William E. Ferguson
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April 21, 2025

Via Electronic Filing

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: William Ferguson v. Aqua Pennsylvania Wastewater, Inc.
Docket Nos. C-2023-3043108 & C-2023-3043109
Exceptions of William Ferguson

Dear Secretary Homsher:

Enclosed for electronic filing please find the Exceptions of William Ferguson to the Initial Decision in the above-referenced proceeding. Copies have been served in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

/s/ William Ferguson

William E. Ferguson

cc: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson, Complainant	:	
v.	:	Docket Nos. C-2023-3043108 & C-2023-3043109
Aqua Pennsylvania Wastewater, Inc., Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Exceptions of William Ferguson to the Initial Decision, in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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/s/ William Ferguson

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Dated: April 21, 2025

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Willaim Ferguson, Complainant	: :	
v.	:	Docket Nos. C-2023-3043108
	:	C-2023-3043109
Aqua Pennsylvania Wastewater, Respondent	: :	

EXCEPTIONS OF WILLIAM FERGUSON

William E. Ferguson
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Date: April 21, 2025

INTRODUCTION

Summary of Exceptions

1. The integrity of the Commission's ratemaking process is at stake in these combined complaints—when does lawful rate case behavior cease and sworn or unsworn falsification to public servants performing their official functions begin?

2. Charging for a major expense (here, trucking wastewater) that is not being incurred is not just and reasonable under 66 Pa.C.S. § 1309(a).

3. Aqua's data strongly suggests that Aqua improperly lowered actual customer usage data to collect more revenue than the Commission's order permitted.

4. Ferguson carried his 66 Pa.C.S. § 332(a) burden of proof by making a *prima facie* case. Aqua failed to rebut that case by producing at least co-equal evidence. Alternatively, Aqua was required by 66 Pa.C.S. § 315(b) to affirmatively show that it did not violate any Commission determination or order, rather than merely rebutting Ferguson's case with at least co-equal evidence.

5. The Initial Decision wrongly dismissed Ferguson's complaints as a matter of law without reaching the merits by applying three inapplicable legal rules to a 66 Pa.C.S. § 1309(a) proceeding.

6. Some of the ID's Findings of Fact were incomplete and misleading by suggesting that Ferguson's claims were "fully considered" in Aqua's 2021 rate case because he asked questions and made general, non-substantive comments about Aqua's initial filing in public input testimony.

7. As a matter of ratemaking fairness, this matter should be remanded to the ALJ for additional discovery and hearing and a decision on the merits of Ferguson's claims. In addition, the Commission *sua sponte* should separately investigate whether Aqua's rate case conduct exceeded the bounds of lawful rate case behavior, or should refer the matter to the Bureau of Investigation and Enforcement for action it deems appropriate.

1. Nature of case. These are exceptions to an Initial Decision ("ID")[1] regarding two consolidated Public Utility Code Section 701 formal complaints, both filed on September 19, 2023, by William Ferguson ("Ferguson"), acting *pro se*, who is a customer of Aqua Pennsylvania Wastewater, Inc. ("Aqua") in its New Garden Township (Chester County) division.

Ferguson's two formal complaints concerned Aqua's 2021 base rate case (at Docket Nos. R-2021-3027385 and R-2021-3027386) filed on August 20, 2021, for increases in water and wastewater rates based on a Fully Projected Future Test Year ("FPFTY") ending March 31, 2023. The Commission's Opinion and Order entered on May 16, 2022,[2] authorized Aqua to collect $4.4 million of revenue from Aqua's New Garden wastewater operations. Aqua submitted its Compliance Tariff on May 23, 2022, which, after Commission staff review, was permitted to become effective by operation of law by Secretarial Letter dated June 3, 2022.[3] Aqua then amended its New Garden Tariff on June, 15, 2022 noting a clerical error in the original.

2. Complaints made and relief sought. With considerable specificity, Ferguson's complaints, supported by fourteen exhibits, alleged that Aqua (1) knowingly and intentionally made a $1.2 million expense claim in its 2021 rate case that ceased to be incurred at or about the time of Aqua's initial rate case filing and did not eliminate the expense from its FPFTY as it was required to do (the "Trucking Expense Complaint" at Docket No. C-2023-3043109) and (2) in support of its Compliance Tariff made improper adjustments to its customer usage data

[1] *Available at* https://www.puc.pa.gov/pcdocs/1872249.pdf.

[2] *Available at* https://www.puc.pa.gov/pcdocs/1744354.pdf.

[3] *Available at* https://www.puc.pa.gov/pcdocs/1746438.pdf.

that likely produced more revenue than permitted by the Commission (the "Revenue Complaint" at Docket No. C-2023-3043108).

Ferguson requested that the Commission investigate and validate his findings about Aqua's trucking-related expenses and its assumptions and calculations in support of its Compliance Tariff and to require new tariffs or issue refunds to customers in its New Garden division if overcharges are found. Tr. 90; ID 16.

3. Ferguson is not a typical pro se complainant. As summarized below in Exception No. 4, Ferguson forcefully demonstrated that Aqua's existing rates (i.e., those resulting from Aqua's 2021 rate case that prevailed until the effective date of Aqua's next rate case in 2024) were not just, reasonable, or lawful, and which Aqua failed to adequately rebut or affirmatively prove otherwise. He successfully did so because of his education and business experience. He holds undergraduate and graduate degrees in Chemical Engineering from The Ohio State University. He retired after 37 years of experience as a chemical plant engineer and a business analyst with DuPont. He has extensive business, accounting and chemical operations knowledge, including pumping projects pertinent to this case. Therefore, he was able to discover and document Aqua's rate case improprieties.

4. The Complaints' importance. Ferguson's complaints are important for two reasons. First and foremost, they involve the integrity of the ratemaking process and the vital need for the Commission to ensure that it can trust the truthfulness and completeness of public utility filings, which are made subject to the penalties for perjury and unsworn falsification to authorities under Pennsylvania's Crimes Code.[4] The Commission's jurisdiction is so broad and

[4] *See* 18 Pa.C.S. §§ 4902 (relating to perjury) & 4904 (relating to unsworn falsification to authorities).

its duties so numerous that it must rely on the trustworthiness of every public utility communication with it and all affected parties. To ignore misbehavior would only encourage more misbehavior. Violations should be punished, and harmed customers should be made whole.

Second, the effect on New Garden Township customers was substantial. New Garden customers paid Aqua $3.3 million for trucking costs that were not incurred during the time that the rate increase was in place. The rate increase for the August 2021 rate case became effective on May 19, 2022. It remained in effect until the May 2024 rate case became effective on February 22, 2025. For a period of two years and nine months, New Garden customers paid Aqua for a nonexistent trucking expense. At $1.2 million/yr that totals $3.3 million.

That $1.2 million/yr was *64%* of the $1.86 million/yr New Garden operating expense that Aqua forecast. It was also 27% of the total $4.43 million/yr revenue that Aqua was allowed to collect from New Garden customers. That was a major factor contributing to the very large rate increases experienced by New Garden customers. The following table illustrates how dominant the trucking cost was (note that the $1.2 million trucking cost is included in the $1.86 million operating cost)[5]. It clearly was the single largest cost element.

[5] The source document for the table is at https://www.puc.pa.gov/pcdocs/1716839.pdf

Aqua's Cost Elements For New Garden Township	
	Proposed Rates
Item	Amount
Operating Expenses	$1,881,734
Depreciation	$735,834
Total Taxes other than income	$35,771
Total Income taxes	$658,480
Interest on Long Term debt	$557,441
Aqua 2021 Rate Filing	
Volume 5, Exhibit 1-G Schedule A-1	
PDF page 652	

5. Why Ferguson's claims were not litigated in Aqua's 2021 rate case.

(a) Why didn't Ferguson challenge Aqua's *trucking expense claim* during the rate case proceedings? Quite simply, there was no way to know that the trucking of wastewater had stopped and its pumping through a pipeline had begun. That was knowledge known only to Aqua. It became public at a special Board of Supervisors meeting held by New Garden Township on November 21, 2022 (the Commission's Opinion and Order was entered on May 16, 2022). That meeting was specifically about the sewer rate increase that outraged many citizens. Aqua made a presentation at that meeting where it came out that wastewater trucking had stopped 8 - 10 months after Aqua's acquisition of New Garden's wastewater system on December 20, 2020. Eight to ten months later was sometime in August-October 2021; Aqua's rate case was filed on August 20, 2021.

(b) Why didn't Ferguson in his *revenue complaint* challenge Aqua's compliance volumes during the rate case proceedings? Because, at the time, there was no reason to question Aqua's data.

The rate case concluded and Aqua filed its tariffs on May 23, 2022. Nothing more

happened until September 2022, when the increased bills first came out. Those bills substantially exceeded the tariff as published on May 23, 2022. While Ferguson was trying to figure out why that was the case, he learned that Aqua had filed an amended tariff on June 15, 2022, because of a clerical error in the original tariff.[6] Ferguson dug through Aqua's compliance data and transcribed it into his own spreadsheet to make sense of it. Only then did it become clear that Aqua's compliance data could not possibly represent actual use by New Garden customers. Transcript Exhibits G, H, and I from the case docket are tables from the resulting spreadsheet.[7]

(c) Fortunately, the Public Utility Code provides a means of post-rate case relief for harmed utility customers who did not participate actively in a rate case—Section 1309(a), 66 Pa.C.S. § 1309(a),[8] which authorizes the Commission upon complaint to find that existing rates are "unjust, unreasonable, or in anywise in violation of any provision of law." As relief, the Commission may set new rates that are just and reasonable and lawful, and/or it may order refunds under Section 1312(a), 66 Pa.C.S. § 1312(a).[9]

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[6] The May 23, 2022, filing had zero consumption charge for the first 5,000 gallons. The June 15, 2022, filing changed that to all users being charged a consumption fee.

[7] The transcript exhibits can be found at: https://www.puc.pa.gov/pcdocs/1860148.pdf. Exhibit G is PDF pages 21 – 23. Exhibit H is PDF pages 24 – 25. Exhibit I is PDF pages 26 – 29.

[8] Section 1309(a) (relating to rates fixed on complaint; investigation of costs of production; general rule) provides in relevant part: "Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or is anywise in violation of any provision of law, the commission shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this part."

[9] Section 1312(a) (relating to refunds; general rule) provides in relevant part: "If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date

6. The ALJ's summary dismissal of the complaints. After repeated filings by Aqua (including a motion to consolidate Ferguson's complaints with Aqua's *2024* base rate case filed on May 23, 2024), which delayed resolution of the case for over a year and half, a telephonic evidentiary hearing was finally held on November 25, 2024.

After relating the parties' positions in her ID, the ALJ dismissed both complaints in their entirety *without discussing or giving reasons for rejecting Ferguson's allegations and supporting exhibits*. Instead, the ALJ summarily concluded that:

(1) "the Complainant has failed to carry his burden of proving by a preponderance of the evidence that the Respondent, th[r]ough its actions or omissions, has violated a Commission statute, regulation, order, or Aqua's wastewater tariff" because tariff provisions previously approved by the Commission are *prima facie* reasonable and Ferguson failed to prove "that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable." (ID 15-16);

(2) "What Mr. Ferguson is seeking from the Commission is tantamount to retroactive ratemaking on two single issues—the trucking expense and the rate design—which were fully considered in Aqua's 2021 Rate Case" and must "be dismissed in their entirety because their claims are barred by the law and no relief can be granted." ID 17;

(3) "Single-issue" ratemaking is prohibited ("an isolated item of revenue or

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of each such excessive payment."

expense may not be, without more, the subject of a refund or recovery") ID 17.

EXCEPTIONS

Exception No. 1 – The Initial Decision Erred by Concluding (Conclusions of Law Nos. 9 and 10) That Ferguson Failed to Carry His Burden of Proof Under Section 332(a) Because He Did Not Overcome the *Prima Facie* Reasonableness of Aqua's Commission-Approved Tariff. Also, the ID Erred Because It Did Not Impose Section 315(b)'s Burden of Proof on Aqua And Overlooked Ferguson's Right to Complain Under Section 1309(a).

The Initial Decision at pages 10-11 describes Ferguson's burden of proof under Section 332(a), 66 Pa.C.S. § 332(a),[10] as the proponent of a rule or order and the process for initially meeting that burden:

> As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Co*. 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co*., 1994 Pa.P.U.C. LEXIS 95 (*Poorbaugh*).
>
> Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa.

[10] Section 332(a) (relating to procedures in general; burden of proof) provides: "Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

1983).

At ID page 15, the ALJ concluded that Ferguson failed to carry his burden of proof because tariff provisions approved by the Commission are *prima facie* reasonable. She concluded that Ferguson did not overcome that *prima facie* reasonableness of Aqua's Compliance Tariff approved by operation of law at the conclusion of Aqua's 2021 rate case. At ID page 16, she explains why: case law requires "that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable," quoting her earlier order in the case, which cited *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996). She reasoned as follows (emphasis added):

> Mr. Ferguson clarified that he was challenging Aqua's existing tariff provisions not because the facts and circumstances leading to the creation of the tariff had changed so drastically as to render the application of the tariff provision unreasonable, but because he believed that Aqua did not meet its obligation to provide factual and correct data for its New Garden sewer operation in its 2021 Rate Case. Tr. 11. *He requested that the Commission investigate Aqua's trucking-related expenses and usage compliance data as reported in the Company's filings, determine new tariffs, and issue refunds to customers in its New Garden division if overcharges are found*. Tr. 90.

The "changed circumstances" rule serves to protect the finality of Commission-made rates and is embodied in Section 316.[11] It does not apply here because, as the ID confirms, Ferguson complained that Aqua had committed improprieties in its 2021 rate case, and he requested that the Commission ***institute an investigation*** into Aqua's conduct. If the investigation confirmed Aqua's misbehavior, he requested various possible remedies to make

[11] Section 316 (relating to effect of commission action) provides in relevant part: "Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

customers whole.

Of course, Section 331(a) grants the Commission broad powers of investigation.[12] Most importantly, Ferguson did not challenge the finality of the Commission's rate order. As a layman unfamiliar with how appropriate refunds are accomplished, he mentions "new tariffs" and he attacked how in its Compliance Tariff filing Aqua adjusted customer usage data to inflate revenues above those permitted by the Commission. But he obviously intended that—if his requested investigation justified it—harmed customers would receive some form of compensation, not by revisiting the rate case and revising the tariff but by an immediate payment, such as checks or bill credits.

Because Ferguson did not discover Aqua's misconduct until after the rate case concluded, the relevant time frame for restitution to harmed customers was the period from the effective date of Aqua's 2021 rate to the effective date of Aqua's 2024 rate case. Aqua's approved Compliance Filing rates during that interim period were the *existing rates* in effect. Consequently, Ferguson's complaints were expressly authorized by Section 1309(a), with refunds authorized by Section 1312(a), if such rates were found to be unreasonable or the tariffed rates were found to be incorrectly charging customers. *Michael Christian v. Audubon Water Co.*, Dkt. No. C-2024-3049476, *available at* https://www.puc.pa.gov/pcdocs/1847693.pdf ("While a utility's Commission-approved tariff provisions are prima facie reasonable, that does not mean that a customer with standing cannot challenge the reasonableness of Audubon's tariff, or claim that Audubon charged him

[12] Section 331(a) (relating to powers of commission and administrative law judges; general rule) provides in relevant part: "The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this part."

incorrectly pursuant to a provision contained within its Commission-approved tariff."). In such a case, Section 332(a)'s burden of proof,[13] as related above, was upon Ferguson.

For the reasons given in Exception No. 4 below, Ferguson overwhelmingly carried that burden by making a prima facie case which Aqua did not rebut with co-equal evidence. In fact, Aqua's excuses were astoundingly weak, especially because Section 315(b)[14] required Aqua to do more than merely present co-equal evidence. That section's burden of proof applies where, as here, the complainant alleges a "violation by a public utility … of any lawful determination or order of the commission, the burden of proof shall be upon the public utility … to show that the determination or order of the commission has been complied with."

Therefore, once Ferguson established a *prima facie* case of Aqua's violations of the Commission's ratemaking regulations concerning the submission of complete and accurate data,[15] Section 315(e)'s requirement that Aqua provide "appropriate data evidencing the accuracy of the estimates contained in the Future Test Year or a Fully Projected Future Test Year,"[16] and the requirement that accurate assumptions and data support Aqua's Compliance

[13] Section 332(a) (relating to procedures in general) provides: "(a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

[14] Section 315(b) (relating to burden of proof; compliance with commission determinations and orders) provides: "In any case involving any alleged violation by a public utility, contract carrier by motor vehicle, or broker of any lawful determination or order of the commission, the burden of proof shall be upon the public utility, contract carrier by motor vehicle, or broker complained against, to show that the determination or order of the commission has been complied with."

[15] 52 Pa.Code §§ 53.51 – 53.53.

[16] Section 315(e) (relating to burden of proof; use of future test year) provides in relevant part: "Whenever a utility utilizes a future test year or a fully projected future test year in any rate proceeding and such future test year or a fully projected test year forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year or a fully projected future test year, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data."

Tariff,[17] it was incumbent upon Aqua to not merely rebut Ferguson's case with at least co-equal evidence but to affirmatively prove that it complied with all these Commission and Code requirements. *Ms. Feeney's testimony did not begin to do so.*

Exception No. 2 – The Initial Decision Erred by Concluding (Conclusions of Law Nos. 5 and 6) That Ferguson Failed to Carry His Burden of Proof Under Section 332(a) Because His "Claims Are Barred by the Law and No Relief Can Be Granted" under the Rule Against Retroactive Ratemaking.

Ferguson repeats and incorporates his response to Exception No. 1 because the rule against retroactive ratemaking and the "*prima facie* reasonableness" rule embodied in Section 316 are closely related and serve the same purpose—to preserve the finality of Commission-made rates by permitting them to be changed only prospectively. Ferguson's request for an investigation and justified restitution to harmed customers honors that general purpose.

The rule against retroactive ratemaking is inapplicable here because, as the ID recognizes at Conclusions of Law Numbers 5 and 6, it is only invoked when future rates are

[17] See the Commission's Opinion and Order entered on May 16, 2022 (a*vailable at* https://www.puc.pa.gov/pcdocs/1744354.pdf), Ordering ¶¶ 16-19:

> "16. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall file detailed calculations with its tariff filings, which shall demonstrate to the Commission's satisfaction that the filed tariff adjustments comply with the provisions of this final Opinion and Order.
>
> 17. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall allocate the authorized increase in operating revenue to each service, rate schedule, and customer class, and rate schedule within each rate customer class, in the manner prescribed in this Opinion and Order.
>
> 18. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall file with the Commission's Secretary's Bureau at these dockets and provide the Commission's Bureaus of Technical Utility Services and Investigation and Enforcement with updates to schedule G-2 of Aqua Exhibits 1-A, 1-B, 1- C, 1-D, 1-E, 1-F, and 1-G, no later than July 1, 2022, which should include actual capital expenditures, plant additions, and retirements for the 12 months ending March 31, 2022, and, an additional update for actuals for the 12 months ending March 31, 2023, no later than July 1, 2023.
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> 19. That Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc., shall comply with all directives and conclusions contained in this Opinion and Order that are not the subject of individual ordering paragraphs as if they were the subject of specific ordering paragraphs."

set to allow a utility to "recoup past losses or to refund to consumers excess utility profits," citing *Cheltenham & Abington Sewerage Co., Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942). That is not what Ferguson's complaints seek to do.

The Commission is also prohibited from establishing rates which are calculated to "retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations" (the ID cites for authority *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n*, 487 A.2d 118 (Pa. Cmwlth. 1985), and *Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994)). Ferguson's complaints do not seek a recovery of surpluses or refunds of deficits caused by mere "inaccuracies" in Aqua's 2021 rate case. He seeks an investigation to determine whether intentional overcharges occurred by Aqua's misconduct.

Ferguson especially relies on Deputy Administrative Law Judge Christopher P. Pell's decision in *Michael Christian v. Audubon Water Co*., Dkt. No. C-2024-3049476,[18] which concerned a very similar retroactive ratemaking allegation by the utility. Judge Pell concluded that, "While a utility's Commission-approved tariff provisions are prima facie reasonable, that does not mean that a customer with standing cannot challenge the reasonableness of Audubon's tariff, or claim that Audubon charged him incorrectly pursuant to a provision contained within its Commission-approved tariff."

Ferguson's complaints make those two precise claims—that, because of Aqua's misconduct during its 2021 rate case, the resulting rates (which became the "existing" rates) were unreasonable under Section 1309(a), and that he and other New Garden Township customers were being incorrectly charged under Aqua's tariff.

[18] *Available at* https://www.puc.pa.gov/pcdocs/1847693.pdf.

Exception No. 3 – The Initial Decision Erred by Concluding (Conclusion of Law Nos. 7 and 8) That Ferguson Failed to Carry His Burden of Proof Under Section 332(a) Because of the Prohibition Against Single-Issue Ratemaking.

Ferguson again repeats and incorporates his response to Exception No. 1 because the prohibition against single-issue ratemaking and the "single-issue ratemaking prohibition" rule are closely related.

With few exceptions, utility rates are set prospectively and must avoid the pitfall of "single-issue ratemaking" which occurs when a utility or a customer seeks to adjust rates based upon a change that impacts an isolated cost center, without subjecting the whole of expenses, revenues, and allowed percentage of return on investment to scrutiny and adjustment together and at the same time. The Commission and the courts have consistently rejected this approach and instead have required utility rates to be set in consideration of all expenses, revenues, and authorized return simultaneously.

The general rule under Pennsylvania law is that "there may be no line by line examination" of "particular items of expense or revenue," and variations in "an isolated item of revenue or expense" may not, "**without more**," support "a Commission order of refund or recovery." *Phila. Elec. Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 722, 727-728 (Pa. Cmwlth. 1985) (emphasis added).

Single-issue ratemaking occurs "when only one element of the general ratemaking equation is examined ***between rate cases*** and the customers' rates are adjusted to reflect a change in that element." *Petition of UGI Utilities, Inc. – Elec. Div. For Approval Of Its Energy Efficiency And Conservation Plan*, Dkt. No. M-2010-2210316, 2011 Pa. PUC LEXIS 1690 at *28 (Recommended Decision issued July 13, 2011) (emphasis added).

Single-issue ratemaking is generally prohibited if it involves a matter that is normally

considered in a base rate case. *Pa. Industrial Energy Coalition v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336, 1995 Pa. Commw. LEXIS 16.

One of the few exceptions to the prohibition is an extraordinary and non-recurring item or event that occurs between rate cases, e.g., where the effects of a new tax or new tax reduction is permitted to be immediately passed through to customers between rate cases and not until after the completion of the next base rate case.

Here, Ferguson's complaints did not involve occurrences between rate cases. He alleged wrongful actions that occurred *during* Aqua's rate case, although Ferguson did not learn of them until after the completion of the rate case. Even if there had been such a "line by line examination" of isolated items, the "without more" caveat quoted above in *Philadelphia Electric* would apply. Such an examination is permitted if something "more" exists. That something "more" was Aqua's extraordinary misconduct.

That same misconduct also excludes Ferguson's complaints from the prohibition because such misbehavior is (fortunately) an extraordinary and non-recurring occurrence (as with the new tax examples above), and therefore it normally is not considered in a base rate case (as in *Pa. Industrial Energy Coalition*).

Exception No. 4 – The Initial Decision Erred by Failing to Address and Decide the Substantive Merits Raised in Ferguson's Complaints, Which Established a *Prima Facie* Case.

1. The Merits of Ferguson's *Trucking Expense Complaint*. The ID at pages 11-12 describes Ferguson's claims in this complaint as follows:

Trucking Expense Complaint – Docket No. C-2023-3043109

> At the hearing, Mr. Ferguson argued that he is not attempting to evade the effect of Aqua's existing tariff provisions but to show that Aqua did not meet

> its obligation to provide factual and correct data for its New Garden sewer operation in its 2021 Rate Case. Tr. 11. Addressing first his Trucking Expense Complaint, Mr. Ferguson explained that towards the end of its operations New Garden Township Sewer Authority was forced to truck wastewater from its South End facility to the East End facility at a cost of $1.2 million per year. On December 20, 2020, New Garden's wastewater operation was sold to Aqua, which continued to truck wastewater while simultaneously moved to activate an existing pipeline between the two facilities at a cost of $600,000. Tr. 31. The trucking continued for eight to ten months after Aqua purchased the New Garden's wastewater system. Tr. 37. When the pipeline was activated the trucking of wastewater between facilities stopped. Tr. 31. On August 20, 2021, Aqua filed for a general rate increase at Docket No. R-2021-3027386. That filing included a $1.2 million per year cost for "Purchased Wastewater," which Aqua later explained constituted the cost of pumping and hauling wastewater for treatment from one location to another. Tr. 34, 42. Mr. Ferguson testified that the $1.2 million per year cost for trucking stopped being incurred two months after the rate case was filed. According to Mr. Ferguson, Aqua had ample opportunity to correct its filing before the rate increase became effective on May 19, 2022, but failed to do so. Tr. 42. Because of this failure, the litigation process was unable to uncover the discrepancy and Aqua was able to improperly increase its revenue and profitability. Tr. 11.

The ID at pages 13-14 relates Aqua's response to these claims:

> In response to Mr. Ferguson's testimony, Aqua presented the testimony of Erin Feeney who is the Manager of Rates for the Respondent. Ms. Feeney testified that in a typical rate case, the Company's historic test year usually ends about four months before the initial filing. As a result, the Company's initial filing for the 2021 Rate Case contained the best information the Company possessed at the time using rate-making estimates. Tr. 143. With regard to Mr. Ferguson's Trucking Expense Complaint, Ms. Feeney explained that at the time of the initial filing on August 20, 2021, the Company was aware that there was a large purchase wastewater expense that it was incurring for hauling wastewater between two facilities in the New Garden division. *Id*. At the time, the Company was actively searching for a solution, but no solution had been found yet. As a result, the Company's filing reflected its belief that the expense would continue to occur until the end of the FPFTY. *Id*.

Aqua knowingly and intentionally made a $1.2 million/yr expense claim for "Purchased Wastewater" in its 2021 rate case that ceased to exist at or about the time of Aqua's initial rate case filing and did not eliminate the expense from its Fully Projected Future Test Year as it was required to do. Consequently, Aqua's New Garden wastewater customers (Rate Zone 11)

were charged (until the effective date of Aqua's 2024 rate case) $1.2 million/yr for a cost Aqua did not incur after a pipeline replaced trucking wastewater to another location for treatment.

Specifically, on August 20, 2021, Aqua filed a general rate increase request for its wastewater customers at Docket No. R-2021-3027386. The filing was based on a Historical Test Year ending March 31, 2021, a Future Test Year ending on March 31, 2022 and a Fully Projected Future Test Year ending March 31, 2023. [19]

On August 25, 2021, Aqua filed Volumes 1-5 of its rate case documentation five days later.[20] The filing details the operating expenses for Aqua's New Garden division in Exhibit 1-G, Schedule C-1, page 1 (PDF page 662). Those expenses included a $1.2 million/yr cost for the opaque euphemism "Purchased Wastewater."[21] The filing nowhere defines the term, but Schedule C-7.1 (PDF page 682)[22] notes that the service provider was Brandywine Septic.

At the public input hearing held on November 12, 2021, Ferguson questioned what "Purchased Wastewater" was because it represented 64 percent of the division's operating expense in one line item. Aqua later addressed Ferguson's question in its Main Brief as follows:[23]

> 2. Geoffrey Meyer, Peter Mrozinski and Bill Ferguson are neighbors and wastewater customers who testified at the public input hearing. *They expressed concerns with the rate application filing and asked several questions. For example, they expressed concerns about purchased wastewater expense for New Garden. Mr. Duerr explained that purchased wastewater*

[19] 2021 Rate Case Opinion and Order at page 3, footnote 4 ("The future test year (FTY) ended March 31, 2022, and the historical test year (HTY) ended March 31, 2021. Aqua M.B. at 15."), *available at* https://www.puc.pa.gov/pcdocs/1744354.pdf.

[20] *See* https://www.puc.pa.gov/pcdocs/1716839.pdf.

[21] *Available at https://www.puc.pa.gov/pcdocs/1716839.pdf PDF page 662*

[22] *Available at https://www.puc.pa.gov/pcdocs/1716839.pdf PDF page 682*

[23] *See* https://www.puc.pa.gov/pcdocs/1746285.pdf (brief page 181, PDF page 200) (emphasis added).

> *expense related to New Garden is [sic] costs for pumping and hauling wastewater for treatment at another location.* The customers also expressed concerns about the size and complexity of the rate filing. However, the Company followed the standard filing procedures as set forth in the Commission's regulations. Rate increase applications by their nature are lengthy and complex filings, which the Company bears the burden to support.In order to better address these concerns, the Company has reached out to these customers. AP St. 9-R at 32-33.

So the expense claim was for the annual cost to truck wastewater from New Garden's South End plant to another location for disposal. It was well known that the New Garden Township Sewer Authority had been trucking wastewater for several years at a cost of about $100,000/month.

When Aqua filed its rate increase request, it was working to activate a pipeline to eliminate the need to truck wastewater elsewhere for disposal. The trucking ended and a newly-renovated pipeline began transporting wastewater eight to ten months after Aqua closed on its purchase of the New Garden wastewater system on December 20, 2020, placing the trucking end between August and October 2021, before or shortly after Aqua filed its rate case on August 20, 2021.

Therefore, Aqua should not have included the expense in its Fully Projected Future Test Year projections. It did so and never removed the $1.2 million trucking expense claim from its FPFTY , even when it made other adjustments to its FPFTY on January 4, 2022.

When Aqua updated its initial rate case filing on January 4, 2022, it repeated many parts of the original filing, including the $1.2 million/yr trucking cost. That filing references Purchased Wastewater on PDF pages 667, 669, 671, and 1,008.[24]

[24] *See* https://www.puc.pa.gov/pcdocs/1729409.pdf.

The rate case concluded and Aqua filed its Compliance Tariff on May 23, 2022. Increased bills came out in September, 2022, causing such public consternation that a special meeting of the Township Supervisors was held on November 21, 2022 to discuss the new rates. Afterward, Aqua's president sent New Garden customers a letter dated December 9, 2022,[25] stating that Aqua had spent $800,000 on trucking while activating the pipeline replacement. He stated that the pipeline replaced the trucking "several months" after Aqua acquired the New Garden wastewater system in December 2020. By the end of 2021, the trucking of New Garden wastewater had stopped.

The meaning of "several months" was clarified at the same November 21, 2022, public meeting when Aqua's operations manager discussed the issues with New Garden's South End system. He noted that it took about eight months to activate an existing pipeline, and the trucking cost was eliminated once that was done. A video of the meeting is available at https://www.facebook.com/Ginny4PA/videos/1221133465137182. The relevant part of the video starts at 1:30:00 and continues for about three minutes. At the end of that segment, the manager stated that trucking had ended within the first year Aqua owned the system (i.e., within one year of December 20, 2020).

Aqua Wastewater's 2021 annual report to the Commission indicates that Aqua's New Garden Dry Line Activation project had a projected in-service date of December 31, 2021.[26]

Conclusion: In light of these facts, the testimony of Aqua's Manager of Rates, Erin Feeney, was evasive and suspiciously incomplete. It utterly failed to address Ferguson's

[25] Exhibit C, PDF page 6 of the case transcript exhibits *available at https://www.puc.pa.gov/pcdocs/1860148.pdf*.

[26] Exhibit D, PDF page 7 of the case transcript exhibits *available at https://www.puc.pa.gov/pcdocs/1860148.pdf*.

detailed allegations, let alone rebut them "co-equally" as the burden of proof stated in *Waldron v. Philadelphia Electric Co*. 54 Pa.P.U.C. 98 (1980), requires. The exact date that trucking ended and piping began is still unknown, but it certainly ended by year-end 2021, not to the end of the FPFTY on March 31, 2023. In fact, Aqua's rates reflected the expense until the effective date of the Company's 2024 base rate case on February 22, 2025. As detailed above, the added cost to New Garden's customers was substantial, $3.3 million.

Ms. Feeney's testimony that "the best information the Company possessed at the time of its August 20, 2021, rate case filing"—and end of Historical Test Year on March 31, 2021—does not withstand scrutiny. The rate case was not filed for nearly 5 ½ months after the HTY's end on March 31, 2021, and the Company failed to update its Fully Projected Future Test Year projections in January, 2022, when at that point it had an additional four months of information about the trucking expense (which certainly ended by year-end 2021). The same information refutes her explanation that "the Company's [initial rate case] filing reflected its belief that the expense would continue to occur until the end of the FPFTY." ID 14.

All Ms. Feeney had to do to rebut Ferguson's trucking expense claim was to produce documentation proving the end date of the trucking and the activation date of the pipeline. Why is the Company not being more forthright with that easily produced information?

2. The Merits of Ferguson's *Revenue Complaint*. The ID at pages 12-13 describes Ferguson's claims in this complaint as follows:

> **Revenue Complaint – Docket No. C-2023-3043109**
>
> Mr. Ferguson continued his testimony explaining that the outcome of the rate case allowed Aqua to collect $4,428,399 per year from New Garden customers. Aqua then proceeded to calculate tariffs that would deliver this result. He argued that his Revenue Complaint focuses on two issues about the consumption data Aqua used to calculate those tariffs. Tr. 49. According to

Mr. Ferguson, the consumption data in question does not reflect actual use by customers, whereas Aqua's total volume forecast was significantly less than actual consumption at the time of filing. Id. This would have the effect of increasing rates and, therefore, revenue above the allowed number. Tr. 49. Mr. Ferguson testified that Aqua's data requires unrealistic customer usage, which is mathematically possible, but doesn't exist in the real world. Tr. 57, 89. More specifically, using Aqua's compliance filing Mr. Ferguson calculated at least 1,303 customers out of Aqua's total of 1,916 in the New Garden system would have to consume zero water in any given billing cycle to meet Aqua's criteria. Tr. 57-61; Complainant Exhibits A, B, D. He continued to identify similar discrepancies with Aqua's compliance data for Commercial 1 and 2 customer classes. Tr. 65-67. Based on his calculations, Mr. Ferguson concluded that the consumption data for residential and commercial customers contained in Aqua's compliance filing does not reflect actual customer use, yet it was used as the basis for calculating tariffs for these customer classes. Tr. 65, 66-67. In his view, it is not possible to arrive at fair and reasonable tariffs using invalid data. Tr. 65. 12 In his testimony, Mr. Ferguson acknowledges that at the time of the rate case filing (August of 2021), Aqua had owned and operated the New Garden system only for a few months. Tr. 90. He argued that now that the actual consumption data for the year 2021 are available they should be used as the compliance data. Tr. 90.

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

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

The ID at pages 14-15 relates Aqua's response to these claims. The following are the

relevant parts:

> Turning to Mr. Ferguson's Revenue Complaint, Ms. Feeney explained that, again, the Company used the best information available to it at the time of filing. More specifically, the Company used the actual data provided by New Garden in the prior acquisition proceeding. Tr. 145-146. She further explained that at the heart of Mr. Ferguson's Revenue Complaint is a rate design problem, and that if Aqua were to reset the rate bands using more recent data, but keep the 106 million gallons – since that is the information that the Company had at the time of filing – in order to collect and design rates to equal the $4.4 million of authorized revenue, the current rate for the first two bands, where most of the residential consumers are located, would be higher and not lower. Tr. 153.
>
> ***
>
> Lastly, Ms. Feeney testified that on May 23, 2022, Aqua submitted its Compliance Tariff which was filed in accordance with both the Commission's Opinion and Order issued on May 16, 2022, and the Commission's regulations. The usage data used in the Compliance Tariff filing was the same as the usage data presented in the initial rate case filing. See Aqua Exhibit 5-B. Aqua's Compliance Tariff filing underwent a review process before it was permitted by the Commission to become effective by operation of law. Tr. 139-41; Aqua Exhibits C, D.

Ms. Feeney again claims that "the Company used the best information available to it at the time of filing. More specifically, the Company used the actual data provided by New Garden in the prior acquisition proceeding. *This claim is refuted by combining the Company's "consumption analysis" (which appears to be accurate actual usage) and questionable "billing adjustments" to produce lower customer usage volumes that potentially could generate revenue higher than the $4.4 million allowed in the rate case.*

Aqua rate case filing volumes 1-5 filed August 25, 2021 contain the relevant compliance data.[27]

There are significant differences between the "consumption analysis" and the "billing adjustments". For example, the "consumption analysis" for residential customers using more

[27] Aqua rate case filing volumes 1-5 filed August 25, 2021 (https://www.puc.pa.gov/pcdocs/1716839.pdf). Schedule NG-3, (PDF pages 1170 - 1172) is Aqua's "consumption analysis." Schedule NG-4, (PDF pages 1173 - 1175) details Aqua's "billing adjustments." The "consumption analysis" and "billing adjustments" are combined to form the final compliance volumes.

than 5,000 gallons shows that only 17 percent used more than that amount. The "billing adjustments," however, show 90 percent of those customers using more than 5,000 gallons. There are many other such differences that call into question the propriety of the combination of the two to form the final compliance volumes.

Ferguson also proved that the resulting compliance volumes identically matched data used by Aqua in its February 21, 2020, settlement petition (Appendix A, 2 of 11 (PDF page 38)) for Aqua's acquisition of New Garden's wastewater system.[28] These volumes predated Aqua's acquisition of the system by ten months. Aqua took its actual 1Q-2021 data based on its "consumption analysis" and made "billing adjustments" to revert actual use back to the numbers used before they owned the system. At best, that is inexplicable.

Potentially costly to customers was Ferguson's proof demonstrating how the compliance volumes used by Aqua did not represent actual usage by customers. As noted at ID 14, Aqua's rates were set based on a total annual volume of 106 million gallons. However, annualizing Aqua's "consumption analysis" produces an annual volume of 124 million gallons. That difference had a major effect on rates. Using 106 million gallons results in higher rates to generate the permitted revenue. If customers actually used 124 million gallons, Aqua's revenue would increase well above the permitted revenue.

Conclusion: In Aqua's 2021 base rate case, the Commission permitted the Company to prepare a tariff to collect $4,428,399 annually from New Garden customers.[29] Aqua was required to show that the tariff it submitted on May 23, 2022, was in compliance with the

[28] *See* https://www.puc.pa.gov/pcdocs/1655518.pdf.

[29] The Commission's Opinion and Order is available at https://www.puc.pa.gov/pcdocs/1744354.pdf. *See* PDF pages 64 and 439.

allowed revenue. Aqua did demonstrate compliance with the allowed tariff, but did so based on flawed data. The submission was allowed to go into effect by operation of law because the Commission was unaware of the data issues. In the evidentiary hearing on his two complaints, Ferguson showed it was likely that Aqua collected more than permitted by the Commission. The compliance data Aqua used to set rates did not reflect actual usage by New Garden customers. Aqua's usage volume data started with an accurate "consumption analysis" that was modified by the Company's "billing adjustments" to produce *understated* customer usage volume. Higher customer rates resulted because the permitted revenue was spread over a *smaller* usage volume. If actual customer usage from the "Consumption Analysis" had been used (unmodified by the Company's "Billing Adjustments"), customer rates would have been lower. This is not merely a rate design quibble, as Ms. Feeney suggested, but an insistence that rates be set on actual customer usage, which is the only fair and just thing to do.

Exception No. 5 – Take Together, ID Findings of Fact Nos. 8, 12, and 13 Are Incomplete and Misleading, and They Wrongly Suggest that the Doctrine of Collateral Estoppel Applies.

Finding of Fact No. 8 states: "In Aqua's 2021 Rate Case, Mr. Ferguson provided testimony at the public input hearing on November 21, 2021, at the one o'clock session. Tr. 106, 121."

Finding of Fact No. 12 states: "Aqua addressed Mr. Ferguson's sworn public input testimony in the briefs the Company filed in the 2021 Rate Case. Tr. 122-23."

Finding of Fact No. 13 states: "In Aqua's 2021 Rate Case, a Recommended Decision was issued on February 18, 2022, which inter alia addressed the issues raised by Mr. Ferguson in his sworn public input hearing testimony. Tr. 123; Aqua Exhibit A."

All of these findings when taken together are incomplete and misleading because they wrongly suggest that Ferguson's complaints should be dismissed because (as the ID states on page 17) they "were fully considered in Aqua's 2021 Rate Case."

Ferguson's public input testimony was indeed sworn testimony, but it consisted of questions to the Company's representative to learn the meaning of the term "Purchased Wastewater" and to clarify Aqua's opaque filing. Ferguson questioned rather than advocated on the substantive aspects of the case. Moreover, the primary purpose of holding public input hearings is to give customers an opportunity to ask such questions. A secondary purpose is to gather information on the utility's service quality and the likely impact on customers if higher rates are authorized. It is emphatically not a forum for complicated advocacy that is reserved for evidentiary hearings with all interested parties present after extensive discovery has occurred. Therefore, to suggest that Ferguson was estopped from pursuing his claims or that such claims should be dismissed is unfair and just plain wrong.

Finding of Fact No. 12 is equally unfair and misleading. Ferguson's testimony was addressed in Aqua's Main Brief only on January 11, 2022, pages 181-182.[30] The testimony was merely summarized and proves that the testimony contained no advocacy.

Finding of Fact No. 13 is equally unfair. The Recommended Decision at page 13[31] treated the testimony in the same perfunctory way about Ferguson's comments which did not address the merits of specific aspects of Aqua's initial filing:

> Mr. Ferguson closed the joint argument by agreeing with Mr. Meyer that the rate filing was deliberately opaque and inconsistent. For example, one part of the filing expressed rate data in a monthly fashion, but in others rate data was

[30] *See* https://www.puc.pa.gov/pcdocs/1746285.pdf (brief page 181, PDF page 200).

[31] *Available at* https://www.puc.pa.gov/pcdocs/1734561.pdf (PDF page 20).

> expressed quarterly. He also reviewed data which demonstrated Aqua's profitability to investors. As a regulated public utility, he argued that if the proposed rate increase is approved, Aqua is protected from the consequences of poor business decisions in the acquisition of other wastewater systems because it is guaranteed a return on its investment. He noted that given Aqua's financial success it should not require such a substantial rate increase.

Finally, these findings of fact wrongly suggest (as Aqua did in its pleadings (see ID 4)) that the doctrine of collateral estoppel applies. It does not.

In Pennsylvania, collateral estoppel, also known as issue preclusion, means that once an issue of law, fact, or ultimate fact has been determined by a valid and final judgment, it cannot be relitigated between the same parties in a future lawsuit. The doctrine helps prevent redundant legal proceedings by ensuring that certain issues are not repeatedly argued in court (or before an administrative agency).

Aqua, in its Answer and New Matter, and in Ms. Feeney's testimony (ID 14-15), repeatedly argues that Ferguson's public input testimony and the absence of a challenge by any active party to the 2021 rate case (Ferguson was not an active party to the case) to wastewater treatment and disposal costs or usage data with respect to the New Garden division precluded consideration of Ferguson's formal claims.

Again, nothing Ferguson uttered in the public input hearing addressed issues of law, fact, or ultimate fact adjudicated in the rate case, nor, as Aqua admits, did anyone else. Therefore, adjudication of Ferguson's complaints was not *relitigation* of the issues presented by Ferguson's complaints. Those issues were raised and decided for the first time and not redundantly so.

CONCLUSION

For the foregoing reasons, the Commission should, as a matter of ratemaking fairness, remand this matter to the ALJ for additional discovery and hearing and a decision on the merits of Ferguson's claims. In addition, the Commission *sua sponte* should separately investigate whether Aqua's rate case conduct exceeded the bounds of lawful rate case behavior, or should refer the matter to the Bureau of Investigation and Enforcement for action it deems appropriate.

Respectfully submitted,

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Date: April 21, 2025