr. Ferguson in his sworn public input hearing testimony. Tr. 123; Aqua Exhibit A.

14. In Aqua's 2021 Rate Case, the active parties filed Exceptions and Reply Exceptions to the Recommended Decision. Tr. 183.

15. On May 16, 2022, the Commission issued an Opinion and Order in Aqua's 2021 Rate Case, authorizing a lower increase in rates than what Aqua proposed on its August 20, 2021 initial filing. Tr. 124.

16. In the Commission's May 16, 2022 Opinion and Order in Aqua's 2021 Rate Case, with respect to the New Garden wastewater operations, the Commission authorized Aqua to collect $4.4 million of revenue, using the Commission's Bureau of Investigation & Enforcement (I&E) proposed rate design that was indicated in the Administrative Law Judge's Recommended Decision. Tr. 124, 125.

17. When Aqua proposes setting base rates for its operations, those rates are prospective in nature and are based on projections regarding the Company's anticipated normal operations in a future period. Tr. 135.

18. On May 23, 2022, Aqua submitted its Compliance Tariff which was filed in accordance with both the Commission Opinion and Order issued on May 16, 2022, and the Commission's regulations.

19. The usage data used in the Compliance Tariff filing was the same as the usage data presented in the initial rate case filing. *See* Aqua Exhibit 5-B.

20. Aqua's Compliance Tariff filing underwent a review process before it was permitted by the Commission to become effective by operation of law. Tr. 139-41; Aqua Exhibits C, D.

21. Mr. Ferguson has been charged for services in accordance with Aqua's Commission-approved tariff for wastewater service. Tr. 108-109.

DISCUSSION

Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 1994 Pa.P.U.C. LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n,* 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

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At the hearing, Mr. Ferguson argued that he is not attempting to evade the effect of Aqua's existing tariff provisions but to show that Aqua did not meet its obligation to provide factual and correct data for its New Garden sewer operation in its 2021 Rate Case. Tr. 11. Addressing first his Trucking Expense Complaint, Mr. Ferguson explained that towards the end of its operations New Garden Township Sewer Authority was forced to truck wastewater from its South End facility to the East End facility at a cost of $1.2 million per year. On December 20, 2020, New Garden's wastewater operation was sold to Aqua, which continued to truck wastewater while simultaneously moved to activate an existing pipeline between the two facilities at a cost of $600,000. Tr. 31. The trucking continued for eight to ten months after Aqua purchased the New Garden's wastewater system. Tr. 37. When the pipeline was activated the trucking of wastewater between facilities stopped. Tr. 31. On August 20, 2021, Aqua filed for a general rate increase at Docket No. R-2021-3027386. That filing included a $1.2 million per year cost for "Purchased Wastewater," which Aqua later

explained constituted the cost of pumping and hauling wastewater for treatment from one location to another. Tr. 34, 42. Mr. Ferguson testified that the $1.2 million per year cost for trucking stopped being incurred two months after the rate case was filed. According to Mr. Ferguson, Aqua had ample opportunity to correct its filing before the rate increase became effective on May 19, 2022, but failed to do so. Tr. 42. Because of this failure, the litigation process was unable to uncover the discrepancy and Aqua was able to improperly increase its revenue and profitability. Tr. 11.

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Mr. Ferguson continued his testimony explaining that the outcome of the rate case allowed Aqua to collect $4,428,399 per year from New Garden customers. Aqua then proceeded to calculate tariffs that would deliver this result. He argued that his Revenue Complaint focuses on two issues about the consumption data Aqua used to calculate those tariffs. Tr. 49. According to Mr. Ferguson, the consumption data in question does not reflect actual use by customers, whereas Aqua's total volume forecast was significantly less than actual consumption at the time of filing. *Id.* This would have the effect of increasing rates and, therefore, revenue above the allowed number. Tr. 49. Mr. Ferguson testified that Aqua's data requires unrealistic customer usage, which is mathematically possible, but doesn't exist in the real world. Tr. 57, 89. More specifically, using Aqua's compliance filing Mr. Ferguson calculated at least 1,303 customers out of Aqua's total of 1,916 in the New Garden system would have to consume zero water in any given billing cycle to meet Aqua's criteria. Tr. 57-61; Complainant Exhibits A, B, D. He continued to identify similar discrepancies with Aqua's compliance data for Commercial 1 and 2 customer classes. Tr. 65-67. Based on his calculations, Mr. Ferguson concluded that the consumption data for residential and commercial customers contained in Aqua's compliance filing does not reflect actual customer use, yet it was used as the basis for calculating tariffs for these customer classes. Tr. 65, 66-67. In his view, it is not possible to arrive at fair and reasonable tariffs using invalid data. Tr. 65.

In his testimony, Mr. Ferguson acknowledges that at the time of the rate case filing (August of 2021), Aqua had owned and operated the New Garden system only for a few months. Tr. 90. He argued that now that the actual consumption data for the year 2021 are available they should be used as the compliance data. Tr. 90.

> But from that data, fair and just … tariffs can be determined for New Garden customers. And once those tariffs have been determined, customer bills should be recalculated to determine if there were significant overcharges, which I believe that there probably are. And if so, those charges should be refunded to customers with interest. I think these actions are needed by Aqua to fulfill its obligations to the PUC and to Aqua' customers.
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> I am asking the PUC to investigate by requiring Aqua to produce the 2021 data and then recalculate the billings. These actions do not impact the PUC's rate-making actions that determine whether that Aqua should be allowed to collect revenue of the 4.4 million. And it also only impacts a well defined set of customers.

Tr. 90-91. During cross examination, Mr. Ferguson admitted that he participated in Aqua's 2021 Rate Case proceedings. Tr. 106. More specifically, he provided testimony at the public input hearing on November 21, 2021, at the one o'clock session. Tr. 106, 121. He also admitted that he has been charged for services in accordance with the Commission-approved tariff for wastewater service. Tr. 108-109.

In response to Mr. Ferguson's testimony, Aqua presented the testimony of Erin Feeney who is the Manager of Rates for the Respondent. Ms. Feeney testified that in a typical rate case, the Company's historic test year usually ends about four months before the initial filing. As a result, the Company's initial filing for the 2021 Rate Case contained the best information the Company possessed at the time using rate-making estimates. Tr. 143. With regard to Mr. Ferguson's Trucking Expense Complaint, Ms. Feeney explained that at the time of the initial filing on August 20, 2021, the Company

was aware that there was a large purchase wastewater expense that it was incurring for hauling wastewater between two facilities in the New Garden division. *Id.* At the time, the Company was actively searching for a solution, but no solution had been found yet. As a result, the Company's filing reflected its belief that the expense would continue to occur until the end of the FPFTY. *Id.*

Turning to Mr. Ferguson's Revenue Complaint, Ms. Feeney explained that, again, the Company used the best information available to it at the time of filing. More specifically, the Company used the actual data provided by New Garden in the prior acquisition proceeding. Tr. 145-146. She further explained that at the heart of Mr. Ferguson's Revenue Complaint is a rate design problem, and that if Aqua were to reset the rate bands using more recent data, but keep the 106 million gallons – since that is the information that the Company had at the time of filing – in order to collect and design rates to equal the $4.4 million of authorized revenue, the current rate for the first two bands, where most of the residential consumers are located, would be higher and not lower. Tr. 153. In addition, Ms. Fenney testified that the rate design ordered by the Commission in its Opinion and Order was not the rate design that was proposed by Aqua. The design of rates that were ordered and authorized by the Commission were proposed by I&E. Tr. 124-25.

Ms. Feeney emphasized that Aqua's 2021 Rate Case was fully litigated. An evidentiary hearing was held on December 21, 2021. Tr. 121. There were four rounds of testimony presented by the active parties in that case: direct, rebuttal, surrebuttal, and rejoinder. She pointed out that none of the active parties challenged the *pro forma* usage data presented by the Company with respect to the New Garden wastewater operations. Furthermore, no party challenged the *pro forma* wastewater treatment and disposal costs with respect to the New Garden rate division. Main briefs were filed on January 11, 2022, and reply briefs were filed on January 21, 2022. Ms. Feeney further testified that Aqua addressed Mr. Ferguson's sworn public input testimony

in the briefs the Company filed in the 2021 Rate Case. Tr. 122-23. A Recommended Decision was issued on February 18, 2022, which also addressed the issues raised by Mr. Ferguson in his sworn public input hearing testimony. Tr. 123; Aqua Exhibit A. The Commission issued an Opinion and Order on May 16, 2022, authorizing a lower increase in rates than what Aqua proposed on its August 20, 2021 initial filing. Tr. 124. With respect to the New Garden wastewater operations, the Commission authorized Aqua to collect $4.4 million of revenue, using the I&E proposed rate design that was indicated in the Administrative Law Judge's Recommended Decision. Tr. 124, 125. Ms. Feeney further added that, when Aqua proposes setting base rates for its operations, those rates are prospective in nature and are based on projections regarding the Company's anticipated normal operations in a future period. Tr. 135.

Lastly, Ms. Feeney testified that on May 23, 2022, Aqua submitted its Compliance Tariff which was filed in accordance with both the Commission's Opinion and Order issued on May 16, 2022, and the Commission's regulations. The usage data used in the Compliance Tariff filing was the same as the usage data presented in the initial rate case filing. *See* Aqua Exhibit 5-B. Aqua's Compliance Tariff filing underwent a review process before it was permitted by the Commission to become effective by operation of law. Tr. 139-41; Aqua Exhibits C, D.

After careful review of the record created in these consolidated matters, I find that the Complainant has failed to carry his burden of proving by a preponderance of the evidence that the Respondent, though its actions or omissions, has violated a Commission statute, regulation, order, or Aqua's wastewater tariff. The Order issued October 22, 2024, instructed the Complainant that tariff provisions previously approved by the Commission are *prima facie* reasonable. *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered July 28, 2011); *Zucker v. Pa. Pub. Util. Comm'n,* 437 A.2d 1067 (Pa. Cmwlth. 1981). He was further instructed that a complainant seeking to evade the effect of an existing tariff provision carries a very

heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. October 22, 2024 Order, p. 8 (citing *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)). As mentioned above, at the November 25, 2024 hearing, Mr. Ferguson clarified that he was challenging Aqua's existing tariff provisions not because the facts and circumstances leading to the creation of the tariff had changed so drastically as to render the application of the tariff provision unreasonable, but because he believed that Aqua did not meet its obligation to provide factual and correct data for its New Garden sewer operation in its 2021 Rate Case. Tr. 11. He requested that the Commission investigate Aqua's trucking-related expenses and usage compliance data as reported in the Company's filings, determine new tariffs, and issue refunds to customers in its New Garden division if overcharges are found. Tr. 90.

Ratemaking, by its nature, is prospective. *Columbia Gas of Pa., Inc. v. Pa. Pub. Util. Comm'n*, 613 A.2d 74, 76 (Pa. Cmwlth. 1992) (*Columbia Gas*). Typically, a utility files a general rate case with a record of revenues and expenses for the past year and a projection of anticipated expenses and revenues for a future test year. *See* 66 Pa.C.S. § 315(e). The future test year is a projection of a future 12–month period reflecting anticipated or projected results of operations. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76. The use of a test year allows the prudently managed utility to recover all expenses and a reasonable return and, therefore, requires normalization or removal of all abnormal, non-recurring events from the test year. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76*; see also* Cawley & Kennard, *Rate Case Handbook*, 1983, pp. 54, 150–51. Based on the information provided, the Commission determines whether the utility has proved that its requested rates are just and reasonable. 66 Pa.C.S. § 315(a).

Because of the prospective nature of rates, a rule against retroactive ratemaking has developed. The rule against retroactive ratemaking prohibits a public

utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. *Cheltenham & Abington Sewerage Co. v. Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942); *see also* Krieger, The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings, 1991 Univ.Ill.L.Rev. 983, 984. The policy reasons behind this rule are that if retroactive ratemaking is allowed, it makes the "test year" method of ratemaking meaningless and the general principle that those customers who use power should pay for its production rather than requiring future ratepayers to pay for past use. The Commonwealth Court has stated this rule as "[t]he Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations." *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n*, 487 A.2d 118 (Pa. Cmwlth. 1985); *Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994).

Also, in *Philadelphia Electric Co. v. Pennsylvania Public Utility Commission*, 502 A.2d 722 (Pa. Cmwlth. 1985), the Commonwealth Court held that there should be no line-by-line examination of items in a rate case and an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery. Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. *Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

What Mr. Ferguson is seeking from the Commission is tantamount to retroactive ratemaking on two single issues – the trucking expense and the rate design – which were fully considered in Aqua's 2021 Rate Case. Consequently, Mr. Ferguson's consolidated Complaints against Aqua will be dismissed in their entirety because their claims are barred by the law and no relief can be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n,* 578 A.2d 600 (Pa. Cmwlth. 1990).

3. The Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

4. Ratemaking, by its nature, is prospective. *Columbia Gas of Pa., Inc. v. Pa. Pub. Util. Comm'n*, (*Columbia Gas*), 613 A.2d 74, 76 (Pa. Cmwlth. 1992).

5. Because of the prospective nature of rates, a rule against retroactive ratemaking has developed. The rule against retroactive ratemaking prohibits a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. *Cheltenham & Abington Sewerage Co. v. Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942).

6. The Commission may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations. *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n*, 487 A.2d 118

(Pa. Cmwlth. 1985); *Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994).

7. There should be no line-by-line examination of items in a rate case and an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery. *Phila. Elec. Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 722 (Pa. Cmwlth. 1985); *see also Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

8. Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. *Phila. Elec. Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 722 (Pa. Cmwlth. 1985); *see also Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

9. The claims raised by the Complainant are barred by law and no relief can be granted.

10. The Complainant failed to prove that the public utility violated a statute, regulation, Commission order or tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the consolidated Formal Complaints filed by William Ferguson against Aqua Pennsylvania Wastewater, Inc. at Docket Nos. C-2023-3043108 and C-2023-3043109 are dismissed in their entirety.

2. That the Secretary mark these matters closed.

Date: March 31, 2025

/s/
Eranda Vero
Administrative Law Judge