

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC	:	
	:	C-2022-3036893
v.	:	C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

ORDER
GRANTING SCH USA, LLC’S MOTION TO STRIKE AND
DENYING AQUA PENNSYLVANIA WASTEWATER, INC’S MOTION FOR NOTICE

On November 21, 2022, SCH USA, LLC (SCH or Complainant) filed a Formal Complaint against Aqua Pennsylvania Wastewater, Inc. (Aqua Wastewater or Respondent) at Docket Number C-2022-3036893 concerning unmetered wastewater service to three separate accounts at three separate service locations. On November 29, 2022, SCH filed a Formal Complaint against Aqua Wastewater at Docket Number C-2022-3037118 concerning unmetered wastewater service to one account at one service location. The Formal Complaint at Docket Number C-2022-3037118 was served on Aqua Wastewater on December 7, 2022. In both Formal Complaints, Complainant is alleging Aqua Wastewater is threatening to shut off its service and is incorrectly charging it for unmetered wastewater service. SCH claims it is being incorrectly charged because it is being charged pursuant to a settlement agreement that neither it nor Aqua Wastewater were party to, and its actual wastewater usage is far less than the volume reflected in the unmetered rate. Complainant requests a payment arrangement and that it be charged on a metered basis going forward.

On December 12, 2022, Aqua Wastewater filed an answer and new matter to the Formal Complaint filed at Docket Number C-2022-3036893. On December 27, 2022, Aqua Wastewater filed an answer and new matter to the Formal Complaint filed at Docket Number C-2022-3037118. In both answers Aqua Wastewater avers SCH is billed pursuant to the Commission-approved Rate Zone 4 tariff and denies there are any incorrect charges on the

accounts. Aqua Wastewater denies that the Commission can direct a payment arrangement for SCH. In both new matters Aqua Wastewater avers Complainant does not allege Respondent has violated the Public Utility Code, Pennsylvania Public Utility Commission regulations or orders, or its Commission-approved tariff.

On December 29, 2022, SCH filed a reply to new matter at both dockets. In both replies to new matters, although SCH admits it is being billed pursuant to Aqua Wastewater's Rate Zone 4 tariff, SCH alleges that it is being incorrectly charged based on a number of Equivalent Dwelling Units (EDU) included in a settlement agreement rather than applying the definition of EDU contained in Aqua Wastewater's tariff.

On January 4, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for Friday, March 17, 2023 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a consolidation and prehearing order on January 6, 2023, setting forth various rules that would govern the March 17, 2023 evidentiary hearing, as well as consolidating hearing of the two Formal Complaints.

On March 10, 2023, I issued an order, converting the March 17, 2023 evidentiary hearing to a prehearing conference. Also on March 10, 2023, a notice converting the evidentiary hearing to a prehearing conference was issued. Pursuant to the March 10, 2023 order, parties were to file prehearing memoranda by March 8, 2023. Both SCH and Aqua Wastewater filed a prehearing memorandum on March 8, 2023.

A prehearing conference was held on March 17, 2023. Counsel for both parties appeared. During the prehearing conference, parties discussed settlement, witnesses, presently identified issues, and a litigation schedule. Consistent with its prehearing memorandum, Aqua Wastewater raised issues it asserted should be resolved prior to scheduling an evidentiary hearing. On March 17, 2023, I issued a scheduling order, setting April 17, 2023 as the date by which Aqua Wastewater should file a motion regarding issues it wishes to resolve prior to scheduling an evidentiary hearing, and May 8, 2023 as the date by which SCH should file a

response to any motion filed by Aqua Wastewater. On April 17, 2023, Aqua Wastewater filed a Motion for Judgment on the Pleadings. On May 8, 2023, SCH filed an answer to the Motion for Judgment on the Pleadings. On May 22, 2023, I issued an order, denying Aqua Wastewater's Motion for Judgment on the Pleadings.

On May 31, 2023, I issued an order staying this proceeding and directing each party to provide a status report by June 30, 2023. Subsequent to the May 31, 2023 order, parties continued to engage in settlement discussions and provided me several status reports by e-mail indicating that settlement discussions were ongoing. On January 11, 2024, I issued an order memorializing the litigation schedule agreed to by the parties and provided further instructions regarding this proceeding. On June 5, 2024, I issued an order setting a new litigation schedule as agreed to by the parties.

On July 11, 2024, Aqua Wastewater filed a Motion to Consolidate the Formal Complaints of SCH USA, LLC at Docket Nos. C-2022-3036893 and C-2022-3037118 with Aqua Wastewater's pending base rate proceeding for its wastewater service at Docket No. R-2024-3047824. Also on July 11, 2024, Aqua Wastewater filed a Motion to Stay the procedural schedule in the formal complaint proceedings because of its pending Motion to Consolidate. On July 31, 2024, SCH filed an answer to Aqua Wastewater's Motion to Consolidate and Motion to Stay. On August 12, 2024, I issued an order denying Aqua Wastewater's Motion to Consolidate and Motion to Stay.

Parties submitted pre-served testimony and exhibits consistent with the above litigation schedule. An evidentiary hearing was held on September 24, 2024. During the hearing, the parties' pre-served testimony and exhibits were admitted into the record. Parties agreed that main briefs would be due on January 9, 2025 and reply briefs would be due January 29, 2025. The evidentiary hearing adjourned on September 24, 2024, and the hearing scheduled for September 25, 2024 was cancelled. On September 26, 2024, I issued an Order on Briefs, Admitting Evidence, and Closing the Record.

On January 9, 2025, SCH and Aqua Wastewater filed main briefs. On January 29, 2025, SCH and Aqua Wastewater filed reply briefs.

On January 31, 2025, SCH filed a Motion to Strike portions of Aqua Wastewater's Reply Brief (Motion to Strike). On February 20, 2025, Aqua Wastewater filed an answer to the Motion to Strike.

On February 20, 2025, Aqua Wastewater filed a Motion for Notice of Aqua Wastewater's base rate proceeding at R-2024-3047822 (Motion for Notice). On March 12, 2025, SCH filed a response to Aqua Wastewater's Motion for Notice.

For the reasons set forth below, I will grant the Motion to Strike and deny the Motion for Notice.

DISCUSSION

Motion to Strike

Commission regulations allow motions, and motions may make a request for relief, except as otherwise expressly provided by Commission regulations. 52 Pa. Code §§ 5.1(a)(6), 5.103(a). SCH's Motion to Strike requests that an order be issued striking Section IV of Aqua Wastewater's Reply Brief filed in this proceeding (Section IV). Section IV includes a block quote from the Recommended Decision issued in Aqua Wastewater's base rate proceeding at R-2024-3047824 (2024 base rate proceeding). SCH argues that this section of Aqua Wastewater's Reply Brief is inappropriate and should be stricken because (1) it raises arguments regarding Aqua Wastewater's rate case for the first time in the Reply Brief, which prevents SCH from responding in violation of its due process rights; (2) the Recommended Decision is not a final decision; (3) it incorrectly characterizes SCH's arguments in the rate case as being identical to its arguments in this proceeding; and (4) the tariff ultimately adopted in the 2024 base rate proceeding would not have any application to the past billings at issue in this proceeding.

Aqua Wastewater's response to the Motion to Strike avers the Motion to Strike should be denied. Aqua Wastewater states that the Commission entered an Opinion and Order on February 7, 2025 in the 2024 base rate proceeding, summarizing the same issues as presented in this proceeding. Additionally, Aqua Wastewater states that the issues and arguments raised in briefs and exceptions in the 2024 base rate proceeding are nearly identical to the briefs in this proceeding.

As I stated in my August 12, 2024 Order Denying Aqua Wastewater's Motion to Consolidate and Motion to Stay, I recognize that this proceeding raises some common issues of fact and law with the issues raised in the 2024 base rate proceeding. However, the record developed in the 2024 base rate proceeding is separate from that developed in this proceeding. Allowing extra-record evidence to be introduced in Reply Briefs would violate SCH's due process rights. Aqua Wastewater appears to notice the potential factual nature of citing to the 2024 base rate proceeding by way of its Motion for Notice, discussed below. Therefore, I will grant SCH's Motion to Strike to the extent Section IV of Aqua Wastewater's Reply Brief introduces extra-record evidence into this proceeding.

Notwithstanding, as explained further below in denying Aqua Wastewater's Motion for Notice, I find no bar in citing to the 2024 base rate proceeding altogether should I find the legal reasoning persuasive in making my own decision based solely on the record in this proceeding.

Motion for Notice

A presiding officer may take official notice or judicial notice. 52 Pa. Code § 5.408. Aqua Wastewater requests that I take official notice of the Commission's February 7, 2025 Opinion and Order in the 2024 base rate proceeding (February 7 Order) because the matters at that docket are interrelated and raise common issues of law and fact.

SCH's response to Aqua Wastewater's Motion for Notice avers the Motion for Notice should be denied. First, SCH states that the February 7 Order is not final. Second, SCH argues that this proceeding is not identical to the issues raised in 2024 base rate proceeding.

The record for this proceeding closed on January 29, 2025. Therefore, Aqua Wastewater's Motion for Notice essentially seeks for the record of this proceeding to be reopened. Additionally, if I were to take official notice, SCH could request that the facts are not properly noticed or that alternative facts should be noticed. 52 Pa. Code § 5.408(c). I decline to grant Aqua Wastewater's Motion for Notice and take official notice for two reasons. First, parties agreed to a litigation schedule in this proceeding, including dates for evidentiary hearings and submission of briefs. To take official notice of fact now would be to disrupt the schedule agreed to by parties and extend this proceeding for an unforeseen amount of time. Second, as stated above, the 2024 base rate proceeding will not be cited for factual support. However, I do not find that there is a bar to citing to the February 7, 2025 Order for any persuasive value in making my own decision.

C-2022-3036893 - SCH USA, LLC v. AQUA PENNSYLVANIA WASTEWATER, INC.

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