

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held April 10, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Pennsylvania Public Utility Commission	:	R-2024-3047822
Office of Consumer Advocate	:	C-2024-3049344
Office of Small Business Advocate	:	C-2024-3049339
Steven Boyanowski	:	C-2024-3048622
Sky Dumont	:	C-2024-3049269
Daniel O'Neill	:	C-2024-3049270
Linc Slipakoff	:	C-2024-3049274
Lori Kennedy	:	C-2024-3049307
Joel T Postema	:	C-2024-3049316
Ronald Smith & Gail Smith	:	C-2024-3049337
Lori Hill	:	C-2024-3049379
Robert J Fogarty	:	C-2024-3049398
Susan Unvasky & Sharon Ellis	:	C-2024-3049399
Ronald and Lara Roebuck	:	C-2024-3049402
Sebastian Borriello	:	C-2024-3049417
Teri Dahl	:	C-2024-3049444
Theodore J Voltolina III	:	C-2024-3049472
Donna Bullard	:	C-2024-3049473
Kathleen Ferrante	:	C-2024-3049592
Christopher F Kroen	:	C-2024-3049672
Daniela Kroen	:	C-2024-3049680
Donald Wilcox	:	C-2024-3049682
Bryce Matthew Wynter	:	C-2024-3049729
Susan & Joseph Hennigan	:	C-2024-3049758
Pellegrino & Mary Deleo	:	C-2024-3049768

Gary & Jo Anna Shovlin	:	C-2024-3049783
Paul Gaudet	:	C-2024-3049784
Maureen Bruno	:	C-2024-3049785
Christina D Sappey, PA Representative	:	C-2024-3049801
Aqua Large Users Group	:	C-2024-3049840
Frances Cannon	:	C-2024-3049851
Timothy Babbitt	:	C-2024-3049900
Gabrielle Fazio	:	C-2024-3049905
Christoffel Lombard	:	C-2024-3049913
Catherine Moran	:	C-2024-3049929
Barbara Woods	:	C-2024-3049941
Robert Overbeck	:	C-2024-3049944
Phyllis Leung	:	C-2024-3049964
Frances E Cannon	:	C-2024-3049978
YC Shellhorse	:	C-2024-3049982
John Muscari	:	C-2024-3050008
Adam Joseph Shellhorse	:	C-2024-3050014
Richard Centrella	:	C-2024-3050019
Sandra Clapps	:	C-2024-3050033
Meghan Cogley	:	C-2024-3050041
Judith Vasey	:	C-2024-3050042
Jeffrey J & Lisa A Robinson	:	C-2024-3050053
Penelope Rigatos	:	C-2024-3050055
Jeanne Passante Lennon	:	C-2024-3050181
John W Jengo	:	C-2024-3050199
Sandy Township, et al	:	C-2024-3050249
Ann & James Deveney	:	C-2024-3050260
Bruce Corbin	:	C-2024-3050316
Leroy Beckerman	:	C-2024-3050318
Diane & Stephen Bruno	:	C-2024-3050327
Christian Caso	:	C-2024-3050329
Francisco Augspach	:	C-2024-3050331
Rene Beauregard	:	C-2024-3050357
Ed Negra & Janice Schoem	:	C-2024-3050383
Johanna Milot	:	C-2024-3050394
Robert Kish	:	C-2024-3050411
Douglas Bell	:	C-2024-3050412
Linda Antonette	:	C-2024-3050415
Thomas Burrows	:	C-2024-3050417
Cynthia Burns	:	C-2024-3050419
Sandra Landers-Raimer	:	C-2024-3050421
Paul & Irina Rolando	:	C-2024-3050426
Gerardo Giannattasio	:	C-2024-3050427

William Lentz	:	C-2024-3050428
Scott Newman	:	C-2024-3050429
Nelson & Remedios Singcuenco	:	C-2024-3050434
Roxann Honer	:	C-2024-3050435
Andrea Verba	:	C-2024-3050437
Sharon Tripodi	:	C-2024-3050440
Eugene Crossland	:	C-2024-3050446
Paul Brenner	:	C-2024-3050448
Gregory Klauder	:	C-2024-3050449
Diane Gallagher	:	C-2024-3050450
Joseph & Deborah Gennaro	:	C-2024-3050454
Donald Guth	:	C-2024-3050455
Michael & Christine Maddalo	:	C-2024-3050457
Margaret Daly	:	C-2024-3050460
Joseph & Kathleen Wesolowski	:	C-2024-3050463
Thomas Bugda	:	C-2024-3050464
Carole A Ralph	:	C-2024-3050468
Jo Anna Shovlin	:	C-2024-3050469
Mary Merrigan	:	C-2024-3050559
Derek Scott	:	C-2024-3050563
William Fisher	:	C-2024-3050566
Douglas Weiser	:	C-2024-3050600
Michael Assante	:	C-2024-3050624
Paulette Nicolas	:	C-2024-3050654
Rene Javier	:	C-2024-3050707
Bob Zafian	:	C-2024-3050829
Karen L Reighert	:	C-2024-3051240
Lynn Hunter	:	C-2024-3051291
Amanda Zaremba	:	C-2024-3051443

v.

Aqua Pennsylvania, Inc.	:	
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Pennsylvania Public Utility Commission	:	R-2024-3047824
Office of Small Business Advocate	:	C-2024-3049340
Office of Consumer Advocate	:	C-2024-3049345
Daniel O’Neill	:	C-2024-3049279
Ronald & Gail Smith	:	C-2024-3049342
Valerie J Cosumano	:	C-2024-3049371
Lori Hill	:	C-2024-3049404

Ronald and Lara Roebuck	:	C-2024-3049423
Sebastian Borriello	:	C-2024-3049430
Donna Bullard	:	C-2024-3049480
Peter John Brady	:	C-2024-3049541
Kathleen Ferrante	:	C-2024-3049607
Sky Dumont	:	C-2024-3049666
Christopher F Kroen	:	C-2024-3049673
Daniela Kroen	:	C-2024-3049681
Pellegrino & Mary Deleo	:	C-2024-3049781
Christina D Sappey, Representative	:	C-2024-3049804
Timothy Babbitt	:	C-2024-3049809
John Day	:	C-2024-3049878
Barbara Woods	:	C-2024-3049940
Robert Overbeck	:	C-2024-3049948
Catherine Moran	:	C-2024-3049955
Adam Joseph Shellhorse	:	C-2024-3049959
David Richards	:	C-2024-3049965
Diana Sabol	:	C-2024-3049972
Frances E Cannon	:	C-2024-3049998
John Muscari	:	C-2024-3050005
Maria Simpas	:	C-2024-3050031
Thomas Wilson	:	C-2024-3050034
Judith Vasey	:	C-2024-3050043
Henry C Minter III	:	C-2024-3050087
Aqua Large Users Group	:	C-2024-3050164
Sandy Township, et al	:	C-2024-3050250
Diane & Stephen Bruno	:	C-2024-3050328
Christian Caso	:	C-2024-3050330
Rene Beauregard	:	C-2024-3050360
Ed Negra & Janice Schoem	:	C-2024-3050386
Colleen Connor	:	C-2024-3050406
Johanna Milot	:	C-2024-3050407
Douglas Bell	:	C-2024-3050414
Thomas Wizda	:	C-2024-3050416
Shane Oliver	:	C-2024-3050418
Paul & Irina Rolando	:	C-2024-3050430
William Lentz	:	C-2024-3050432
Thomas Burrows	:	C-2024-3050433
Cynthia Burns	:	C-2024-3050436
Ann & James Deveney	:	C-2024-3050442
Thomas & Joann Stark	:	C-2024-3050452
Diane Gallagher	:	C-2024-3050456
Carole A Ralph	:	C-2024-3050458

Michael & Christine Maddalo	:	C-2024-3050459
Margaret Daly	:	C-2024-3050462
Joseph & Kathleen Wesolowski	:	C-2024-3050465
Thomas Bugda	:	C-2024-3050466
Derek Scott	:	C-2024-3050564
Douglas Weiser	:	C-2024-3050568
Paulette Nicolas	:	C-2024-3050655
Ben Mroz III	:	C-2024-3050740
Bob Zafian	:	C-2024-3050836
Karen L Reighert	:	C-2024-3051132
Lynn Hunter	:	C-2024-3051294

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

Table of Contents

I.	History of Proceeding.....	3
II.	Discussion	8
A.	Legal Standards	8
B.	February 2025 Order	11
1.	Aqua’s Proposed Rates for East Whiteland	11
2.	Aqua’s Method of Billing SCH USA for Wastewater Services	18
C.	Aqua Petition, Answers and Disposition.....	30
1.	Aqua Petition and Answers	30
2.	Disposition of Aqua Petition.....	40
D.	SCH USA Petition, Answer and Disposition.....	45
1.	SCH USA Petition and Answer	45
2.	Disposition of SCH USA Petition.....	52
III.	Conclusion.....	58

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Partial Reconsideration and/or Clarification (Aqua Petition or Aqua’s Petition), filed by Aqua Pennsylvania, Inc. (Aqua Water) and Aqua Pennsylvania Wastewater, Inc. (Aqua Wastewater) (collectively, Aqua or the Company) on February 14, 2025, seeking reconsideration of the Commission’s Opinion and Order entered on February 7, 2025 (*February 2025 Order*), relative to the above-captioned proceeding. On February 24, 2025, the Commission’s Bureau of Investigation and Enforcement (I&E) filed an Answer to the Petition (I&E Answer to Aqua Petition). Additionally, on February 24, 2025, the Office of Consumer Advocate (the OCA) filed an Answer to the Petition (OCA Answer to Aqua Petition) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a letter in lieu of an Answer to the Petition (CAUSE-PA Letter).

Also, before the Commission for consideration and disposition is the Petition for Reconsideration filed by SCH USA LLC (SCH USA) on February 24, 2025, seeking reconsideration of the *February 2025 Order* (SCH USA Petition). On March 6, 2025, Aqua filed an Answer to the SCH USA Petition.

In its Petition, Aqua seeks reconsideration of our *February 2025 Order*, pertaining to the rates applicable to customers in East Whiteland Township (East Whiteland or Township). Specifically, Aqua requests that the Commission reconsider or clarify whether the Company will be permitted to implement settlement rates related to the Township’s operations if the Pennsylvania Supreme Court (Supreme Court) reverses the Commonwealth Court’s decision in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, 320 A.3d 667 (Table) (Pa. 2024) (*Cicero*). In their respective Answers, I&E, the OCA, and CAUSE-PA each oppose the Aqua Petition. For the reasons stated more fully, *infra*, we conclude that Aqua failed to assert a sufficient

basis for reconsideration of our *February 2025 Order*. Therefore, based upon the record in this proceeding, and upon consideration of Aqua’s arguments, we shall deny the Aqua Petition, consistent with the discussion in this Opinion and Order.

In its Petition, SCH USA requests that the Commission reconsider the *February 2025 Order* permitting Aqua to maintain its current practice of billing SCH USA using a flat rate for unmetered wastewater service based on equivalent dwelling units (EDUs). In its Answer to the SCH USA Petition, Aqua contends that SCH USA fails to raise any new arguments not previously heard by the Commission and requests that SCH USA’s Petition be denied. Upon review, we shall deny the SCH USA Petition, consistent with this Opinion and Order.

I. History of Proceeding

On May 23, 2024, Aqua filed Original Tariff Water – PA P.U.C. No. 4 (Tariff Water No. 4) and Original Tariff Sewer – PA P.U.C. No. 4 (Tariff Sewer No. 4) with the Commission, to become effective July 22, 2024. The Company filed this combined water and wastewater rate proceeding in accordance with Section 1308 of the Public Utility Code (Code) and pursuant to the provisions of Act 11 of 2012 (Act 11),¹ set forth in Section 1311(c) of the Code, proposing to allocate a portion of the wastewater revenue requirement to its water operations. 66 Pa.C.S. § 1308, 66 Pa.C.S. § 1311(c). The Company used a fully projected future test year (FPFTY), ending December 31, 2025, to support its general rate increase request. In the rate filing, the

¹ On February 14, 2012, then Governor Tom Corbett signed into law Act 11, which amended Chapters 3, 13 and 33 of the Code. Namely, Act 11 amended Chapters 3 and 13 to allow jurisdictional utilities to make rate case claims based on a FPFTY and to allow wastewater utilities to allocate a portion of their revenue requirement to the combined wastewater and water utility customer base. *See Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Order entered August 2, 2012); 66 Pa.C.S. § 1311(c).

Company proposed to increase Aqua’s total annual operating revenues for water service by approximately \$112 million, or 18.7%, and for wastewater service by approximately \$14.6 million, or 20.1%. Through the combination of both rate filings, the Company proposed to increase rates to produce additional overall revenues of \$126,675,472 per year, an 18.88% increase in overall annual distribution revenues.

On May 23, 2024, the OSBA filed a Notice of Appearance. On May 29, 2024, I&E filed a Notice of Appearance. On May 31, 2024, the OSBA and the OCA each filed Formal Complaints against the rate filing.²

On June 13, 2024, the Commission entered an Order (*June 2024 Order*) suspending each of the proposed tariffs by operation of law until February 22, 2025. The Commission also instituted an investigation to determine the lawfulness, justness, and reasonableness of the proposed and existing rates, rules, and regulations and assigned the rate filing to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of hearings, as may be necessary, culminating in the issuance of a recommended decision.

Also on June 13, 2024, CAUSE-PA filed a Petition to Intervene and Answer.

On June 21, 2024, Aqua filed Suspension Tariff Supplement No. 1 to Tariff Water No. 4 and Suspension Tariff Supplement No. 1 to Tariff Sewer No. 4, in accordance with the *June 2024 Order*. On June 27, 2024, Aqua filed corrected versions of these Suspension Tariffs.

² The OSBA’s Complaints are docketed at Nos. C-2024-3049339 (water) and C-2024-3049340 (wastewater); the OCA’s Complaints are docketed at Nos. C-2024-3049344 (water) and C-2024-3049345 (wastewater).

On June 27, 2024, New Wilmington Municipal Authority (NWMA) and SCH USA each filed a Petition to Intervene at the wastewater docket, Docket No. R-2024-3047824, only. On June 28, 2024, Aqua Large Users Group (Aqua LUG) filed a Formal Complaint against the water rate filing.³

Additionally, as of the date the Recommended Decision in this proceeding was issued, *i.e.*, December 9, 2024, 149 *pro se* Formal Complaints have been filed by consumers in both of the rate filings, as indicated in the caption to this Opinion and Order, with their corresponding docket numbers. Some *pro se* Complainants filed a Complaint at both docket numbers.

On July 23, 2024, Sandy Township, Treasure Lake Property Owners Association, Inc., Barry Abbott, and Richard Whitaker (Sandy Township *et al.*) filed Formal Complaints against both rate filings.⁴

Between August 1, 2024 and August 14, 2024, 11 public input hearings were held throughout the Company's service territory, and telephonically. During these hearings, a total of 173 witnesses testified.

In August and September 2024, various parties submitted direct testimony, supplemental direct testimony, rebuttal testimony, and surrebuttal testimony. On October 3, 2024, Aqua submitted written rejoinder testimony.

³ See Docket No. C-2024-3049840.

⁴ See Docket Nos. C-2024-3050249 (water) and C-2024-3050250 (wastewater).

On October 11, 2024, an evidentiary hearing was held. All Parties' pre-served written testimony and exhibits⁵ were entered into the record by stipulation and no witnesses were cross-examined.

On October 28, 2024, Aqua, I&E, the OCA, SCH USA, and Mr. John Day filed Main Briefs limited to issues reserved for briefing, *i.e.* the litigated issues, *infra*.

On November 7, 2024 Aqua, I&E, the OCA, the OSBA, and CAUSE-PA (Joint Petitioners) filed a Joint Petition for Non-Unanimous Partial Settlement (Joint Petition, Partial Settlement, or Settlement). Therein, the Joint Petitioners agreed to a settlement of all issues among them, exclusive of the Company's proposed rate increase as applied to the East Whiteland wastewater system. Further, SCH USA and Aqua were not able to resolve the issue raised by SCH USA regarding the Company's method of billing wastewater to it. These issues were reserved for litigation. Each Joint Petitioner submitted a Statement in Support of the Settlement (Statement in Support). While not signatories to the Settlement, Aqua LUG, Sandy Township *et al.*, and NWMA submitted letters stating that they do not oppose the Settlement. Conversely Mr. Day, Mr. Shellhorse, and several other *pro se* Complainants opposed the Settlement.

Also on November 7, 2024, Reply Briefs on the litigated issues were filed by Aqua, I&E, the OCA, SCH USA, and Mr. Day.

The record in this case closed on November 26, 2024, to allow time for any first-class mail responses to be filed or sent to the ALJs or the OCA from the *pro se* Complainants. A total of nine responses were submitted by Aqua's

⁵ See the Appendix to the R.D. for a complete list of all admitted testimony and exhibits.

customers. Five customers opposed the Settlement and four customers supported the Settlement.

On December 9, 2024, the Commission issued the Recommended Decision of ALJs Gail M. Chiodo and Alphonso Arnold III, wherein they recommended that: (1) the Commission grant the Joint Petition and approve the Partial Settlement, subject to certain minor modifications; (2) the Company's proposed rates for East Whiteland be excluded from the instant rate filing; and (3) that SCH USA's claims regarding the Company's method of billing wastewater to it be denied.

On December 23, 2024, Aqua, SCH USA, Mr. Day, and Mr. Adam Joseph Shellhorse each filed Exceptions to the Recommended Decision. Aqua, I&E, the OCA, and Mr. Shellhorse filed Replies to Exceptions on December 30, 2024.

In our *February 2025 Order*, we: (1) granted, in part, denied, in part, and rendered moot, in part, the Exceptions of Aqua; (2) denied the Exceptions of SCH USA, Mr. Day, and Mr. Shellhorse; (3) adopted the Recommended Decision of the ALJs, as modified; and (4) granted the Joint Petition and adopted the Partial Settlement, as modified.

As noted, *supra*, on February 14, 2025, Aqua filed its Petition. On February 22, 2025, I&E and the OCA filed Answers to the Aqua Petition and CAUSE-PA filed its Letter.

By Order entered February 20, 2025, the Commission granted reconsideration of the *February 2025 Order* as to the Aqua Petition, pending further review of, and consideration on, the merits, pursuant to Pa. R.A.P. 1701(b)(3).

Also, as noted, *supra*, on February 24, 2025, SCH USA filed its Petition seeking reconsideration of the *February 2025 Order*.

By Order entered March 4, 2025, the Commission granted reconsideration of the *February 2025 Order* as to the SCH USA Petition, pending further review of, and consideration on, the merits, pursuant to Pa. R.A.P. 1701(b)(3).

On March 6, 2025, Aqua filed an Answer to the SCH USA Petition.

II. Discussion

A. Legal Standards

With respect to petitions for rehearing, reconsideration, rescission, and amendment of Commission orders, the Code establishes a party's right to seek relief within fifteen days following the service of a Commission order pursuant to Subsection 703(f). 66 Pa.C.S. § 703(f) (relating to rehearing).⁶ Upon the filing of a petition for relief pursuant to Section 703(f), the Commission may affirm, rescind, or modify its original order. 66 Pa.C.S. § 703(f). The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa.C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of Commission Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

⁶ Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for rehearing pursuant to Section 703(f) of the Code typically include an allegation of new evidence. 66 Pa.C.S. § 703(f); *see West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572(c) of Commission Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas, or others within fifteen days of the service of a Commission order, or under Section 5.572(d) as a petition for rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission as matters seeking relief falling within the agency's discretion.

The Commission's application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Philip Duick, et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*) as follows:

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 on the grounds that the decision or ruling of the Commission on a matter or issue was either unwise or in error.

In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein the Court said,

[b]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of these appellants ... and dismissed by the Commission ... and not appealed from. Parties, ..., cannot be permitted, by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them and not appealed from. ...

Pennsylvania Railroad Co. v. Public Service Commission, [179 A. 850, 854 (Pa. Super. 1935)].

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. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559; *see also*, *AT&T v Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

The Commission utilizes a two-step analysis in determining whether to exercise its discretion to grant relief under *Duick*. *See, e.g.*, *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Opinion and Order entered May 9, 2019)⁷ at 4-5 (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Opinion and Order entered September 11, 2014)). The first step is to determine whether a party has offered any basis to persuade the Commission to exercise its discretion, including but not limited to, new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. This initial step examines whether a party raises the same questions which were specifically considered and decided against them by a prior Order of the Commission. If so, it is unlikely that the Commission will be persuaded to exercise its discretion to grant relief. *Duick* at 559 (citing *Pennsylvania Railroad Co. v. Public Service Commission*, 179 A. 850 (Pa. Super. 1935)). The second step of the *Duick* analysis is to evaluate any matter the Commission has deemed worthy of consideration, to determine whether to grant any relief.

⁷ *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (Pa. 2021), *remand granted, in part*, 256 A.3d 1092 (Pa. 2021) (Table).

B. February 2025 Order

In the *February 2025 Order*, the Commission addressed the Non-Unanimous Partial Settlement, to which Mr. Day, Mr. Shellhorse, and several other *pro se* Complainants opposed. Upon review, we agreed with the ALJs and the Joint Petitioners that the Partial Settlement was in the public interest and was supported by substantial evidence in the record. Pursuant to the Settlement, we approved an annual increase of \$73 million in Aqua’s annual operating revenues, on a consolidated water and wastewater operations basis. This amount was inclusive of an increase of \$48 million for Aqua’s water operations and \$25 million for its wastewater operations, pre-Act 11 shift; and an increase of \$58.4 million for the Company’s water operations and \$14.6 million for its wastewater operations, post-Act 11 shift. *February 2025 Order* at 2.⁸

Next, in the *February 2025 Order*, we considered the two issues reserved for litigation. The first reserved issue was Aqua’s proposed rates for East Whiteland. The second issue reserved for litigation pertained to Aqua’s practice of billing SCH USA a flat rate for unmetered wastewater service, based on EDUs.

1. Aqua’s Proposed Rates for East Whiteland

In the *February 2025 Order*, we described the background of this issue beginning with the Commission’s Order entered on July 29, 2022, that, in relevant part, approved the application of Aqua to acquire the wastewater system assets of East Whiteland and established ratemaking rate base of the system’s assets under

⁸ Additionally, in the *February 2025 Order*, we addressed various Exceptions filed by Aqua, Mr. Day, and Mr. Shellhorse to the Recommended Decision and the approval of the Settlement. We further considered and approved some modifications to the Settlement. As these issues are not pertinent to the Petitions of Aqua and SCH USA herein, we will not summarize them here but will cite generally to the *February 2025 Order* at pages 83-117.

Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2).⁹ The Commission also approved an Asset Purchase Agreement (APA), and related contracts, between Aqua and the Township and issued the related Certificates of Public Convenience (CPCs). *February 2025 Order* 117-18 (citing *East Whiteland Order*).

On August 12, 2022, Aqua closed on the East Whiteland system acquisition. Aqua’s closing on the acquisition occurred prior to the expiration of the 30-day appeal period applicable to the *East Whiteland Order*, as set forth in the Pennsylvania Rules of Appellate Procedure (Pa. R.A.P). *February 2025 Order* 118 (citing Pa. R.A.P. 1512 (relating to time for petition for review to appellate court)).

On August 25, 2022, the OCA timely appealed the Commission’s *East Whiteland Order* to the Commonwealth Court. Thereafter, on July 31, 2023, the Commonwealth Court reversed the Commission’s *East Whiteland Order*, holding that the Commission erred or abused its discretion in concluding that Aqua established substantial affirmative public benefits that outweighed the harms of Aqua’s acquisition of the System to support the grant of the CPC. *February 2025 Order* at 118 (citing *Cicero*, 300 A.3d at 1120).

The Commission, Aqua, and the Township timely sought review of the Commonwealth Court’s decision before the Supreme Court. On June 14, 2024, the

⁹ See *Application of Aqua Pa. Inc., pursuant to 66 Pa.C.S. §§ 1102 and 1329 for: (1) approval of the acquisition by Aqua Pa. Wastewater, Inc. of the wastewater assets of E. Whiteland Twp. situated within the Twp. of E. Whiteland, Chester Cnty., Pa.; (2) approval of the right of Aqua Pa. Wastewater, Inc. to begin to offer, render, furnish and supply wastewater service to the public in portions of E. Whiteland Twp., Chester Cnty., Pa.; and (3) an order approving the acquisition that includes the ratemaking rate base of the E. Whiteland Twp. wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code, Docket No. A-2021-3026132 (Opinion and Order entered July 29, 2022) (East Whiteland Order).*

Supreme Court granted the petitions for review and a decision remains pending. *February 2025 Order* at 119 (citing *Cicero*, 320 A.3d 667 (Table)).

In the *February 2025 Order*, we explained that Aqua has been providing wastewater service to East Whiteland customers since the effective date of its closing on August 12, 2022, including billing and collections, investment, and expansion of the customer base. Additionally, Aqua provided testimony that it has incurred, and continues to incur, investment expenses in the plant serving East Whiteland customers. *February 2025 Order* at 119 (citing Aqua St. 1-R at 19).

We further noted that, in this proceeding, the Joint Petitioners to the Settlement were unable to agree to the Company's proposed increase in rates to the East Whiteland customers and decided to litigate this issue. To simplify briefing on this reserved issue, and to avoid disturbing other aspects of the Settlement, the Joint Petitioners agreed to the rate effects if the Commission were to authorize a rate increase for the East Whiteland customers. *February 2025 Order* at 119.

Pursuant to the Settlement, the Joint Petitioners agreed that if the Commission were to authorize Aqua to include the East Whiteland system in its ratemaking rate base and permit the establishment of new rates for East Whiteland, the Company would be permitted to collect an additional \$6.4 million in revenue from East Whiteland customers. This amount would be in addition to the overall revenue increase provided for under the Partial Settlement. Furthermore, if a rate increase to the East Whiteland customers were permitted, the Settlement specified that the \$6.4 million revenue increase established for the East Whiteland customers would not be subject to a shift under Act 11 and, specifically, East Whiteland's revenue increase would be excluded from the portion of the wastewater revenue increase (\$10.4 million) shifted to water operations for recovery under the Settlement. *February 2025 Order* at 119-20 (citing Joint Petition at 7, 22-23, ¶¶ 41, 94-96).

Regarding the positions of the parties, we noted Aqua's assertion that it should be permitted to include the revenues, expenses, and rate base of the East Whiteland system for purposes of increasing rates to East Whiteland customers by \$6.4 million. The Company argued, in part: (1) that the Commonwealth Court's decision in *Cicero* is not binding on the Commission while the appeal remains pending before the Supreme Court, and, (2) that approving increased rates, subject to refund in the event the Supreme Court affirms the Commonwealth Court's decision, is the fair approach to both East Whiteland customers and Aqua customers, while recognizing that Aqua has been incurring expenses and investing in a plan to provide safe and reliable service to the East Whiteland customers. *February 2025 Order* at 120 (citing Aqua M.B. at 10, 15-18).

Both I&E and the OCA objected to Aqua's arguments and contended that any rate base, expenses, taxes, revenue, and corresponding revenue shortfall from the East Whiteland system should be excluded from the instant rate filing. *February 2025 Order* at 122-23.

In the Recommended Decision, the ALJs concluded that after an exhaustive review of the record and the parties' briefs, Aqua did not meet its burden to show that its East Whiteland rate proposal is just and reasonable, as required by Section 1301 of the Code. Further, the ALJs concluded that, on balance, it is not in the public interest to permit this increase now. Rather, the ALJs determined that the better course of action is to maintain the status quo until ownership of the system is determined, with certainty, on appeal. Therefore, the ALJs recommended that the Commission exclude any rate base, expenses, taxes, revenue, and corresponding shortfall from the East Whiteland system from the instant rate filing. *February 2025 Order* at 123-24 (citing R.D. at 149-50).

In response, Aqua filed its Exception No. 1 to the Recommended Decision arguing that the ALJs erred in failing to allow the Company to increase rates to the

East Whiteland customers. For support, Aqua submitted two main arguments. First, Aqua contended that the ALJs incorrectly concluded that the *Cicero* decision is binding and has voided Aqua's CPC to serve the East Whiteland customers. Second, Aqua argued that the ALJs' conclusion pertaining to the uncertainty of the Supreme Court's prospective decision in *Cicero* is an unfair basis to deny an increase in East Whiteland rates where rate refunds are a viable remedy. *February 2025 Order* at 126-31 (citing Aqua Exc. at 4-12).

As an alternative argument, Aqua requested that if the Commission determined 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*. According to Aqua, under those circumstances, the Company would file a tariff supplement implementing the rate change agreed to in the Settlement and the change in East Whiteland rates would occur without the need to file a separate rate case. Aqua claimed that this would be permissible because the Joint Petitioners have already agreed upon what the revenue increase should be for East Whiteland customers – that is \$6.4 million. *February 2025 Order* at 131 (citing Aqua Exc. at 11-12).

Both I&E and the OCA filed Reply Exceptions objecting to Aqua's arguments and agreeing with the ALJs' disposition in the Recommended Decision. *February 2025 Order* at 131-36 (citing I&E R. Exc. 3-5; OCA R. Exc. at 2-11).

In our disposition of Aqua's Exception No. 1, we found no error in the ALJs' recommended denial of the requested rate increase for the East Whiteland customers. We reasoned, in part, that the Commonwealth Court's decision in *Cicero* controls as to the ownership of the East Whiteland system and is binding on the Commission. *February 2025 Order* at 136-38.

We also addressed the alternative analysis of the ALJs, in which they assumed, *arguendo*, that *Cicero* is not binding on the Commission. Even under that scenario, the ALJs recognized that Aqua's CPC was uncertain, speculative, and tenuous, at best, and we agreed with that analysis. *February 2025 Order* at 138 (citing R.D. at 150).

We find that the ALJs' evaluation was prudential given the uncertainty of how the Supreme Court will ultimately rule. It is undisputed that there are multiple possible outcomes of the case on appeal, including that the Supreme Court could affirm the Commonwealth Court's reversal of the Commission's order. In that scenario, the *Cicero* decision reversing the Commission's *East Whiteland Order* would be upheld, which would mean that Aqua does not have certificate authority to acquire and own the East Whiteland system or serve the customers of the system pursuant to the Code. Additionally, it is possible that the Supreme Court will reverse or modify *Cicero* and either remand for further proceedings or outright affirm the Commission's *East Whiteland Order*. Both outcomes are possible, but neither is certain and cannot be presumed. However, it is clear, none of the possible outcomes at the Supreme Court will be known while this case is pending.

February 2025 Order at 138-39.

Under the circumstances discussed in our rationale, we determined that the best course of action is to maintain the status quo of the existing East Whiteland rates until this issue is resolved with certainty. *February 2025 Order* at 139-40. We further reasoned that, under the unique circumstances of this proceeding and in the absence of any stay order, we found it appropriate and prudent to respect the Commonwealth Court's order in *Cicero* as being effective upon issuance. *Id.* at 142.

Moreover, we agreed with the ALJs that Aqua has not satisfied its burden of proof to establish that the East Whiteland rate proposal is just and reasonable as

required under Section 1301 of the Code. That is, due to the uncertainty of when and how the Supreme Court will resolve *Cicero*, we found that Aqua did not establish by a preponderance of the evidence 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 2025 Order* at 142 (citing 66 Pa.C.S. § 315(e)). We also concluded that it is in the public interest to maintain the status quo until ownership of the East Whiteland system is determined, with certainty, on appeal. Accordingly, we denied Aqua's Exception No. 1 and excluded any rate base, expenses, taxes, revenue, and corresponding shortfall from the East Whiteland system from the rate case. *February 2025 Order* at 142-43.

As a final matter, we addressed Aqua's alternative request 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*. Given the uncertainty of how the Supreme Court will rule in *Cicero* and the variety of possible outcomes in that appeal, we determined that it would not be possible to craft a specific remedy because it would require speculation on the actual language of the ultimate order. As an example, we noted that 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, we reasoned that 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 denied Aqua's alternative request. *February 2025 Order* at 143, n.35.

2. Aqua's Method of Billing SCH USA for Wastewater Services

Next, in the *February 2025 Order*, we addressed the second issue reserved for litigation – Aqua's method of billing SCH USA for wastewater services.

February 2025 Order at 143-67. The crux of this issue was SCH USA's assertion that Aqua should be directed to change the way it bills SCH USA for wastewater service. As such, SCH USA advanced several arguments to challenge the current billing determinants used by Aqua to charge SCH USA for wastewater service, proffering alternative billing methods. *Id.* at 145-46.

In the *February 2025 Order*, we provided the background information that SCH USA is a commercial wastewater customer of Aqua that owns and operates a large commercial resort property known as the Split Rock Resort (the Resort),¹⁰ which is in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. Aqua provides wastewater collection and treatment services to SCH USA, which owns and operates its own sewer collection system on its property that discharges to the Company's wastewater system. Water for the Resort is provided by private wells, which SCH USA acquired when it purchased the Resort in October 2020. *February 2025 Order* at 143-44 (citing SCH USA St. 1 at 2, Aqua St. 11-R at 2, and SCH USA M.B. at 1-2).

As a result of recent and prior acquisitions of wastewater systems, Aqua's wastewater rates are comprised of several varying rate structures, including fixed

¹⁰ The Resort consists of the following buildings and amenities: (1) Willowbrook, a resort hotel with 256 guest rooms; (2) the Galleria, a resort hotel with 77 guest rooms and 8 VIP rooms, as well as other features including a food court and shops, restaurants, movie theater, racquetball court, waterpark, indoor pool, lobby, bar, and large meeting space; (3) the Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; and (4) a laundry room that serves the Resort properties. *See* SCH USA St. 1 at 2.

customer or EDU¹¹ charges, plus usage charges, unmetered flat rates, and structures with minimum usage allowances. *February 2025 Order* at 144.

As further background, we explained that Aqua became the wastewater service provider for the Resort, as a result of Aqua’s Commission-approved acquisition of Kidder Township’s wastewater assets in 2012.¹² Aqua St. 10-R at 2. SCH USA is located in Rate Zone 4¹³ of the Company’s current wastewater tariff, Tariff Sewer No. 4,

¹¹ The Company’s prior wastewater tariff defined an EDU, as follows:

Equivalent Dwelling Unit or “EDU”: The EDU is a measure based upon the estimated average daily wastewater flow for the type of business, as calculated by the Pennsylvania Department of Environmental Protection [(PaDEP)] regulation at 25 Pa. Code § 73.17 divided by the typical estimated average daily wastewater flow from a current single-family unit. In the Company’s sole discretion, the Company may assign more than one (1) EDU for a residential Property.

See Tariff Sewer No. 3-Pa. P.U.C. No. 3 (Tariff Sewer No. 3), Original Page 25, effective May 19, 2022. As a result of the instant proceeding, Aqua’s Tariff Sewer No. 3 was superseded in its entirety by Aqua’s current Tariff provision. *See* Tariff Sewer No. 4, Original Page 26, effective February 22, 2025. As discussed below, the Company proposed changes to the above definition of an EDU in this rate proceeding, which we approved in the *February 2025 Order*; and which is reflected on Original Page 26 of Tariff Sewer No. 4.

¹² *See, Application of Little Washington Wastewater Co. for approval of the acquisition by Little Washington of the wastewater system assets of the Twp. of Kidder situated in a portion of Kidder Twp., Carbon Cnty., PA and the Right of Little Washington to supply wastewater service to the public in an additional portion of Kidder Township, Carbon Cnty., PA*, Docket No. A-2012-2298067 (Order entered July 19, 2012) (*Kidder Township Order*). Little Washington Wastewater Company (LWWC) is a subsidiary of Aqua. Pursuant to a Notice of Name Change filed on November 26, 2013, the Company changed the name of LWWC to Aqua Pennsylvania Wastewater, Inc., *i.e.*, Aqua Wastewater. *See* Docket No. R-2013-2395509.

¹³ *See* Tariff Sewer No. 4 at Original Pages 11.4.1 and 11.4.2, effective February 22, 2025.

and, since SCH USA does not currently have metered water service, it is billed a monthly flat rate for unmetered wastewater service based on predetermined EDUs, totaling 330 EDUs, as follows:

Willowbrook at Lake Harmony	128 EDUs
Galleria and the Water Park	145 EDUs
The Lodge	53 EDUs
Laundry (serves the above premises)	4 EDUs
Total EDUs Charged to SCH USA	330 EDUs

February 2025 Order at 145 (citing Aqua St. 10-R at 2, 4-5).¹⁴

Aqua previously charged SCH USA a monthly rate of \$131.00 per EDU under the prior rates (excluding the Distribution System Improvement Charge (DSIC)), and, under Settlement rates approved in this proceeding, will charge SCH USA \$144.17 per EDU. *February 2025 Order* at 145 (citing Joint Petition, Sch. 5-WW at 10).¹⁵

¹⁴ The EDUs assigned to SCH USA were determined during litigation initiated in 2007 between a prior owner of the Resort and the Township of Kidder. During the course of that proceeding, the litigants reached a settlement agreement (Kidder Settlement) on several issues, including the number of EDUs that would be used in calculating the Resorts wastewater charges. *February 2025 Order* at 145 (citing SCH USA Exh. FL-1, Release and Settlement Agreement, *Vacation Charters LTD., Split Rock Country Club, Inc., Summit Management & Utilities, Inc., v. Kidder Township*, In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079 (Court of Common Pleas of Carbon County, Pa.)).

¹⁵ Aqua noted that SCH USA stopped paying the current rates it is billed for wastewater service, and such billing dispute is the subject of a separate set of dockets from the instant base rate proceeding. Aqua R.B. at 16 (citing *SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. C-2022-3036893 and C-2022-3037118). Aqua further noted that its motion to consolidate that complaint proceeding with this instant rate case was denied on August 12, 2024 by an Order issued by ALJ John Coogan, the Presiding Officer assigned to those two Formal Complaint proceedings. Aqua R.B. at 16. Aqua explained that ALJ Coogan found “the Formal Complaints include some

Regarding the positions of the parties, SCH USA claimed that its prior rate for wastewater service, and Aqua’s proposal to continue to bill SCH USA on a flat, EDU-basis, was unjust and unreasonable. SCH USA’s case comprised four issues: (1) EDU calculations as a result of the Kidder Settlement; (2) the reasonableness of a flat, EDU-based rate for SCH USA wastewater service; (3) alternatives to a flat, EDU-based rate for SCH USA wastewater service; and (4) changes to EDU tariff language. *February 2025 Order* at 149 (citing SCH USA M.B. at 4 and 13).

First, SCH USA submitted that the EDUs currently charged to it, as set by the Kidder Settlement, are not based on actual usage by the Resort and are inconsistent with Aqua’s existing wastewater tariff language and therefore, result in rates charged to SCH USA that are unjust, unreasonable, and violate Aqua’s tariff. *February 2025 Order* at 149 (citing SCH USA M.B. at 6).

Second, SCH USA alleged that the EDU-based billing by Aqua is unreasonable as applied to SCH USA because SCH USA’s usage of wastewater is substantially lower than the quantity of service actually provided and being billed by Aqua. Therefore, SCH USA claimed that its current flat rate billing significantly overestimates actual usage resulting in rates that violate the Code. Furthermore, SCH USA explained that the Commission has consistently preferred volumetric billing based on actual, measured usage over flat rate billing. *February 2025 Order* at 149 (citing SCH USA M.B. at 8-9).

common issues of fact and law with the issues raised in Aqua Wastewater’s pending base rate proceeding” but that “the issues raised by SCH’s Formal Complaints also implicate matters related to individual account and billing issues that may not be adequately addressed in a base rate proceeding.” R.D. at 155 (citing *SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. C-2022-3036893, Order Denying Motion to Consolidate and Motion to Stay (Order Issued August 12, 2024)).

Third, SCH USA contended that it presented Aqua with several reasonable means for Aqua to measure SCH USA's actual flows so that SCH USA could be billed based on volumetric billing, as opposed to flat rate billing, including: (1) measuring actual water consumption and billing for wastewater service based on metered water consumption; (2) measuring actual wastewater discharges to Aqua's system; (3) adjusting the EDUs used for billing purposes in compliance with Aqua's wastewater tariff which better reflects actual usage and occupancy at the property; or (4) assigning a different proxy that more accurately reflects actual usage and occupancy. *February 2025 Order* at 149-50 (citing SCH USA M.B. at 3).

Fourth, SCH USA objected to Aqua's proposal to change the definition of EDU in its wastewater tariff. *February 2025 Order* at 149-50 (citing SCH USA M.B. at 13).

In summarizing Aqua's position, we noted the Company's proposal to revise the definition of EDU, as follows:

Equivalent Dwelling Unit or "EDU": Except for existing Customers acquired by the Company through a purchase or acquisition and for billing purposes only, the EDU is a measure assigned by the Company based upon the estimated average daily wastewater flow for the type of business, as calculated by the PaDEP regulation at 25 Pa. Code § 73.17(b) divided by the Company's typical estimated average daily wastewater flow from a current single-family unit. Residential Customers are designated as one (1) EDU; however, in the Company's sole discretion, the Company may assign more than one (1) EDU for a residential Property.

For existing customers without a predetermined EDU allocation, the EDU is a measure based upon the estimated average daily wastewater flow for the type of business based on water usage, divided by the typical estimated average daily wastewater flow from a current single-family unit. For other existing customers acquired by the Company through a

purchase or acquisition, the number of equivalent dwelling units is available at <https://www.aquawater.com/about/states-we-serve/pennsylvania/index.php>.

Any Customer who modifies their properties in a manner that impacts the EDU calculation, including in areas previously acquired by the Company, will be subject to the EDU definition described above. The Company will consider a Customer's request for a change in the number of assigned EDUs upon presentation of substantial evidence, satisfactory to the Company in its sole discretion. The Customer shall bear the burden of proof for all such requests.

February 2025 Order at 147-48 (citing, now current, Tariff Sewer No. 4, Original Page 26, effective February 22, 2025).

Aqua argued that this language clarifies the Company's definition of an EDU and provides a method for customers to request a change to its billing EDUs if the nature of its property has changed. Aqua pointed out that SCH USA could request a change to its billing EDUs if such changes in circumstances or the nature of its property have occurred since its EDUs were assigned to it. According to Aqua, SCH USA did not demonstrate that there has been a change in circumstances that warrants an adjustment to its EDUs in that the SCH USA property was a resort when the EDUs were set, and is still a resort today. *February 2025 Order* at 147-48 (citing Aqua M.B. at 19-20, 30).

Regarding the reasonableness of the use of a flat, EDU-based rate for the unmetered wastewater service being provided to SCH USA, Aqua pointed out that, because SCH USA obtains water from their privately-owned wells, Aqua does not know the water usage of SCH USA. When a wastewater utility cannot bill wastewater service based on water usage, as is the case here, the Company argued that it is appropriate and common practice across the wastewater industry to bill a flat rate based upon an assigned number of EDUs. Aqua's witness, Mr. Todd Duerr, further explained that the use of an EDU from a system design and rate perspective is reasonable because the Company must

consider the “sewer capacity needed to treat wastewater from the customer/premises at all times.” *February 2025 Order* at 146 (citing Aqua St. 11-R at 3-4).

Therefore, Aqua argued that, contrary to SCH USA’s claims, the number of EDUs being charged to SCH USA is appropriate, and more specifically, that it is appropriate to utilize the number of EDUs from the Kidder Settlement for SCH USA’s billing. Aqua noted that SCH USA’s predecessor and Kidder Township voluntarily agreed on these values; and Aqua has merely continued to apply those historically agreed upon values. Moreover, Aqua emphasized that the Company is billing SCH USA pursuant to its Commission-approved tariff. *February 2025 Order* at 146-47 (citing Aqua M.B. at 21-22, 26).

Aqua submitted that once Aqua acquired the Kidder Township assets, the assigned EDUs from Kidder Township’s billing system were transferred to Aqua for billing purposes. The assets of the acquired system were placed into Aqua’s rate base in the proceeding in *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2018-3003558 and R-2018-3003561, *et al.* (Order entered May 9, 2019) (*Aqua 2018 Rate Case*). According to Aqua, the number of EDUs billed to SCH USA were reviewed and included in the revenue requirements, as set forth in the respective Commission Orders in the *Aqua 2018 Rate Case* and in *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2021-3027385 and R-2021-3027386, *et al.* (Order entered May 16, 2022) (*Aqua 2021 Rate Case*). *February 2025 Order* at 147 (citing Aqua M.B. at 19; Aqua R.B. at 16).

In our summary of the Recommended Decision, we explained that the ALJs addressed each of SCH USA’s four arguments, in turn. *February 2025 Order* at 150-51.

First, the ALJs determined that the issue of the applicability of the Kidder Settlement – as to the EDU calculation for the Resort that Aqua relies upon – was irrelevant. The ALJs explained that since the Commission approved the flat, EDU-based rate applicable to SCH USA in the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*, Aqua is billing SCH USA based on its Commission-approved tariff, and not the Kidder Settlement. *February 2025 Order* at 150 (citing R.D. at 166-67).

Next, the ALJs considered the reasonableness of Aqua’s use of a flat, EDU-based rate for the unmetered wastewater service provided to SCH USA. The ALJs acknowledged the Commission’s preference for volumetric billing over flat-rate billing but explained that the facilities at the Resort are not individually metered. When metered information is unavailable, the ALJs stated, it is standard industry practice to use a flat rate on a system-wide average per month plus a customer charge. The ALJs ultimately determined that due to the standard industry practice and the fact that the Commission approved Aqua’s flat rate methodology in the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*, they cannot find that the flat rate charged to SCH USA for wastewater service is unreasonable in the current proceeding. *February 2025 Order* at 150-51 (citing R.D. at 167).

The ALJs next discussed SCH USA’s four proposed alternatives to flat EDU-based billing for its wastewater service, outlined *supra*. The ALJs recommended that the Commission reject SCH USA’s first alternative, to install meters to the Resort wells, finding that it would be a great undertaking by Aqua to install the meters and that the costs associated would ultimately be borne by Aqua wastewater customers. Next, the ALJs determined that SCH USA’s second proposal of utilizing ultrasonic flowmeters and electromagnetic flowmeters was not feasible. *February 2025 Order* at 151 (citing R.D. at 168).

The ALJs then focused on SCH USA's third and fourth proposed alternatives where SCH USA proposed that Aqua adjust the EDUs used for billing purposes in compliance with its wastewater tariff, or that it assign a different proxy that more accurately reflects actual usage and occupancy. The ALJs stated that SCH USA is being billed the same as other commercial customers in Rate Zone 4, and if Aqua were to deviate from its tariff, it would result in Aqua charging rates that violate Section 1304 of the Code, 66 Pa.C.S. § 1304. The ALJs concluded by opining that SCH USA did not meet its burden of proving that any of the four alternatives it presented are, in fact, feasible. *February 2025 Order* at 151 (citing R.D. at 168-69).

Finally, the ALJs turned to Aqua's revision to the definition of EDU in its proposed wastewater tariff. The ALJs agreed with Aqua that the clarifying definition of EDU provides a method for customers to request a change to its billing EDUs if the nature of its property has changed. The ALJs determined that SCH USA failed to meet its burden of proof to show that Aqua's flat EDU-based billing method as it applies to SCH USA was unjust or unreasonable. Therefore, the ALJs recommended that the Commission approve Aqua's proposed change to the definition of an EDU. *February 2025 Order* at 151 (citing R.D. at 169).

SCH USA filed four Exceptions to the Recommended Decision arguing that the ALJs incorrectly denied SCH USA's claims to be billed based on metered usage. Specifically, the Exceptions of SCH USA asserted that the ALJs erred in finding the following: (1) that Aqua is billing SCH USA based on Aqua's tariff; (2) that billing SCH USA using a flat, EDU-based rates is reasonable; (3) that alternative billing methods proposed by SCH USA are not feasible; and (4) that Aqua's proposed change to the definition of EDU in its wastewater tariff is reasonable. SCH USA Exc. at 3-11. In its Reply Exceptions, Aqua argued that the ALJs' determinations as to each of these

issues were correct and that the SCH USA Exceptions should be denied. Aqua R. Exc. at 1-9.¹⁶

Upon review, we found no basis to reverse or modify the ALJs' recommendation and denied all of SCH USA's Exceptions. *See February 2025 Order* at 159-67.

In summary, we made the following determinations. First, regarding Aqua's acquisition of the Kidder Township system in 2012, we explained that the number of EDUs that were transferred to Aqua from Kidder Township for billing purposes were taken from the Kidder Settlement, which was entered into between the Kidder Township and SCH USA's predecessor. We reasoned that the Kidder Settlement was appropriate to utilize for the number of the EDUs associated with the Resort, as Kidder Township had been charging the Resort this exact number of EDUs prior to the Company's ownership of the Kidder Township wastewater system. *February 2025 Order* at 160.

There, we acknowledged that it is commonplace with any acquisition for the number of EDUs, or billing determinants, associated with a customer to remain consistent with what the system's previous owner had been charging. We stated that the Commission approved Aqua's acquisition of the Kidder Township wastewater system in 2012 pursuant to the *Kidder Township Order*, and the Compliance Tariff that was filed as part of that proceeding explicitly lists out the number of EDUs associated with the Resort. *February 2025 Order* at 160.

Next, we found that since the Company's acquisition of the Kidder Township wastewater assets, the Commission has reviewed the EDUs billed to

¹⁶ For a full summary of the arguments contained in SCH USA's Exceptions and in Aqua's Reply Exceptions see pages 152-59 of the *February 2025 Order*.

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*. We reasoned that the Commission approved the quantity of EDUs established for the Resort through the Compliance Tariffs filed in the referenced dockets and those billing determinants were found by the Commission to be just and reasonable. *February 2025 Order* at 160.

Additionally, we stated that SCH USA is requesting different billing than what has been authorized by the Commission when the Company acquired the system, and more recently in the *Aqua 2021 Rate Case*. However, SCH USA is operating the same type of business that has always been at this location – *i.e.*, a combination of hotels, restaurants, *etc.* Reasoning that there has been no significant change in the nature of the original wastewater usage at the location, we concluded that no change to the assigned EDUs would be warranted. *February 2025 Order* at 160-61.

In the *February 2025 Order*, we further reasoned that, absent actual use data for the Resort, the practice of using a surrogate to actual measures (*i.e.*, the EDU) is a reasonable practice. Here, we found that SCH USA offered no evidence to tie actual use to the costs Aqua incurs to provide wastewater service, nor any evidence regarding its actual occupancy rate. *February 2025 Order* at 163.

Regarding the four alternatives proposed by SCH USA, we also determined that SCH USA failed to meet its burden to prove that any option is actually viable as it pertains to the Resort or that they can be reasonably implemented. For example, we explained that SCH USA's proposal to measure the wastewater usage for the Resort using ultrasonic flowmeters and electromagnetic flowmeters is unsupported. *February 2025 Order* at 163-64. Moreover, we determined that SCH USA's proposed alternatives of either adjusting the EDUs of SCH USA used for billing purposes to better

reflect actual usage and occupancy or assigning some other proxy that more accurately reflects actual usage and occupancy would result in rates that violate Section 1303 of the Code, 66 Pa.C.S. § 1303. *February 2025 Order* at 166.¹⁷

As a final matter, we denied the Exception of SCH USA that objected to Aqua’s proposed change to the definition of EDU in its wastewater tariff. On review, we found that SCH USA’s argument, that the language change is Aqua’s attempt to provide a basis for continuing to unreasonably bill SCH USA based on the Kidder Settlement, is unfounded. Although we acknowledged that Aqua adopted the EDU calculation within the Kidder Settlement to begin service to SCH USA, we stated that this EDU calculation was ultimately approved by the Commission in both the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*. Additionally, we noted that Aqua’s proposed tariff language provides customers with more information and allows customers to challenge its billing EDUs if the nature of its property has changed since its initial assignment of EDUs. Accordingly, we found Aqua’s modification to the EDU definition to be reasonable as it provides customers with a process to seek recalculation of its EDUs from the Company, a process not offered previously. Thus, we approved Aqua’s revised definition of an EDU. *February 2025 Order* at 167.

¹⁷ We explained that Section 1303 states, in pertinent part, as follows: “No public utility shall, directly or indirectly by any device or in anywise, demand or receive from any ... corporation ... a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs” *February 2025 Order* at 166 (citing 66 Pa.C.S. § 1303).

C. Aqua Petition, Answers and Disposition

1. Aqua Petition and Answers

Aqua's Petition is limited to the Commission's denial of the Company's alternate request pertaining to the authorization to increase rates if the Supreme Court reverses the Commonwealth Court's decision in *Cicero*. Specifically, the Company argues that the Commission should reconsider whether Aqua should be authorized to increase rates related to the Township's operations, as provided for in Paragraph 95 of the Settlement and related Appendix G-1, if the Supreme Court reverses *Cicero*. Aqua Petition at 10.¹⁸

¹⁸ Paragraph 95 of the Settlement stated, as follows:

95. 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.
- b) This amount is not included in the overall revenue requirement established in Paragraph 40.
- c) The revenue increase established for East Whiteland customers will not be subject to a shift under Act 11, and East Whiteland's revenue increase is excluded from the wastewater operations portion of the Act 11 shift identified in Paragraph 2.

Joint Petition at 23. Appendix G-1 provides the tariff pages for the East Whiteland system based on the inclusion of the system in the Company's ratemaking rate base. *Id.* at Appendix G-1.

As a preliminary matter, Aqua submits that both the ALJ, in the Recommended Decision, and Commission, in the *February 2025 Order*, acknowledged that this case presents new and novel issues. According to the Company, one issue which has not been clearly addressed is 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. Aqua argues that this issue clearly satisfies the Commission's standards for reconsideration under *Duick, supra*. Aqua Petition at 9.

Regarding the substance of its arguments, Aqua contends that the Commission acknowledges the possibility that the Supreme Court could affirm the *East Whiteland Order* but overlooks what impact this would have on the Company. Aqua also asserts that the Commission failed to consider whether there were other proposals advanced that would balance the concerns of all stakeholders and the Commission. Aqua Petition at 11.

The Company further submits that until it is permitted to increase rates to East Whiteland customers, Aqua will have been prevented from having an opportunity to recover an adequate return on the investment that this Commission approved in the *East Whiteland Order* and further capital expenditures in the system that have occurred since closing. Moreover, Aqua proffers that absent confirmation that it may immediately implement the East Whiteland rates if the Supreme Court reverses *Cicero*, it may suffer financial harm. In this regard, Aqua asserts 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. Aqua Petition at 11.

To address this concern, Aqua states that it proposed in its Exceptions that the revenue increase provided in Paragraph 95 and Appendix G-1 in the Settlement be

authorized to become effective if the Supreme Court reverses *Cicero* and affirms the *East Whiteland Order*. Aqua Petition at 11 (citing Aqua Exc. at 11-12).

Aqua objects to the Commission's denial of this request on the basis that it would not be possible to craft a specific remedy because it would require speculation as to the Supreme Court's action. According to Aqua, the *February 2025 Order* did not consider the fact that the Commission can appropriately condition the increase in rates contemplated by the Settlement if the Supreme Court reverses and vacates *Cicero* and affirms the *East Whiteland Order*. The Company suggests the following language that, it avers, would satisfy the Commission's concerns:

We find and conclude that, 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, Aqua PA is hereby authorized to file a tariff supplement implementing rates consistent with Appendix G-1 and Paragraph 95 of the Settlement to become effective on one days' [sic] notice.

Aqua Petition at 11-12.

Aqua argues that this suggested language requires no speculation and sets forth appropriate conditional language which would implement specific provisions in the Settlement. The Company adds that this language would: (1) maintain the status quo by giving effect to an agreed-upon provision of the Settlement that was approved by the Commission; (2) resolve concerns about increasing the rates for the Township customers at this time while the *Cicero* decision is pending; (3) resolve concerns regarding the determination and issuance of refunds if the *Cicero* decision is affirmed; and (4) balance the risks to Aqua and the Township for actions authorized by the Commission, which may ultimately be affirmed by the Supreme Court. Aqua Petition at 12.

Regarding the Commission's rationale that Aqua can increase its rates in a future base rate proceeding if the Supreme Court reverses *Cicero* and affirms the *East Whiteland Order*, the Company argues such an approach would result in a substantially larger, single rate increase for East Whiteland customers in that later base rate proceeding. In contrast, Aqua submits that its alternative proposal would more gradually implement rate increases for East Whiteland customers. Additionally, Aqua asserts that awaiting a later rate case would deprive the Company of its right to increase rates to recover investments and to earn a return immediately, if the Supreme Court affirms the *East Whiteland Order*. Aqua Petition at 13.

In its Answer to the Petition, I&E requests that we deny the Aqua Petition, arguing that Aqua raised no new or novel arguments and did not present any considerations which were overlooked or not addressed previously. Rather, I&E submits that the Company's Petition is merely a recitation of prior positions, which were dismissed by the Commission as unpersuasive. I&E Answer to Aqua Petition at 13.

Regarding Aqua's contention that the Commission failed to address the effective date of rates if the Supreme Court reverses the Commonwealth Court's *Cicero* decision, I&E asserts that the Commission addressed this by requiring the maintenance of the status quo. According to I&E, this determination effectively acknowledged that if, by the Company's next base rate case, *Cicero* has been decided in Aqua's favor, Aqua will then be able to potentially increase these customer rates. I&E Answer to Aqua Petition at 7.

I&E argues that, even assuming the Commission did not ultimately address when Aqua could presumably increase these customers rates, Aqua's first opportunity to impose a rate increase on these customers will not be until it is clear that Aqua holds a valid CPC to own and operate the East Whiteland system. I&E states that the rationale as

to this principle is that the public interest would not allow a public utility to increase rates for customers on a system it does not clearly own. I&E Answer to Aqua Petition at 8.

Additionally, I&E objects to Aqua's contention that the Commission overlooked the impact of its ruling. Instead, I&E explains that the Commission addressed Aqua's fairness arguments in finding that the Company was in the best position to assess its risk in closing on the transaction and that it would be unfair to East Whiteland customers to bear the risk of the Company's decision while the *East Whiteland Order* remained subject to appeal. I&E Answer to Aqua Petition at 9 (citing *February 2025 Order* at 141). Further, I&E submits that the Commission appropriately addressed Aqua's arguments about the option of refunds pending the ultimate disposition of *Cicero* by the Supreme Court. *Id.*

Regarding Aqua's alternative request and suggested clarifying language, I&E asserts that the Commission specifically disagreed with this proposal and found it unpersuasive. According to I&E, there is nothing new or novel, nor is there any argument presented by Aqua which the Commission has not already heard and addressed. I&E Answer to Aqua Petition at 10-11.

Referencing the Settlement, I&E notes the following operative language from Paragraph 95: “[i]f 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...*” I&E Answer to Aqua Petition at 11 (emphasis in the original). I&E contends that the Commission has affirmatively answered the question of whether rates for East Whiteland customers can be increased by means of this proceeding and concluded that it is not possible to increase rates at this time. I&E Answer to Aqua Petition at 11.

Addressing Aqua's argument that its alternate proposal would prevent a substantially larger, single rate increase for East Whiteland customers in the next base rate proceeding, I&E proffers that Aqua is not required to seek a substantially larger, single rate increase for these customers. Rather, I&E submits that Aqua is in control of the amount and frequency of its rate requests. Moreover, I&E argues that the concept of gradualism is often used to mitigate rate increases and that the concept should apply equally to Aqua's future rate increases. I&E Answer to Aqua Petition at 12.

In its Answer to the Petition, the OCA argues that Aqua's requested relief is legally deficient because the Company failed to also request the necessary precedent relief in its Petition. Additionally, the OCA asserts that although Aqua submitted a proposal in its Petition with crafted language to address the Commission's reasoning set forth in the *February 2025 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. Rather, the OCA submits that Aqua raised a question which was specifically considered and decided against it in the Commission's ruling on Aqua's Exceptions. Thus, the OCA contends that, pursuant to *Duick*, Aqua's Petition should be denied. OCA Answer to Aqua Petition at 3.

In support, the OCA presents three arguments. First, the OCA asserts that Aqua's Petition is legally deficient for failure to request whole and complete relief and must be denied. Specifically, the OCA explains that Aqua did not request that the Commission rescind or modify the *February 2025 Order* to find that the rates specified in Paragraph 95 of the Settlement for East Whiteland customers are just and reasonable. OCA Answer to Aqua Petition at 3. Here, the OCA cites to the Commission's findings that 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. OCA Answer to Aqua Petition at 3-4 (citing, in part, *February 2025 Order* at 142 and 66 Pa.C.S. §§ 315(a), 315(c), and 1301).

In addition, the OCA contends that 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. The OCA submits that the Commission did not reach a determination of the appropriate amount of an increase because it determined that any increase would be unjust and unreasonable based on the record in this case. According to the OCA, the issuance of such a determination based on certain conditions being met by the Supreme Court would be akin to issuing an advisory opinion because the determination of the appropriate amount of the proposed rate increase was rendered moot by the Commission determination. OCA Answer to Aqua Petition at 4-5.

The OCA argues that the Commission has consistently refrained from issuing advisory opinions on future ratemaking issues because they are best left for resolution in future requests for rate relief. OCA Answer at 4-5 (citing *Petition of Met. Edison Co., et al., for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket Co. M-2009-2123950 (Opinion and Order entered August 3, 2010) (*Petition of Met-Ed*) at 5 (modifying a Commission order to remove an advisory opinion which touched on future ratemaking issues)). Accordingly, the OCA contends that the appropriate amount of a rate increase to East Whiteland customers should be considered in the first rate case in which the Company can meet its burden of proof as to the justness and reasonableness of any increase. OCA Answer to Aqua Petition at 5.

In its second argument, the OCA asserts that the Commission already addressed the issue raised in Aqua’s Petition when it determined that a rate increase for East Whiteland customers is not just and reasonable. Thus, the OCA submits that Aqua has failed to raise any new or novel argument or to identify any issue which the Commission did not address. The OCA explains that the Commission has previously

denied petitions for reconsideration in similar situations where the Commission has expressly considered an issue. Specifically, the OCA proffers that when evaluating petitions for reconsideration, if a party has raised an issue in its exceptions and the Commission then addresses the issue in its order, reconsideration on the same issue is properly denied. OCA Answer to Aqua Petition at 6-7 (citing *Com. of Pa., et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Opinion and Order entered July 11, 2019)).

In particular, the OCA argues that the Commission already considered Aqua's previous positions raised in its Exceptions and expressly denied the Company's positions. The OCA notes Aqua's admission that the Commission addressed its request for relief and objects to the Company's characterization that the Commission only considered the request "in passing." OCA Answer at 8. Here, the OCA contends that Aqua's allegation that the Commission gave only superficial consideration to the request is meritless, citing to the Commission's order specifying that it is not required to consider expressly or at length each argument raised by the parties. OCA Answer to Aqua Petition at 8 (citing *February 2025 Order* at 15 (internal citations omitted)).

Next, the OCA counters that Aqua's proposed language remains subject to a variety of possible outcomes by the Supreme Court, which the Commission previously addressed in the *February 2025 Order*. For example, the OCA submits that although the 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. Additionally, the OCA notes that the Supreme Court may also reach a determination in the *Cicero* 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. OCA Answer to Aqua Petition at 9-10.

Moreover, the OCA argues that the Commission already addressed Aqua's argument in its Petition that until it is permitted to increase rates for East Whiteland customers, it will be prevented from having an opportunity to recover a return on its investment. Here, the OCA cites to the language in the *February 2025 Order* explaining that Aqua was in the best position to assess and assume its risk and that it would be unjust and unreasonable to permit the Company to shift that risk to the consumers. OCA Answer to Aqua Petition at 10-11 (citing *February 2025 Order* at 141).

The OCA adds that Aqua anticipates filing its next request for a general rate increase in or around March 2026. OCA Answer to Aqua Petition at 11 (citing Aqua St. 3-R at 13). According to the OCA, this means that there will be little to no lag between the FPFTY in this proceeding, ending December 31, 2025, and the historic test year which will be used in the following rate proceeding. OCA Answer to Aqua Petition at 11 (citing OCA St. 1SR at 12-13). The OCA asserts that 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 DSIC. Thus, the OCA proffers that, although denying the Aqua Petition will prevent the Company from raising 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. OCA Answer to Aqua Petition at 11 (citing OCA St. 1 at 21-29).

The OCA further addresses Aqua's contention that granting the relief in its Petition will maintain the status quo. Here, the OCA argues that the Commission considered and rejected Aqua's arguments regarding fairness and maintenance of the status quo. OCA Answer to Aqua Petition at 12 (citing *February 2025 Order* at 139-42).

In its third argument, the OCA contends that Aqua's rate gradualism argument is improper and incorrect. As an initial matter, the OCA asserts that Aqua did not raise this issue in its briefs or Exceptions and should not be permitted to argue them for the first time in its Petition. OCA Answer to Aqua Petition at 13-14 (citing *Edwards v. Duquesne Light Company*, Docket No. C-2018-3002741 (Opinion and Order entered January 8, 2025) at 14-15 (*Edwards*)). The OCA explains that in *Edwards*, the Commission determined that the complainant should have raised issues prior to the close of the record or at hearing, as the complainant was able to do so. Thus, the OCA continues, even when a new issue is presented, the Commission is bound under *Duick* to consider if the arguments should have been raised during the course of the case for purposes of granting reconsideration. *Id.*

The OCA further argues that even if the Commission were to consider this issue as new or novel, it should be rejected. According to the OCA, Aqua is in control of the proposed increases to rates; as such, the OCA proffers that if the Company is concerned about rate shock, it should propose lower rates in its next proceeding for East Whiteland customers, should it have legal authority to do so. Moreover, the OCA submits that Aqua is simply repackaging its fundamental fairness arguments which the Commission previously addressed and rejected. OCA Answer to Aqua Petition at 14.

In its letter, CAUSE-PA also opposes the requests set forth in the Aqua Petition and raises substantially similar arguments to those of I&E and the OCA in their respective Answers to Aqua's Petition. CAUSE-PA Letter at 3-4.¹⁹

¹⁹ CAUSE-PA argues, in part, that Aqua merely reiterates the same arguments it has maintained throughout the entire proceeding, *i.e.*, that it would be harmed if *Cicero* were to be reversed and the Company were not authorized to immediately increase rates for the East Whiteland customers. Even if the Commission were to reconsider these arguments, CAUSE-PA asserts that Aqua's Petition should be denied on the basis that the conditional order requested by the Company requires speculation as previously determined by the Commission. CAUSE-PA Letter at 3-4.

2. Disposition of Aqua Petition

In its Petition, Aqua focuses on the threshold consideration under the *Duick* standard with the following argument: “[o]ne issue not clearly addressed in this proceeding concerns 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.” Aqua Petition at 9. According to Aqua, this issue clearly satisfies the Commission’s standards for reconsideration under *Duick*. We disagree.

The question of the effective date of the East Whiteland settlement rates was addressed in our determination that Aqua failed to establish that its rate proposal for the Township customers was just and reasonable. In our ruling, we specifically held that “we agree with the ALJs that Aqua has not satisfied its burden of proof to establish that the East Whiteland rate proposal is just and reasonable as required under Section 1301 of the Code.” *February 2025 Order* at 142. We further clarified that “due to the uncertainty of when and how the Supreme Court will resolve *Cicero*, Aqua has not established by a preponderance of the evidence 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.” *Id.* (citing 66 Pa.C.S. § 315(c)). Inherent in this determination is the denial of Aqua’s request to collect an additional \$6.4 million in revenue from the East Whiteland customers because of the Company’s failure to establish in the context of this proceeding that such an increase is just and reasonable.

Aqua submits that we did not clearly address when the East Whiteland rates as set forth in the Settlement could be implemented if the Supreme Court reverses *Cicero* and upholds the *East Whiteland Order*. In other words, Aqua asserts that we should reconsider the *February 2025 Order* because, therein, we did not expressly state when

the \$6.4 million revenue increase for the East Whiteland customers could be implemented, pending a ruling in favor of Aqua by the Supreme Court.²⁰

In our *February 2025 Order*, we plainly rejected Aqua’s request to include the East Whiteland Settlement rates in its rate request because of the uncertainty of when and how the Supreme Court will rule. *February 2025 Order* at 138-39. Moreover, the operative language of the Settlement states “[i]f the Commission authorizes [Aqua] to include the East Whiteland system in its ratemaking rate base and permits the establishment of new rates in this proceeding,” Aqua will be permitted to collect an additional \$6.4 million in revenue from East Whiteland customers. Settlement at 23, ¶ 95 (emphasis added). This operative conditional provision was not satisfied and, thus, no further determination pertaining to the proposed East Whiteland Settlement rates was necessary. Under the circumstances, the Commission was not required to state in dicta when the Company could theoretically impose this revenue increase based on possible future action by the Supreme Court.²¹

Furthermore, the Commission explicitly denied Aqua’s alternative request, set forth in its Exception No. 1, that the Company be permitted to immediately implement the East Whiteland Settlement rates upon a Supreme Court ruling in *Cicero* satisfying various preconditions. Even assuming, *arguendo*, that the Commission could issue such an advisory opinion, there has been no determination that the \$6.4 million revenue increase proposed in the Settlement was just and reasonable. It is axiomatic that the

²⁰ Aqua acknowledges in its Petition that the Commission asserted that the Company may seek to increase rates in a future rate base proceeding if the Supreme Court reverses *Cicero* and affirms the *East Whiteland Order*. Aqua Petition at 13 (citing *February 2025 Order* at 140-41). Thus, Aqua cannot reasonably contend that the *February 2025 Order* lacked clarity as to when the Company would be permitted to seek such a rate increase.

²¹ As noted by the OCA, the issuance of such a directive would appear to constitute an advisory opinion on future ratemaking issues, which the Commission ordinarily refrains from issuing. *Petition of Met-Ed* at 5.

Commission cannot authorize a rate increase without a specific determination that the rate is just and reasonable regardless of whether such an increase is agreed to in a settlement. 66 Pa.C.S. § 1308(c). Here, Aqua did not request a reversal or modification of the finding in the *February 2025 Order* that it failed to satisfy its burden of proof that the proposed rate increase for the East Whiteland customers was just and reasonable. Accordingly, without such a prior determination pertaining to the justness and reasonableness of the amount of the requested rates, the Commission lacks authority to permit the immediate implementation of the East Whiteland rate increase upon the actions the Company hopes will be taken by the Supreme Court.²²

In its Petition, Aqua recasts its prior arguments that the Commission fails to appreciate the harm that would occur if the Company is not permitted to immediately implement the East Whiteland rate increase upon a favorable ruling for the Company by the Supreme Court. *See* Aqua Petition at 11. However, Aqua previously raised these arguments in this proceeding – *see* Aqua M.B. at 16 and Aqua Exc. at 10 – and we have already addressed them in the *February 2025 Order*.

For example, in its Petition, Aqua argues that until it is permitted to increase rates for East Whiteland consumers, it will be prevented from having an

²² Aqua’s Petition focuses on the Commission’s denial of the Company’s alternative request and the statement that “it would not be possible to craft a specific remedy because it would require speculation on the actual language of the ultimate order” of the Supreme Court. Aqua Petition at 11 (citing *February 2025 Order* at 143). As a possible solution, Aqua suggests additional conditional language that could be incorporated in a subsequent Commission Order. Aqua Petition at 12. Again, Aqua’s request fails to acknowledge that it did not satisfy its burden of proof as to the reasonableness of its rate increase for the East Whiteland customers. Absent a reversal or modification of this finding clearly set forth in the *February 2025 Order*, such an alternative conditional ruling would not be in the public interest.

opportunity to recover a return on its investment in the East Whiteland system since closing. We previously addressed this argument, as follows:

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. *See, e.g., Aqua Pennsylvania, Inc. v. Pa. PUC*, Docket No. R-2021-3027386 (Initial filing letter May 12, 2022).

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 2025 Order at 141.

Our *February 2025 Order* made clear that the asserted harms are the result of the calculated determination by Aqua to close on the East Whiteland transaction before waiting for the expiration of the appeal period. Thus, we reasoned that the Company assumed the risks of its actions and find here no reason to reconsider this same argument again in Aqua's Petition.

In further support of its Petition, Aqua argues that the Commission failed to appreciate that requiring the Company to wait until the next base rate proceeding to

implement the rate increases for the East Whiteland customers will result in a substantially larger single rate increase for those customers. Aqua Petition at 13. Conversely, Aqua proffers that its alternative proposal would more gradually implement rate increases for the Township customers. *Id.*

Although Aqua's gradualism concern is arguably a new argument first raised in its Petition, we decline to exercise our discretion to reconsider the *February 2025 Order* based on this contention.²³ As argued by both I&E and the OCA, Aqua is in control of its proposed rate increases and the concept of gradualism could equally apply to Aqua's future rate requests to mitigate any increases. Thus, if Aqua has concerns about rate shock, it has the option to propose lower rates in its next rate proceeding for East Whiteland customers, should it have the legal authority to implement any such increase.

Upon consideration, we will deny Aqua's Petition on the grounds that it fails to persuade us that reconsideration is warranted or that we should exercise our discretion to modify the *February 2025 Order*.

²³ We believe this case is distinguishable from *Edwards, supra*, in which we recently held that a complainant waived an argument for failure to raise it at a hearing. *Edwards* at 15. Here, we acknowledge that Aqua first asserted the alternate proposal of an immediate implementation of rates for the East Whiteland customers within its Exceptions in response to the Recommended Decision. Thus, there was no apparent opportunity to present it within the context of the evidentiary hearing or prior to the close of the record.

D. SCH USA Petition, Answer, and Disposition

1. SCH USA Petition and Answer

In its Petition, SCH USA requests that the Commission reconsider the *February 2025 Order* regarding Aqua's current practice of billing SCH USA a flat rate for unmetered wastewater service based on EDUs. According to SCH USA, the Commission has overlooked or not considered various aspects of SCH USA's arguments, which demonstrate that the flat rate currently billed to SCH USA is based on an incorrect number of EDUs and has no relationship whatsoever to actual usage at the property. SCH USA argues that this results in overcharges for significantly more wastewater usage than Aqua is actually collecting or treating, and these inaccurate charges are unjust and unreasonable. In particular, SCH USA contends that the Commission overlooked the practical effect of continuing this unfair billing practice on SCH USA, which owns and operates a large commercial resort property. SCH USA Petition at 1-2.

In support of its Petition, SCH USA proffers four arguments. First, SCH USA argues that in the *February 2025 Order*, the Commission improperly relied on outdated and baseless EDU calculations from the Kidder Settlement, which has expired. Second, SCH USA contends that the *February 2025 Order* failed to acknowledge that Aqua's 2018 and 2021 rate cases did not expressly approve allocation of costs or EDUs specific to SCH USA. Third, SCH USA asserts that the *February 2025 Order* overlooks the fact that Aqua's current billing practice applied to SCH USA violates the Company's tariff by failing to calculate EDUs consistent with the provisions of the tariff. Fourth, SCH USA submits that the *February 2025 Order* overlooks substantial evidence of reasonable and feasible alternatives for billing based on actual usage. SCH USA Petition at 3-8.

Regarding its first argument, SCH USA contends that the *February 2025 Order* incorrectly focused on Aqua’s acquisition of the system from Kidder Township by stating that the number of EDUs that were transferred to Aqua from Kidder Township for billing purposes were taken from the Kidder Settlement. SCH USA Petition at 3 (citing *February 2025 Order* at 160). According to SCH USA, by continuing to allow Aqua to bill for the EDUs based on the Kidder Settlement, the *February 2025 Order* overlooked 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 Kidder to Aqua. SCH USA Petition at 3.

SCH USA notes that the EDUs assigned to it were determined during litigation initiated in 2007 between a prior owner of the Resort and Kidder Township. SCH USA states, during that proceeding, the litigants reached a settlement agreement on several issues, including the number of EDUs that would be used in calculating the Resort’s wastewater charges. Later, in 2012, SCH USA continues, LWWC, a subsidiary of Aqua, entered into an APA with Kidder Township to purchase the wastewater system. However, SCH USA contends that under this APA, only two paragraphs from that settlement were transferred from Kidder Township to LWWC – and those paragraphs did not include the EDUs for the Resort. SCH USA Petition at 3-4.

Specifically, SCH USA submits that pursuant to the APA: “LWWC shall not assume any rights or obligations of Seller under any contract, agreement, commitment, lease, certificate, permit or other instrument, whether oral, written, express or implied, except with respect to: (i) those agreements, contracts, permits and other instruments listed on Schedule 1.4 attached hereto...” SCH USA Petition at 4.

SCH USA adds that Schedule 1.4 of the APA states, as follows:

Seller shall assign to LWWC Seller’s right to collect the payments still to be made by the Plaintiff to Kidder Township under paragraphs nine and ten of that certain Release and

Settlement Agreement entered by and between Vacation Charters LTD as Plaintiff and Kidder Township pursuant to the civil action filed in the Court of Common Pleas of Carbon County, Pennsylvania at Docket No. CV-07-4079....

Id. SCH USA states that the payments outlined in paragraphs nine and ten of the Kidder Settlement were to resolve disputed charges from the wastewater system between 2002 and 2010 and did not include EDU calculations for the Resort. According to SCH USA, LWWC did not assume the portions of the Kidder Settlement related to the Resort's EDU calculations, and Aqua likewise did not assume those EDU provisions when it later acquired the system. *Id.*

SCH USA argues that the *February 2025 Order* ignored the plain language of these agreements, which shows that the Kidder Settlement has long expired, and any terms related to EDU calculations for the Resort were not assumed by Aqua when it acquired the wastewater system. According to SCH USA, the EDU determinations outlined in the Kidder Settlement should have no bearing whatsoever on the calculation of EDUs for the Resort today, or how SCH USA's current wastewater bills should be calculated. SCH USA contends that by continuing to rely on these outdated and baseless EDU calculations, Aqua is imposing improper charges on SCH USA that are unjust and unreasonable. SCH USA Petition at 5.

In its Answer to SCH USA's first argument, Aqua argues that the Commission did not overlook whether Aqua assumed the provisions of the Kidder Settlement related to SCH USA's EDUs. Rather, Aqua submits, the Commission explained that those EDUs had been included in Aqua's tariff as a result of a number of prior proceedings. In support, Aqua references the *February 2025 Order* which provided that "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.” Answer to SCH USA Petition at 5 (citing *February 2025 Order* at 160).

Aqua further references the *February 2025 Order*, stating that the Commission reviewed the EDUs billed to the accounts of SCH USA within both the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*. The Company asserts that the Commission explained that these EDUs were included in the revenue requirements within Aqua’s prior two rate cases, finding them to be just and reasonable, and that the Commission approved those rates through filed Compliance Tariffs. Answer to SCH USA Petition at 5-6 (citing *February 2025 Order* at 160).

The Company contends that SCH USA does not raise any new or novel arguments with respect to the EDUs its bills are based upon pursuant to Aqua’s Commission-approved wastewater tariff. Rather, Aqua proffers, SCH USA’s argument 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’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 Rate Case* and the *2021 Rate Case*. Answer to SCH USA Petition at 6.

In its second argument, SCH USA contends that the *February 2025 Order* overlooks the fact that neither the 2018 nor the 2021 Aqua rate cases specifically approved an allocation of costs or number of EDUs applicable to SCH USA. Here, SCH USA argues that Aqua and the Commission in the *February 2025 Order* generically cite to the prior rate proceedings but do not cite to any specific reference where the Commission has approved the number of EDUs that must be billed to SCH USA. Additionally, SCH USA notes that Aqua’s current tariff does not include any mention of EDUs specific to SCH USA. SCH USA Petition at 5.

SCH USA argues that the *February 2025 Order* ignores that there was no specific discussion of SCH USA's EDUs or costs in previous cases. According to SCH USA, the simple approval of Aqua's prior rate cases provides no basis for the continuation of an unjust and unreasonable billing practice against SCH USA. SCH USA Petition at 5-6.

In its Answer to the second argument, Aqua submits that the assertion of SCH USA is neither new nor novel. The Company contends that this assertion was raised in SCH USA's briefs and that the ALJ recommended that such arguments be rejected; and it was raised in SCH USA's Exceptions and denied by the *February 2025 Order*. Answer to SCH Petition at 7 (citing SCH USA M.B. at 10; SCH R.B. at 4; R.D. at 166-67; and *February 2025 Order* at 160).

Additionally, Aqua asserts that SCH USA's claim fails to acknowledge that the EDUs applicable to SCH USA were approved as part of Aqua's Compliance Tariff at Docket No. A-2012-2298067. The Company further states that those same EDUs were also approved as a part of Aqua's Compliance Tariffs in the *2018 Rate Case* and *2021 Rate Case*. Answer to SCH Petition at 7.

Regarding its third argument, SCH USA asserts that the *February 2025 Order* does not acknowledge that Aqua's current billing practice violates the clear terms of Aqua's tariff by failing to calculate EDUs in the manner described in and consistent with the tariff. In support, SCH USA references the Company's superseded Tariff Sewer No. 3, which required that EDUs be determined based upon the estimated average daily wastewater flow for the type of business, as calculated by the PaDEP regulation at 25 Pa. Code § 73.17, divided by the typical estimated average daily wastewater flow from a current single-family unit. SCH USA Petition at 6 (citing superseded Tariff Sewer No. 3, Original Page 25).

SCH USA argues that its expert testified that billing based on EDUs originally determined in the inapplicable Kidder Settlement does not comport with the calculation of method outlined in the tariff. SCH USA Petition at 6 (citing SCH USA R.B. at 3-4). Additionally, SCH USA asserts that in the *February 2025 Order*, the Commission overlooked the significant difference between the EDUs under the expired Kidder Settlement as compared with the EDUs that would be charged to SCH USA if the tariff provision was applied as written. SCH USA Petition at 6.

In its Answer to the third argument, Aqua contends that SCH USA is reasserting an argument that is neither new nor novel. The Company proffers that SCH USA raised the same argument in its briefs. Answer to SCH USA Petition at 8 (citing SCH USA M.B. at 8; SCH USA R.B. at 3-4). Additionally, Aqua asserts that when SCH USA raised the same issue in its Exceptions, the Commission found no basis to reverse the ALJs' recommendation and denied the Exceptions. Answer to SCH USA Petition at 8 (citing *February 2025 Order* at 167).

Aqua adds that SCH USA's third argument rests upon SCH USA's assertion that the EDUs assigned to it by the Kidder Settlement should not apply. However, the Company argues, SCH USA ignores the fact that its rate has been approved previously by the Commission. According to Aqua, both the ALJs and the Commission already reviewed and disposed of these arguments. Answer to SCH USA Petition at 8 (citing Aqua R.B. at 17; Aqua R. Exc. at 3).

In its fourth argument, SCH USA contends that the Commission overlooked substantial evidence presented by SCH USA's witness, Mr. Ronald Carrier, showing feasible and cost-effective methods that would allow SCH USA to be billed for actual usage. Noting that it is undisputed that Aqua is already using water meters to measure consumption in private wells and in other parts of its system, SCH USA asserts that it is feasible for the Company to bill SCH USA for metered usage. According to

SCH USA, the Commission, in the *February 2025 Order*, overlooked the fact that Aqua has not asserted any real reason why metered service cannot be applied to SCH USA. SCH USA Petition at 7.

SCH USA reiterates its claim that the Commission did not acknowledge the record evidence in this proceeding showing that SCH USA's actual water consumption could be metered and Aqua could use water consumption as a proxy for wastewater usage for billing purposes. SCH states that by utilizing water meters Aqua could determine a more accurate and more reasonable quantity of wastewater being discharged to the Company's system. Although SCH USA acknowledges that this approach is still a method of estimating wastewater usage because not all water going through the meters ends up in the sewer system, SCH USA argues it is a significant improvement over estimating EDUs and would provide a more accurate wastewater bill than the current flat rate bill SCH USA receives. SCH USA Petition at 7-8.

SCH USA submits that, considering the availability of reasonable metering methods, the Commission should direct Aqua to implement one of these options. SCH USA also requests that Aqua be required to provide such billing options in its tariff to allow currently unmetered customers such as SCH USA to be billed for actual usage. SCH USA Petition at 8.

Aqua responds to the fourth argument by asserting that in the *February 2025 Order*, the Commission reviewed the SCH USA arguments and evidence regarding the alternatives to flat-rate billing. The Company contends that the Commission ruled that SCH USA failed to satisfy its burden to prove that any option is viable as it pertains to the Resort. Answer to SCH USA Petition at 9 (citing *February 2025 Order* at 155-57, 163).

Aqua adds that the arguments of SCH USA disregard the fact that the Company fully explained why each specific alternative offered by SCH USA could not be applied to its system. According to Aqua, the Commission then reviewed each of the alternatives offered, and fully explained why SCH USA failed to carry its burden. Answer at 9 (citing *February 2025 Order* at 163-67).

Additionally, Aqua argues that contrary to SCH USA's claims, the Commission did not overlook any evidence. Rather, the Company asserts that the *February 2025 Order* found SCH USA's evidence fell short because it disregarded the specific makeup of the SCH USA system and effectively sought a special rate from Aqua that is not provided for in its tariff. Answer to SCH USA Petition at 9 (citing *February 2025 Order* at 166).

2. Disposition of SCH USA Petition

Upon review, we find that the Petition of SCH USA does not raise any new or novel arguments, or considerations that were not addressed by the Commission in the *February 2025 Order*.

Regarding its first argument, that the *February 2025 Order* improperly relied on outdated and baseless EDU calculations from the Kidder Settlement which has expired, SCH USA previously raised the same arguments which were addressed and rejected in the Recommended Decision and the *February 2025 Order*.

For example, SCH USA proffers substantially similar language in its Petition which it previously asserted in its briefs. *Compare* SCH USA Petition at 3-5, *with* SCH USA M.B. at 6-8, *and* SCH USA R.B. at 2-4. In their Recommended Decision, the ALJs expressly acknowledged and summarized the same arguments raised by SCH USA in its briefs, see R.D. at 155-56, and determined that SCH USA failed to

meet its burden of proof that the Commission should order Aqua to alter its flat EDU-based billing method applicable to SCH USA and apply a different billing method. R.D. at 166. Regarding the arguments pertaining to the applicability of the Kidder Settlement to Aqua, the ALJs found the following:

We do not find the question as to the applicability of the Kidder Settlement relevant here, because 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*. Thus, Aqua is billing SCH USA not based on the Kidder Settlement but is billing SCH [USA] based on its Commission-approved tariff.

R.D. at 166-67.

In response to the ALJs' determination, SCH USA filed Exceptions reiterating its prior arguments. *See* SCH USA Exc. at 3-4. Our *February 2025 Order* directly addressed these arguments. There, we explained that the EDUs proposed to be included in Aqua's tariff were the result of several prior proceedings beginning with the Commission's approval of Aqua's acquisition of the Kidder Township wastewater system in the *Kidder Township Order*. We further emphasized that the Compliance Tariff for the Kidder Township acquisition explicitly listed the number of EDUs associated with the Resort. *February 2025 Order* at 160.²⁴

²⁴ *See* Compliance Tariff filed on October 11, 2012, in accordance with the *Kidder Township Order*. Little Washington Wastewater Company, d/b/a Suburban Wastewater Company, Supplement No. 83 to Tariff Sewer-PA. P.U.C. No. 1, Page No. 10P, effective October 1, 2012 (*Kidder Township Order – Compliance Tariff*). We also note that the Company's tariff filing which incorporated the name change from LWWC to Aqua in 2013 also included the same EDUs associated with the Resort. *See* Aqua Pennsylvania Wastewater Inc., Supplement No. 86 to Tariff Sewer-PA. P.U.C. No. 1, First Revise Page No. 10Q, effective January 1, 2014.

Thereafter, we explained:

[T]he 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.

February 2025 Order at 160.

It is evident that the argument of SCH USA pertaining to the alleged reliance on the Kidder Settlement has been rejected on two occasions: first, as recommended by the ALJs in the Recommended Decision, and second by the Commission in the *February 2025 Order*. We decline to exercise our discretion to entertain the same argument a third time here. More importantly, we find no reason to depart from our rationale that the EDUs which form the basis of the revenue requirement for the rate zone applicable to SCH USA have been included in Aqua's tariff as a result of a number of prior proceedings. Beginning with the *Kidder Township Order* in 2012 and the Compliance Tariff filed in response to that Order, and later by two subsequent Aqua rate case proceedings in 2018 and 2021, the number of EDUs applicable to the accounts of SCH USA have been well established.²⁵

²⁵ We note that SCH USA acquired the Resort in 2020 and thus appeared to have had the opportunity to address its concerns in Aqua's 2021 rate proceeding. However, there is no record of SCH USA intervening or filing a complaint in the 2021 Aqua rate case proceeding. Additionally, we note that SCH USA is an intervenor in this proceeding and did not file a Formal Complaint. As discussed, *supra*, SCH USA currently has two pending Complaints before the Commission containing overlapping issues of fact.

In the second argument, alleging that Aqua’s prior rate cases did not specifically address SCH USA’s EDUs, SCH USA again asserts the same arguments which were addressed in the Recommended Decision and the *February 2025 Order*. See, e.g., SCH USA R.B. at 4; R.D. at 166-67; SCH USA Exc. at 3-4; and *February 2025 Order* at 160.

We disagree with the contention of SCH USA that the Commission, in the *February 2025 Order*, overlooked the fact that neither the *Aqua 2018 Rate Case* nor the *Aqua 2021 Rate Case* specifically approved an allocation of costs or number of EDUs applicable to SCH USA. Rather, we explained that the EDUs applicable to SCH USA were approved as part of the *Kidder Township Order* proceeding. Additionally, we clarified that it is commonplace with any acquisition for the number of EDUs, or billing determinants, associated with a customer to remain consistent with what the system’s previous owner had been charging. We reasoned that the Commission approved Aqua’s acquisition of the Kidder Township wastewater system and found that the *Kidder Township Order – Compliance Tariff* explicitly listed the number of EDUs associated with the Resort. *February 2025 Order* at 160.

Moreover, we determined that in Aqua’s prior two base rate proceedings the EDUs billed to SCH USA’s accounts were included in the revenue requirements set forth in the respective Orders in both the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*. As discussed above, we found those rates to be just and reasonable and approved them pursuant to the Compliance Tariffs filed in those respective dockets. *February 2025 Order* at 160.

Furthermore, we specifically noted that the approval of the billing determinants in the prior rate cases were based upon the EDUs applicable to SCH USA. In particular, we emphasized that the quantity of EDUs established for the Resort were presumptively reasonable as they were reviewed and approved, along with other billing

determinants included in the revenue requirement, which the Commission found to be just and reasonable, most recently in the *Aqua 2021 Rate Case*. *February 2025 Order* at 163.

Accordingly, we find that the second argument of SCH USA fails to assert any new or novel arguments or considerations which we overlooked and, thus, does not satisfy the *Duick* standard for reconsideration.

Regarding the third argument, alleging that the current billing practices for SCH USA violate Aqua's tariff, we find that SCH USA has again failed to proffer an argument that is new or novel or has been overlooked by the Commission. In this argument, SCH USA asserts that it is being billed pursuant to the EDUs originally determined in the Kidder Settlement, which does not comport with the calculation method outlined in the Company's tariff. SCH USA Petition at 6.

SCH USA raised similar concerns in its briefs. *See* SCH USA M.B. at 8; SCH USA R.B. at 3-4. As discussed above, the ALJs determined that the Kidder Settlement was not relevant here because the Commission approved the flat, EDU-based rate applicable to SCH USA in the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*. R.D. at 166. Thereafter, in its Exceptions, SCH USA reiterated the same argument; however, we found no basis to reverse or modify the ALJs' determination and denied the Exceptions of SCH USA. *February 2025 Order* at 167.

We decline to exercise our discretion to reconsider this argument again, because such argument fails to acknowledge that the rate applicable to SCH USA has been long established. As reasoned above, it is clear pursuant to the *Kidder Township Order*, the *Kidder Township Order – Compliance Tariff*, the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case* that the number of EDUs applicable to the accounts of SCH USA have been confirmed for some time. Thus, SCH USA's repeated reliance on

the Kidder Settlement for support that its rate is somehow inconsistent with the terms of the Company's tariff is not persuasive.

Moreover, as we explained in the *February 2025 Order*, SCH USA is requesting different billing than what has been authorized by the Commission when the Company acquired the system, and most recently in the *Aqua 2021 Rate Case*. However, the record indicated that SCH USA has been operating the same type of business that has always been at this location – *i.e.*, a combination of hotels, restaurants, *etc.* Reasoning that there has been no significant change in the nature of the original wastewater usage at the location, we concluded that no change to assigned EDUs was warranted. *February 2025 Order* at 160-61. Accordingly, we decline to exercise our discretion to grant reconsideration based on SCH USA's third argument.

In its fourth argument, SCH USA asserts that in the *February 2025 Order*, the Commission overlooked substantial evidence showing there are feasible and cost-effective methods that would allow SCH USA to be billed for actual usage. For support of this contention, SCH USA argues that Aqua is already using water meters to measure water consumption from private wells along with wastewater meters to measure actual wastewater usage in other parts of its system. Additionally, SCH USA contends that its actual water consumption could be metered and that Aqua could use water consumption as a proxy for wastewater usage for billing purposes. SCH USA Petition at 7.

However, SCH USA previously raised the same arguments in its Exceptions. *See* SCH USA Exc. at 7-9. In ruling on these arguments, we found that SCH USA failed to meet its burden of proof that any option is actually viable as it pertains to the Resort. *February 2025 Order* at 163. We examined each of the alternatives offered by SCH USA and explained why SCH USA failed to satisfy its burden. *Id.* at 163-67. In summary, we determined that SCH USA's evidence fell short

because it disregarded the makeup of the Resort’s specific system and whether the proposals could be reasonably implemented. Additionally, we determined that SCH USA is effectively seeking a special rate from Aqua, in violation of the Code. *Id.* at 166-67 (citing 66 Pa.C.S. §§ 1303 and 1304).

Finding no new or novel arguments or any considerations apparently overlooked by the Commission, we decline to exercise our discretion to reconsider the *February 2025 Order* based on SCH USA’s fourth argument.

III. Conclusion

Upon review, we shall deny both the Aqua Petition and the SCH USA Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Partial Reconsideration and/or Clarification, filed by Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc. on February 14, 2025, seeking reconsideration of the Commission’s Opinion and Order entered on February 7, 2025, relative to the above-captioned proceeding, is denied, consistent with this Opinion and Order.

2. That the Petition for Reconsideration filed by SCH USA, LLC on February 24, 2025, seeking reconsideration of the Commission’s Opinion and Order entered on February 7, 2025, relative to the above-captioned proceeding, is denied, consistent with this Opinion and Order.

3. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 10, 2025

ORDER ENTERED: April 10, 2025