

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision denies two Formal Complaints filed by SCH USA, LLC because Complainant failed to meet its burden of proving, by a preponderance of the evidence, that Aqua Pennsylvania Wastewater, Inc.’s tariffs are unjust and unreasonable.

HISTORY OF THE PROCEEDING

On November 21, 2022, SCH USA, LLC (SCH or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania Wastewater, Inc. (Aqua Wastewater, Company or Respondent) at Docket No. 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 No. C-2022-3037118

concerning unmetered wastewater service to one account at one service location separate from those accounts and locations complained of at Docket No. C-2022-3036893. The Formal Complaint at Docket No. 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 No. C-2022-3036893. On December 27, 2022, Aqua Wastewater filed an answer and new matter to the Formal Complaint filed at Docket No. 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, 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 (EDUs) 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 these matters 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. This order set forth various rules that would govern the March 17, 2023 evidentiary hearing, as well as consolidated the two Formal Complaints for litigation purposes.

On March 10, 2023, I issued an order converting the March 17, 2023 evidentiary hearing to a prehearing conference. Consistent with this order, on March 10, 2023, a notice converting the evidentiary hearing to a prehearing conference was also issued. Pursuant to the March 10, 2023 order, parties were directed 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 shall file a motion regarding issues it wishes to have resolved prior to scheduling an evidentiary hearing, and May 8, 2023 as the date by which SCH shall 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 23, 2023, I received informally via e-mail a joint request by both parties to hold this matter in abeyance while the parties worked towards a settlement. On

May 31, 2023, I issued an order granting this joint request and stayed this proceeding and directed 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 December 4, 2023, parties informed me by e-mail that they would propose a litigation schedule, which they did on January 9, 2024. On January 11, 2024, I issued another scheduling 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 modifying the litigation schedule 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 modified 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 also agreed that main briefs would be due on January 9, 2025, and reply briefs would be due January 29, 2025. On September 26, 2024, I issued an Order on Briefs, Admitting Evidence, and Closing the Record.

The following written testimony and exhibits were admitted into the record on behalf of SCH:

1. SCH Statement No. 1 – Direct Testimony of Carlos Padilla, including Exhibits CP-1 and CP-2 (Public and Confidential)
2. SCH Statement No. 2 – Direct Testimony of Ronald Carrier, including Appendices A and B and Exhibits RTC-1 and Exhibit RTC-2 (Public and Confidential)
3. SCH Statement No. 3 – Direct Testimony of Frank Lacey, including Appendices A and B and Exhibits FL-1 and FL-2 (Public and Confidential)
4. SCH Statement No. 2-SR – Surrebuttal Testimony of Ronald Carrier
5. SCH Statement No. 3-SR – Surrebuttal Testimony of Frank Lacey

The following written testimony and exhibits were admitted into the record on behalf of Aqua Wastewater:

1. Aqua Wastewater Statement No. 1 – Direct Testimony of Christopher Manning, including Exhibits CM-1, CM-2, CM-3 and CM-4
2. Aqua Wastewater Statement No. 2 – Direct Testimony of Steve Clark
3. Aqua Wastewater Statement No. 1-R – Rebuttal Testimony of Christopher Manning, including Exhibits CM-5 and CM-6
4. Aqua Wastewater Statement No. 2-R – Rebuttal Testimony of Steve Clark, including Exhibits SC-1, SC-2, and SC-3¹

¹ Exhibits SC-1, SC-2, and SC-3 were admitted to the record by order issued September 26, 2024.

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. 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. On March 12, 2025, SCH filed an answer to the Motion for Notice.

On April 23, 2025, I issued an order granting SCH's Motion to Strike and denying Aqua Wastewater's Motion for Notice.

The record in this case consists of the above-referenced testimony and exhibits and a transcript of 50 pages. The record closed on January 29, 2025, the due date for filing reply briefs. For the reasons discussed below, the Formal Complaints will be denied.

FINDINGS OF FACT

1. The Complainant is SCH USA, LLC.
2. The Respondent is Aqua Pennsylvania Wastewater, Inc.
3. SCH owns and operates a large commercial resort property known as the Split Rock Resort in Carbon County, Pennsylvania. SCH St No. 1, p. 2.

4. SCH obtains its water from their privately-owned wells. SCH St. No. 1, p. 2.

5. SCH is an unmetered wastewater customer of Aqua Wastewater in Rate Zone 4 and is billed on a flat per equivalent dwelling unit (EDU) basis monthly. Aqua Wastewater St. No. 1, p. 5; Aqua Wastewater Ex. CM-4.

6. SCH's water usage is not metered. Aqua Wastewater St. No. 2-R, p. 1.

7. The EDU method considers the sewer capacity needed to treat wastewater from the customer at all times. Aqua Wastewater St. No. 1-R, p. 3.

8. A Settlement Agreement between Split Rock Resort's previous ownership and Kidder Township (Settlement Agreement) resulted in a set number of EDUs being billed to the resort by Kidder Township. Aqua Wastewater St. No. 1, p. 4; SCH Ex. FL-1.

9. Aqua Wastewater became the wastewater service provider for SCH's Split Rock Resort as a result of Aqua Wastewater's Commission-approved acquisition of Kidder Township's wastewater assets on July 19, 2012, at Docket No. A-2012-2298067. Aqua Wastewater St. No. 1, p. 3; Aqua Wastewater Ex. CM-1.

10. The Settlement Agreement was assigned to Aqua Wastewater as a result of its acquisition of Kidder Township's wastewater assets. Aqua Wastewater St. No. 1, pp. 3-4.

11. Aqua Wastewater filed a compliance tariff at the same docket which contained the EDUs that would be charged for the properties currently owned by SCH. Aqua Wastewater St. No. 1, p. 4; Aqua Wastewater Ex. CM-3.

12. The following EDUs were allotted to SCH pursuant to the Settlement Agreement: (1) 128 EDUs billed to the Willowbrook at Lake Harmony; (2) 145 EDUs billed to the Galleria and Water Park; and (3) 53 EDUs billed to the Lodge-Remaining Uses. Aqua Wastewater St. No. 1, p. 4.

13. The 4 EDUs billed to the Laundromat are not in dispute. SCH St. No. 1, p. 6.

14. The wastewater assets acquired by Aqua Wastewater were placed into Aqua Wastewater's rate base in the Company's 2018 Base Rate Case. Aqua Wastewater St. No. 1, p. 4; *Pa. Pub. Util. Comm'n, et al. v. Aqua Pa., Inc., et al.*, Docket Nos. R-2018-3003558, R-2018-3003561, et al. (Opinion and Order entered May 9, 2019).

15. Aqua Wastewater's treatment facilities are designed to treat 100% of every customer's flow. Aqua Wastewater St. No. 2-R, p. 2.

16. Billing based on variations of usage cannot be done for unmetered customers. Aqua Wastewater St. No. 1-R, p. 5.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other

party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. In this proceeding, SCH filed two Formal Complaints against Aqua Wastewater and, therefore, SCH bears the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

As a general matter, a utility may charge its customers in accordance with its lawful tariffed rates. 66 Pa.C.S. § 1302. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66

Pa.C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). Tariff provisions previously approved by the Commission are *prima facie* reasonable. *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (*Kossmann*); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979) (*Zucker*). A party challenging the tariff provision faces a heavy burden of proof to show that circumstances have changed so drastically as to render the approved provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996) (*Shenango*).

SCH's Position

SCH owns and operates a large commercial resort property known as the Split Rock Resort (Resort), which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. SCH purchased the Resort property on October 29, 2020. The Resort consists of the following buildings and amenities: (1) The Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; (2) Willowbrook, a resort hotel with 256 guest rooms; (3) 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; and (4) a laundry that serves the Resort properties. SCH MB at 1-2.

SCH states that water for the Resort is provided by private wells which SCH also acquired when it purchased the Resort. The Resort receives non-residential wastewater service from Aqua Wastewater as part of Rate Zone 4. Because SCH does not currently have metered water service, Aqua Wastewater bills SCH a flat rate for unmetered wastewater service on a per Equivalent Dwelling Unit (EDU) basis. SCH MB at 2.

SCH argues that Aqua Wastewater's charges to SCH for wastewater service are not just and reasonable pursuant to 66 Pa.C.S. § 1301 because: (1) Aqua Wastewater currently bills SCH based on a number of EDUs originally determined in a Settlement Agreement that Aqua Wastewater did not assume when purchasing the system and which has long since expired; (2) Aqua Wastewater's practice of billing SCH on a flat, per EDU, basis results in charges that have no relationship to actual usage at the property and may significantly overstate wastewater usage at the Resort, as occupancy at the Resort varies widely and is often significantly less than 100%; and (3) there are other reliable and technically feasible options to bill SCH for actual usage at the property. SCH MB at 4.

SCH states that the number of EDUs currently charged to SCH were originally set by a Settlement Agreement between Split Rock's original owner and the Township of Kidder in 2010 (2010 Settlement). SCH asserts that these EDUs are not based on actual usage by the Resort and result in rates charged to SCH that are inaccurate, unjust and unreasonable. Additionally, SCH asserts that Aqua Wastewater did not assume the EDU provisions of the 2010 Settlement, and therefore the EDU determinations outlined in the 2010 Settlement should have no bearing on the calculation of EDUs for the Resort today. SCH also states that Aqua Wastewater violates its own tariff by failing to calculate EDUs in the manner described in and consistent with its tariff. Specifically, SCH avers that Aqua Wastewater calculates EDUs pursuant to the inapplicable 2010 Settlement, which results in SCH being billed nearly double the EDUs authorized under Aqua Wastewater's tariff. SCH MB at 6-8.

SCH avers that while there may be instances where flat rate billing based on EDUs may be reasonable, applying this method to calculating bills for SCH's Resort significantly overstates the volume of wastewater that is produced at the property. Specifically, SCH contends that billing on a per EDU basis assumes full occupancy, but the Resort is rarely if ever at 100% occupancy. Additionally, SCH notes that the

Commission prefers charges based on actual meter usage, but SCH contends Aqua Wastewater refuses to cooperate with SCH's proposals. SCH asserts that it is entirely possible and technically feasible to obtain metered usage data for billing purposes for SCH's accounts by either (1) measuring actual wastewater discharges to Aqua Wastewater's system; (2) measuring actual water consumption, so as to permit SCH to be billed based on its actual usage; (3) adjusting the EDUs used for billing purposes to better reflect actual occupancy; or (4) assigning a different proxy that more accurately reflects actual occupancy of the Resort. SCH MB at 5, 8-13.

As relief, SCH requests that Aqua Wastewater be directed to implement an alternative method to more accurately and equitably bill SCH for wastewater usage based on actual consumption at the property, and also to adjust SCH's prior bills (since SCH acquired the property on October 29, 2020) to reflect the average occupancy rate. SCH MB at 4, 13.

SCH asserts that Aqua Wastewater failed to rebut the facts and testimony SCH offered. SCH also asserts that any changes to Aqua Wastewater's tariff as a result of the base rate proceeding at Docket No. R-2024-3047824 cannot be relied upon by SCH to cure any past violations or deficiencies regarding the alleged unreasonableness of Aqua Wastewater's flat, per EDU basis for billing SCH. SCH Reply Brief (RB) at 1-2. SCH further contends that Aqua Wastewater's Main Brief failed to effectively rebut the arguments raised by SCH in SCH's Main Brief and in witness testimony. SCH RB at 2-9.

Aqua Wastewater's Position

Aqua Wastewater explains that it became the service provider for the Resort as a result of Aqua Wastewater's acquisition of Kidder Township's wastewater assets on July 19, 2012, at Docket No. C-2012-2298067. Aqua Wastewater avers that the

2010 Settlement was assigned to it as a result of the acquisition and, as a result of the acquisition, Aqua Wastewater filed a compliance tariff at the same docket which contained the EDUs that would be charged for the properties currently owned by SCH. Specifically, Aqua Wastewater states that the following EDUs were allotted to SCH pursuant to the 2010 Settlement: (1) 128 EDUs billed to the Willowbrook at Lake Harmony; (2) 145 EDUs billed to the Galleria and Water Park; and (3) 53 EDUs billed to the Lodge-Remaining Uses. Aqua Wastewater further states that an additional 4 EDUs were billed to the Laundromat added after the acquisition and, thereafter, the wastewater assets that were acquired by Aqua Wastewater were placed into Aqua Wastewater's rate base in the Company's 2018 Base Rate Case. Aqua Wastewater argues that the number of EDUs billed to SCH were reviewed and authorized in the approved revenue requirements in both the 2018 Base Rate Case Order entered May 9, 2019, and the 2021 Base Rate Case Order entered on May 16, 2022. Aqua Wastewater MB at 8-9.

Aqua Wastewater asserts that SCH's claims that the current EDU-based rate, as applied, is unjust and unreasonable should be rejected. Aqua Wastewater avers SCH's positions are related to rate design and billing determinants that are considered in base rate proceedings and cannot be considered in individual customer complaint proceedings because it would impact the rates charged to other customers and the Company's overall approved rate design. Instead, Aqua Wastewater avers that SCH's claims should fail because Aqua Wastewater must bill SCH pursuant to its Commission-approved tariff. Aqua Wastewater MB at 10-11.

Aqua Wastewater asserts that it has justified the use of a flat, EDU-based rate for unmetered service provided to SCH, and that the Commission has approved this type of rate. Aqua Wastewater contends that granting SCH's request for an alternative method of billing would be undue and unreasonable rate discrimination, and ignores the potential rate impact on other wastewater customers. Aqua Wastewater MB at 12.

Aqua Wastewater states that its method of calculating EDUs for the Resort is performed consistent with the 2010 Settlement. Aqua Wastewater also contends that SCH's assertion that occupancy at the Resort is less than 100% is irrelevant because the design of Aqua Wastewater's system is to accommodate the maximum capacity of its wastewater flows 365 days a year, 24 hours a day. Aqua Wastewater MB at 13.

Aqua Wastewater avers that SCH has not substantiated the feasibility or reasonableness of an alternative method of billing. Specifically, Aqua Wastewater avers that the metering technology referenced by SCH can only be used on pumped flow, and SCH's wastewater flow is a gravity flow system where it connects to Aqua Wastewater's system. Aqua Wastewater also avers that, while it is possible to bill wastewater customers based on metered water usage, SCH does not have metered water usage. If the Company were to pursue using wastewater meters, Aqua Wastewater states it would need to change its internal system and operations and obtain Commission approval. Aqua Wastewater MB at 14.

Aqua Wastewater avers that SCH has failed to carry its burden of proof that the billed charges for wastewater service are unjust and unreasonable, or that SCH is entitled to an alternative billing/adjustment or a rate method different than the EDU-based flat rate authorized by the Commission. Aqua Wastewater RB at 1-2. In response to SCH's argument that it should not be billed pursuant to the 2010 Settlement, Aqua Wastewater highlights that the rate charged to SCH was approved in Aqua Wastewater's 2018 and 2021 base rate cases. Aqua Wastewater RB at 3. Aqua Wastewater avers that SCH did not substantiate either its claims regarding occupancy at the Resort or its actual wastewater usage. Aqua Wastewater RB at 4.

Disposition

I agree with Aqua Wastewater that Complainant has failed to carry its burden of proof that it has been and is being charged in violation of Section 1301. 66 Pa.C.S. § 1301. SCH presents three main arguments to support its position: (1) Aqua Wastewater currently bills SCH based on a number of EDUs originally determined in a Settlement Agreement that Aqua Wastewater did not assume when purchasing the system and which has long since expired; (2) Aqua Wastewater's practice of billing SCH on a flat, per EDU, basis results in charges that have no relationship to actual usage at the property and may significantly overstate wastewater usage at the Resort, as occupancy at the Resort varies widely and is often significantly less than 100%; and (3) there are other reliable and technically feasible options to bill SCH for actual usage at the property. SCH MB at 4. For the reasons discussed below, I do not find that any of SCH's arguments carry its burden of proof.

2010 Kidder Township Settlement

SCH seeks adjustment to its bills since it acquired the Resort on October 29, 2020. At the time SCH acquired the Resort, it was being billed pursuant to the tariffs approved in Aqua Wastewater's 2018 base rate proceeding. *Pa. Pub. Util. Comm'n, et al. v. Aqua Pa., Inc., et al.*, Docket Nos. R-2018-3003558, R-2018-3003561, et al. (Opinion and Order entered May 9, 2019) (*2019 Order*). In 2021, Aqua Wastewater filed another base rate proceeding, resulting in the tariffs approved by Commission order entered May 16, 2022. *Pa. Pub. Util. Comm'n, et al. v. Aqua Pa., Inc., et al.*, Docket Nos. R-2021-3027385, R-2021-3027386, et al. (Opinion and Order entered May 16, 2022) (*2022 Order*).² Aqua Wastewater avers that SCH has been

² Aqua Wastewater filed another base rate proceeding in 2024, resulting in the tariffs approved by Commission order entered February 7, 2025. *Pa. Pub. Util. Comm'n, et al. v. Aqua Pa., Inc., et al.*, Docket Nos. R-2024-3027822, R-2024-3047824,

appropriately billed pursuant to the *2019 Order* and the *2022 Order*. SCH disputes that it has been billed correctly pursuant to Aqua Wastewater's tariffs and further disputes the applicability of the EDUs reflected in the 2010 Settlement to its Aqua Wastewater bills.

I do not find that SCH met its burden of proving that it is being charged incorrectly according to either the 2010 Settlement or Aqua Wastewater's tariffs. The 2010 Settlement established the number of EDUs currently charged to SCH. SCH St. No. 3, pp. 3-5. However, SCH has not been charged pursuant to the 2010 Settlement. Instead, the calculation of EDUs first established by the 2010 Settlement was later reflected in the revenue requirement approved by the *2019 Order* and the *2022 Order*. Aqua Wastewater St. No. 1, p. 4. Therefore, the number of EDUs billed to SCH were reviewed and authorized in the revenue requirements approved in both the *2019 Order* and the *2022 Order*.

Reasonableness of Flat, per EDU Billing

After determining that SCH was properly billed pursuant to the Commission's *2019 Order* and *2022 Order*, the next issue raised by SCH is whether Aqua Wastewater's flat, per EDU billing is unjust and unreasonable. SCH avers that billing on a flat, per EDU basis is unjust and unreasonable because it significantly overstates that volume of wastewater produced at the property. Although Aqua Wastewater bills SCH assuming 100% occupancy, I do not find this demonstrates that billing on a flat, per EDU basis is unjust and unreasonable. First, SCH's water usage is unmetered, and billing based on variations of usage cannot be done for unmetered customers. Aqua Wastewater St. No. 1-R, p. 5. Further, Aqua Wastewater's wastewater treatment plant is designed to treat 100% of every customer's flow, and Aqua Wastewater

et al. (Opinion and Order entered Feb. 7, 2025) (*2025 Order*). The *2025 Order* was entered after reply briefs were due in this proceeding.

cannot adjust its wastewater treatment capacity to match variations in the Resort's occupancy. Aqua Wastewater St. No. 2-R, p. 1-2. Therefore, it is reasonable to bill SCH assuming a 100% occupancy of the Resort.

Second, although the Commission has expressed its preference for volumetric billing to flat-rate billing, it has also acknowledged the standard industry practice of flat rate billing where metered water information is unavailable. *2022 Order* at 272. Here, metered water information has been unavailable for SCH, and therefore SCH has been billed on a flat rate basis. Third, as discussed above, the Commission approved this manner of billing in both its *2019 Order* and *2022 Order*, and tariff provisions approved by the Commission are *prima facie* reasonable. *Kossmann; Zucker*. Therefore, I do not find that Aqua Wastewater's method of billing SCH on a flat, per EDU basis is unjust and unreasonable.

Alternative to Flat, per EDU Billing

SCH argues that Aqua Wastewater should be directed to implement methods to bill SCH for actual wastewater usage. As discussed above, I do not find that SCH met its burden of proof that it has been charged unjust and unreasonable rates so that alternative billing should be implemented. I also agree with Aqua Wastewater that metered billing is not possible where neither SCH's water or wastewater usage is currently metered, and the Commission has not authorized metering wastewater service. Aqua Wastewater St. No. 2-R, pp. 1-2. Further, I agree with Aqua Wastewater that any variation SCH seeks to how it is billed should be pursued in the context of a base rate proceeding, especially where I have found that SCH has been billed properly and in accordance with the Commission's *2019 Order* and *2022 Order*. *Id*; see 66 Pa.C.S. § 1303.

Aqua Wastewater's 2024 base rate proceeding

On April 23, 2025, I issued an order granting SCH's Motion to Strike a portion of Aqua Wastewater's Reply Brief that referenced an excerpt from the Recommended Decision issued in the 2024 base rate proceeding. Although I found it inappropriate to cite the Recommended Decision issued in the 2024 base rate proceeding for any factual support, I do not find that there is any bar to citing the *2025 Order* for persuasive support.³ To that end, it is notable that many of the arguments raised by SCH in this proceeding were similarly disposed of by the Commission in its *2025 Order*. *2025 Order* at 159-167. Additionally, in this proceeding, SCH has the high burden of proving that circumstances have changed so drastically so that the complained of tariff provisions approved by the *2019 Order* and *2022 Order* are unreasonable. *Shenango*. For the reasons discussed above, I find that SCH has failed to meet its high burden of proof that circumstances have changed so drastically so that the complained of tariffs and associated charges are unjust and unreasonable.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest

³ On February 24, 2025, SCH filed a Petition for Reconsideration of portions of the *2025 Order*. On April 10, 2025, the Commission entered an order denying SCH's Petition for Reconsideration.

degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

5. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

6. The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

7. A utility may charge its customers in accordance with its lawful tariffed rates. 66 Pa.C.S. § 1302.

8. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa.C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067 (Pa. Cmwlt. 1981).

9. Tariff provisions previously approved by the Commission are *prima facie* reasonable. *Kossman v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147 (Pa. Cmwlt. 1997); *Zucker v. Pa. Pub. Util. Comm’n*, 401 A.2d 1377 (Pa. Cmwlt. 1979).

10. A party challenging the tariff provision faces a heavy burden of proof to show that circumstances have changed so drastically as to render the approved provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlt. 1996).

11. SCH has failed to satisfy its burden of proof in this proceeding to demonstrate that its Aqua Wastewater bills are unjust and unreasonable. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints filed by SCH USA, LLC at *SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.*, at Docket Nos. C-2022-3036893 and C-2022-3037118, are denied.
2. That the Secretary's Bureau shall mark this case as closed.

Date: April 24, 2025

/s/
John M. Coogan
Administrative Law Judge