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May 1, 2025

VIA ELECTRONIC FILING

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: William Ferguson v. Aqua Pennsylvania Water, Inc., and Aqua Pennsylvania Wastewater, Inc.
Docket Nos. C-2023-3043108 and C-2023-3043109

Dear Secretary Homsher:

Attached for filing are the Replies to Exceptions of Aqua Pennsylvania Water Inc., and Aqua Pennsylvania Wastewater, Inc., in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Garrett P. Lent

GPL/dmc
Attachment

cc: The Honorable Eranda Vero (*via email; w/attachment*)
Office of Special Assistants (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST-CLASS MAIL

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Date: May 1, 2025

Garrett P. Lent

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLIES TO EXCEPTIONS OF AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.

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I. INTRODUCTION

Aqua Pennsylvania Wastewater, Inc. ("Aqua," or the "Company") hereby files its Replies to the Exceptions of William C. Ferguson (the "Complainant"). The Complainant excepted to the Initial Decision dated March 31, 2025 (hereinafter, the "ID") of Administrative Law Judge Eranda Vero (the "ALJ"). In the ID, the ALJ correctly dismissed two interrelated Formal Complaints related to Aqua's wastewater rates for its New Garden operations that were established by the Pennsylvania Public Utility Commission ("Commission") Opinion and Order entered May 16, 2022 (the "*Rate Case Order*") at Docket Nos. R-2021-3027385 and R-2021-3027386 (the "*2021 Rate Case*"), and the compliance tariff and proof of revenues (the "*Compliance Tariff*") filed by Aqua consistent with the *Rate Case Order* on May 23, 2022 that was approved by Secretarial Letter on June 3, 2022. The Formal Complaint at Docket No. C-2023-3043108 attempts to contest the usage data for New Garden customers Aqua submitted to prepare its *Compliance Tariff* (the "Revenue Complaint"); the Formal Complaint at Docket No. C-2023-3043109 attempts to contest one aspect of Aqua's "Purchased Wastewater" expense related to New Garden operations (the "Expense Complaint"). The ID correctly concluded that both of the complaints should be denied pursuant to the general prohibitions against retroactive and single-issue ratemaking, because Mr. Ferguson was attempting to revisit singular aspects of Aqua's wastewater rates and seek refunds to New Garden customers. *See* ID, p. 17.

Aqua submits that the Exceptions filed by the Complainant should be denied, and the ID should be adopted by the Commission as its final action without modification.

II. REPLIES TO THE EXCEPTIONS OF THE COMPLAINANT

A. REPLY TO THE COMPLAINANT'S INTRODUCTION AND SUMMARY OF EXCEPTIONS

The Complainant's Exceptions begin with a lengthy "Summary of Exceptions." Comp. Exc., pp. 1-8. While purporting to "summarize" the arguments set forth in his exceptions, the Complainant instead offers new arguments as to why he believes the ID should be modified and/or reversed, and/or entirely new grounds for his Complaints. *See, e.g.*, Compl. Exc., p. 3 (regarding the claim that Mr. Ferguson is "not a typical pro se complainant," and claims regarding perjury and unsworn falsification). The claims advanced in the Summary of Exceptions are improper, unfounded, and inflammatory. None of these claims should be given any credence by the Commission.

Aqua submits that the Summary of Exceptions offered is improper under the Commission's regulations. Pursuant to Section 5.33(b), "Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception." 52 Pa. Code § 5.33(b). While an introduction or summary may regularly be supplied by a party submitting exceptions, where this occurs the introduction or summary is directly related to each of the specific, numbered exceptions raised. It is not proper for such a summary to raise independent arguments and/or new grounds for relief as the Complainant does. For example, Complainant attempts to raise his education and experience as an additional ground in support of the merits of his Complaints. Compl. Exc., p. 3. However, this ground is never again referenced in any numbered exception and, at any rate, Aqua's witness demonstrated that she has greater and more specific experience with respect to utility ratemaking than Mr. Ferguson. Tr. 104-105 (confirming that Mr. Ferguson has not been employed by a public utility, and has not been responsible for the

preparation of a revenue requirement exhibit, cost of service study or billing determinants in a base rate proceeding, 112 (describing Ms. Feeney's experience). Therefore, where the Complainant raises issues or arguments in his "Summary of Exceptions" that do not relate specifically to a numbered exception, such arguments are non-compliant with Section 5.33(b) and should be disregarded.

Moreover, the Complainant also lodges the unfounded and inflammatory assertion that Aqua, or its witnesses, have somehow violated 18 Pa.C.S. §§ 4902 and 4904. Compl. Exc., p. 3 (asserting the Complaints "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."). Mr. Ferguson supplies **zero** basis in the record to support this claim. Devoid of any support, this inflammatory statement is nothing more than an attempt to harass Aqua and its witnesses. The Commission should strike and/or disregard this statement.

In addition, the Complainant's additional requests for relief—i.e., that the matter be remanded to the ALJ for further discovery and hearings, and that the Commission or its Bureau of Investigation and Enforcement ("I&E") should investigate Aqua's rate case conduct—should be rejected. Compl. Exc., p. 1. No further discovery or hearing is required in this case. The Complainant was afforded ample opportunity to conduct discovery in advance of the evidentiary hearing that was held in this matter. Furthermore, the Complainant was afforded the opportunity to present his case, cross-examine Aqua's witness, and argue the merits of his case before the ALJ at the hearing held in this matter. The Complainant was provided a full and fair opportunity to pursue his claims; however, he failed to carry his burden of proof. Likewise, no further investigations are necessary or warranted. The ID properly concluded that Aqua was lawfully

charging the Complainant pursuant to a Commission-approved tariff, which was established as the result of the fully-litigated *2021 Rate Case*.

Finally, Aqua notes that a separate investigation into the justness and reasonableness of Aqua's existing (including the wastewater rates at issue) and proposed rates occurred parallel to this proceeding at Docket Nos. Docket Nos. R-2024-3047822 and R-2024-3047824, *et al*. ("*2024 Rate Case*").[1] As a result of the *2024 Rate Case*, the Commission entered an Opinion and Order on February 7, 2025 (the "*2024 Rate Case Order*"), that approved a Joint Petition for Settlement and authorized Aqua (and Aqua Pennsylvania, Inc.) to file tariffs compliant with the *2024 Rate Case Order*. Such compliance tariffs were submitted on February 18, 2025, and approved by Secretarial Letter on March 25, 2025.

The Complainant's Summary of Exceptions should be disregarded as improper and, at any rate, provides no basis for the Commission to modify or reverse the ID. Therefore, and for the reasons explained herein, the Complainant's Exceptions should be denied.

B. REPLY TO EXCEPTION NO. 1 – The Initial Decision Correctly Concluded That The Complainant Did Not Carry His Burden Of Proof, And Correctly Applied The Applicable Burden Of Proof To A Non-Base-Rate Case Complaint Against Existing Rates

The Complainant first claims that the ID errs because it misapplied the burden of proof. Compl. Exc., pp. 8-11. He further reasons, citing his Exception No. 4, that he "established a *prima facie* case of Aqua's violations of the Commission's ratemaking regulations," which then required

[1] Aqua specifically notes that its Motion to Consolidate the above-captioned complaints with the *2024 Rate Case*, so that Mr. Ferguson's claims regarding the justness and reasonableness of the then existing rates for New Garden wastewater operations could be conducted alongside the Commission's investigation into those then-existing rates that was undertaken in the *2024 Rate Case*. However, the Complainant opposed the Motion to Consolidate and the ALJ ultimately denied it. *See* Order Denying Motion To Convert Or Continue, Docket Nos. C-2023-3043108 and C-2023-3043108 (dated Nov. 20, 2024).

"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." Compl. Exc., pp. 11-12. The Complainant's arguments are without merit.

The ID correct set forth the legal standards applicable to the Complainant's burden of proof in this matter. ID, pp. 10-11; *see* Compl. Exc., p. 8 (quoting the same). Indeed, 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); *see also* 66 Pa.C.S. § 701. Complainant concedes this fact by explaining that his "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…[and] [i]n such a case, Section 332(a)'s burden of proof,[]. . . was upon Ferguson." Compl. Exc., pp. 10-11.

Further, it is undisputed that Mr. Ferguson is challenging Commission-approved base rates. *See, e.g.*, Compl. Exc., p. 10 ("Aqua's approved Compliance Filing rates during that interim period were the existing rates in effect." (emphasis added)); *see also* ID, at p. 17 ("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."). Indeed, the Complainant acknowledges that both complaints concerned the *2021 Rate Case*, which was a fully litigated base rate case. Compl. Exc., p. 2; *see also* Tr. 105-107. He further acknowledges that the Commission issued the *Rate Case Order*, which authorized Aqua to collect a revenue requirement for New Garden wastewater operations of $4,428,399, as part of the overall allowed revenue requirement of Aqua of $18,740,978 for wastewater service. Compl. Exc., p. 2; *see also* Tr. 107-108 Aqua Exhibit B. Then, he admits that Aqua submitted the *Compliance Tariff*, which was approved by Secretarial Letter. Compl. Exc., p. 2; *see also* Aqua Exhibits C and D.

Finally, he admitted that he was charged pursuant to Aqua's Commission-approved tariff for wastewater service. *See also* Tr. 108-109; ID, pp. 10 (Finding of Fact, Para. 21) and 13.

Under 66 Pa.C.S. § 1303, the rates specified in a utility's tariff have the force and effect of law and are binding until changed. Consistent with this statutory provision, it is well established law that, as a general rule, any adjustment to the "commission-made rate" of a Pennsylvania public utility can only be effective prospectively. The "commission-made rate" doctrine is based upon the principle that a public utility commission performs a quasi-legislative function when it determines just and reasonable rates and, therefore, may not retroactively repeal those previously approved and enacted rates. *See Arizona Grocery Co. v. Atchis, T. & S. F. Ry.*, 284 US. 370, 52 S. Ct. 183 (1932). In the seminal case of *Cheltenham & Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334 (Pa. 1942), the Supreme Court of Pennsylvania followed the principle announced in *Arizona Grocery Co.* and held a "commission-made rate furnishes the applicable law for the utility and its customers until a change is made by the commission." *Id.* at 337. As such, the Supreme Court of Pennsylvania clearly held that a utility is permitted to charge rates approved by the Commission until the Commission subsequently issues an order setting new rates.

For these reasons, the ID specifically explained:

> The Order issued October 22, 2024, instructed the Complainant that tariff provisions previously approved by the Commission are *prima facie* reasonable. *Sattar v. Aqua Pa., Inc.,* Docket No. C- 2010-2169756 (Opinion and Order entered July 28, 2011); *Zucker v. Pa. Pub. Util. Comm'n,* 437 A.2d 1067 (Pa. Cmwlth. 1981). He was further instructed that a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. October 22, 2024 Order, p. 8 (citing *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)).

ID, pp. 15-16 (emphasis added). Mr. Ferguson provided no such evidence 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. Rather, the evidence presented by Aqua witness Ms. Feeney demonstrated that: (1) Aqua collected less revenues from New Garten operations that it was authorized to collect under the *Compliance Tariff* for calendar year 2023 (Tr. 130-132; Aqua Exhibit E, p. 22 of 30 (showing actual revenues recovered from New Garden wastewater operations for the calendar year end January 31, 2023 to be less than the $4.4 million Aqua was authorized to collect); and (2) the rates charged by Aqua for New Garden operations do not actually reflect the full cost of service for those operations (Tr. 132-133). The Complainant cannot demonstrate that the application of the *Compliance Tariff* is unreasonable under these circumstances.

Attempting to avoid applicable law and unrebutted evidence, Mr. Ferguson then asserts that the "changed circumstances" rule does not apply to this case because he only "requested that the Commission institute an investigation into Aqua's conduct." Compl. Exc., p. 10. He offers no legal support for this argument and, moreover, the relief requested by Mr. Ferguson is not relevant to the application of this legal principle. Whether or not the Complainant sought an "investigation" or any other relief, it remains that he is challenging a Commission-approved rate. Furthermore, this argument ignores the fact that the disputed rates **were already** investigated by the Commission as a part of the fully-litigated *2021 Rate Case*, and were set by the Commission in the *Rate Case Order*.

Complainant's attempted reliance on *Michael Christian v. Audubon Water Co.*, Docket. No. C-2024-3049476 (Interim Order Denying Respondent's Preliminary Objections dated Sept. 4, 2024) (DC ALJ Pell) ("*Audubon*"), is also misplaced for two reasons. First, this order did not

dispose of the merits of a complaint against existing, Commission-approved rates. Rather, it denied certain preliminary objections filed by a utility. Second, this order in fact demonstrates that the ID correctly applied the law in this matter. After reciting applicable principles from, *inter alia*, *Cheltenham & Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334, 336 (Pa. 1942), *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981), and *Shenango Township Board of Supervisors v. Pa. PUC*, 606 A.2d 910, 913 (Pa. Cmwlth. 1996), the presiding officer in *Audubon* concluded that the complainant "bears the burden of proof in this matter and is cautioned that challenging the reasonableness of a Commission-approved tariff carries a heavy burden." *Audubon*, at p. 7 (emphasis in original). The ID applied the same heavy burden in this case, which the Complainant failed to carry.

Finally, the Complainant cites to his Exception No. 4 to claim he demonstrated a *prima facie* case for his claims, and the attempts to argue Aqua could only rebut those claims by satisfying Sections 315(b) and 315(e) of the Code, 66 Pa.C.S. §§ 315(b) and (e). Compl. Exc., pp. 11-12. However, as explained above and below in response to Exception No. 4, Complainant did not carry his very heavy burden. Moreover, it is undisputed that (1) Aqua set its rates in the *Compliance Tariff* consistent with the *Rate Case Order*; (2) Aqua collected less revenues from New Garten operations that it was authorized to collect under the *Compliance Tariff* for calendar year 2023 (Tr. 130-132; Aqua Exhibit E, p. 22 of 30 (showing actual revenues recovered from New Garden wastewater operations for the calendar year end January 31, 2023 to be less than the $4.4 million Aqua was authorized to collect)); and (3) the rates charged by Aqua for New Garden operations do not actually reflect the full cost of service for those operations (Tr. 132-133).

None of the reasons supplied by the Complainant demonstrate that the ID erred by properly applying the burden of proof in this matter or correctly concluded that the Complainant failed to

carriy his "very heavy burden" to demonstrate Aqua's existing, Commission-approved wastewater rates were unjust and unreasonable. For these reasons, the Complainant's Exception No. 1 should be denied, and the ID should be affirmed.

C. REPLY TO EXCEPTION NO. 2 – The Initial Decision Correctly Concluded That The Complainant Failed To Carry His Burden Because The General Prohibition Against Retroactive Ratemaking Bars His Claims.

In his second Exception, the Complainant asserts the ID errs because "[t]he rule against retroactive ratemaking is inapplicable here because . . . it is only invoked when future rates are set to allow a utility to 'recoup past losses or to refund to consumers excess utility profits' . . . That is not what Ferguson's complaints seek to do." Compl. Exc., pp. 12-13. This argument is false and entirely without merit.

As an initial matter, the ID correctly recited the law and principles applicable to the general prohibition against retroactive ratemaking. ID, pp. 16-17, 18-19 (Conclusions of Law, Para. 4-6). Ratemaking, by its nature, is prospective. *Columbia Gas of Pa., Inc. v. Pa. PUC*, 613 A.2d 74, 76 (Pa. Cmwlth. 1992). As a result, a rule against retroactive ratemaking has developed. The Commonwealth Court of Pennsylvania has explained this rule as follows:

> The general rule is that there may be no line by line examination of the relative success or failure of the utility to have accurately projected its particular items of expense or revenue and an excess over the projection of an isolated item of revenue or expense may not be, without more, the subject of the Commission's order of refund or recovery, respectively, on the occasion of the utility's subsequent rate increase requests.

Philadelphia Electric Company v. Pa. PUC, 502 A.2d 722, 727-28 (Pa. Cmwth. 1985); *see also Pike Cnty. Light & Power Co. v. Pa. PUC*, 487 A.2d 118 (Pa. Cmwlth. 1985); *Popowsky v. Pa. PUC*, 642 A.2d 648 (Pa. Cmwlth. 1994).

While Mr. Ferguson attempts to argue that his Complaints "do not seek a recovery of surpluses or refunds of deficits" (Compl. Exc., p. 13), he contradicts himself. In his Exception No. 1, he specifically argues that his "complaints were expressly authorized by Section 1309(a), with refunds authorized by Section 1312(a)." Compl. Exc., p. 10. He further makes clear that he is seeking "restitution to harmed customers." Compl. Exc., p. 12. In this case, the ID properly applied the law applicable to retroactive ratemaking and barred Mr. Ferguson's Complaints.

The Complainant further attempts to assert that "he seeks an investigation to determine whether intentional overcharges occurred by Aqua's misconduct." Compl. Exc., p. 13. As explained above, Mr. Ferguson's claim that he seeks an "investigation" is a distinction without a difference. Furthermore, this statement falsely claims that Aqua somehow violated the Code, a Commission regulation, or Commission order by establishing wastewater rates in its *Compliance Tariff* pursuant to the *Rate Case Order*, and charging Mr. Ferguson consistent with those Commission-approved rates.

Finally, Complainant's attempt to assert that "he and other New Garden Township customers were being incorrectly charged under Aqua's tariff" should be rejected. Compl. Exc., p. 13. The unrebutted evidence is that Complainant has been charged for services in accordance with Aqua's Commission-approved tariff for wastewater service. Tr. 108-109; ID, p. 10 (Finding of Fact, Para. 21). This is the first time that Complainant has attempted to raise this claim, which also directly contradicts his sworn statements on cross examination.

None of the reasons supplied by the Complainant demonstrate that the ID erred in its application of the prohibition against retroactive ratemaking in this matter. For these reasons, the Complainant's Exception No. 2 should be denied, and the ID should be affirmed.

D. REPLY TO EXCEPTION NO. 3 – The Initial Decision Correctly Concluded That The Complainant Failed To Carry His Burden Because The General Prohibition Against Single-Issue Ratemaking Bars His Claims.

As an initial matter, Aqua notes that retroactive ratemaking is similar to single-issue ratemaking. *Pennsylvania Indus. Energy Coalition v. Pa. PUC*, 653 A.2d 1336, 1349-1350 (Pa. Cmwlth. 1995); ID, p. 17. Therefore, Aqua fully incorporates by reference its arguments with respect to Exception No. 2 regarding retroactive ratemaking, above, with respect to the Complainant's Exception No. 3 regarding single-issue ratemaking.

In his third Exception, Complainant claims that the ID erred by dismissing his Complaints pursuant to the general prohibition against single-issue ratemaking. Compl. Exc., pp. 14-15. After stating the legal principles applicable to the general prohibition against single-issue ratemaking, he asserts that his "complaints did not involve occurrences between rate cases" but instead involved "actions that occurred *during* Aqua's rate case." Compl. Exc., p. 15. He further argues that Aqua engaged in "extraordinary misconduct" that satisfies the "extraordinary and non-recurring" event exception to the general prohibition. Compl. Exc., p. 15. Neither of these claims have any merit.

Each complaint clearly challenges one, singular element of the rates established in the *2021 Rate Case*. The Revenue Complaint attempts to contest the usage data for New Garden customers Aqua submitted to prepare its *Compliance Tariff*. ID, pp. 12, 17. The Expense Complaint attempts to contest one aspect of Aqua's "Purchased Wastewater" expense related to New Garden operations. ID, pp. 11, 17. Moreover, Mr. Ferguson admits that he is asking the Commission to revisit how each of these issues were established in the *2021 Rate Case* and either "require new tariffs or issue refunds to customers in its New Garden division" between Aqua's *2021 Rate Case* and Aqua's *2024 Rate Case*. Compl. Exc., p. 2. This is the exact sort of conduct that the rule against single-issue ratemaking generally prohibits.

Indeed, as explained by the Commonwealth Court:

> in the absence of a finding that NFG's rates . . . were unjust or unreasonable, the Commission has here erred with respect to an item of NFG's revenues in the same way in which it appears to have erred with respect to NFG's Ashland SNG expense. If a utility's rates are, as in this case, lawful and in conformance with the applicable tariff, Code Section 1312 authorizes retroactive rate relief in the form of a refund only if the utility's rates are unreasonable or unjust. So far as we are able to discern, there is no warrant in Section 1312 for a line-by-line examination of the utility's expenses and revenues actually incurred or received under rates previously in force and the Code does not authorize the imposition of a refund of excess revenues and improvident expenditures without consideration of the reasonableness and justice of the rates as a whole. This is not to say that the legislature could not authorize refunds on such a basis but that it has not done so.
>
> The Legislature's failure to authorize refunds in case an item of the utility's revenue is greater than anticipated at the time of tariff approval or an item of expense is or should have been less than anticipated and approved, is sensible and equitable. It is equitable because the utility may not receive retroactive rate relief on account of expense items which are greater than anticipated or of revenue items which are lesser. It is sensible because the consideration of expense and revenue items in isolation and the requirement of refunds based only on such narrow consideration could result in the setting of confiscatory rates.

Nat'l Fuel Gas Distrib. Corp. v. Pa. PUC, 464 A.2d 546, 567 (Pa. Cmwlth. 1983) ("*National Fuel*") (emphasis added). In this case, Complainant has not demonstrated that Aqua is earning an excessive return above what was authorized by the *Rate Case Order*; nor has he even demonstrated that Aqua recovered greater revenues from New Garden wastewater operations than it was authorized. Instead, he attempts to point out singular discrepancies in one specific line item of revenue and one specific line item of expense, and argues that the actual revenue and expense differed from what Aqua projected. This argument is completely contrary to the precedent established by *National Fuel*, and was properly rejected by the ID.

Complainant's further claim that each Complaint involves "extraordinary conduct" that satisfies the "extraordinary and non-recurring" event exception to the general prohibition misstates the law and lacks any factual support. However, Aqua's *2021 Rate Case* and the resultant *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. There is nothing "extraordinary" or "non-recurring" about a utility filing a base rate case based upon projected test year data, the Commission and stakeholders reviewing that data, and the Commission entering a decision authorizing a rate increase less than what was sought by the utility and ordering the utility to establish rates necessary to collect the authorized increase. Indeed, the ID correctly explains this process in detail. ID, pp. 7-9, 13-15.

None of the reasons supplied by the Complainant demonstrate that the ID erred in its application of the prohibition against single-issue ratemaking in this matter. For these reasons, the Complainant's Exception No. 3 should be denied, and the ID should be affirmed.

E. REPLY TO EXCEPTION NO. 4 – The Initial Decision Correctly Concluded That Complainant Failed To Establish A *Prima Facie* Case That Aqua's Commission-Approved Rates For New Garden Wastewater Operations Violated The Code, The Commission's Regulations, And/Or A Commission Order.

Complainant's further attempts to argue the merits of both of his complaints. Compl. Exc., pp. 15-24. While Aqua addresses these arguments below, three general matters apply to each of these arguments, and demonstrate that they are without merit.

First, the ID correctly recognized the applicable ratemaking principles, and acknowledged that the rates set forth in the *Compliance Tariff* were reviewed and vetted by the Commission. ID, pp. 10, 15-16. Ultimately, the result of this review and vetting process was that Aqua was authorized to implement a rate increase that was substantially less than what it requested in the

2021 Rate Case. Second, the ID and the Commission are not required to reach a decision on the merits if the Complaints were properly barred by the general prohibition against retroactive and single-issue ratemaking, and they were.

Third, and importantly, the Complainant's Exceptions ultimately ignore the unrebutted evidence that (1) Aqua set its rates in the *Compliance Tariff* consistent with the *Rate Case Order*; (2) Aqua collected less revenues from New Garten operations that it was authorized to collect under the *Compliance Tariff* for calendar year 2023 (Tr. 130-132; Aqua Exhibit E, p. 22 of 30 (showing actual revenues recovered from New Garden wastewater operations for the calendar year end January 31, 2023 to be less than the $4.4 million Aqua was authorized to collect)); and (3) the rates charged by Aqua for New Garden operations do not actually reflect the full cost of service for those operations (Tr. 132-133). It cannot be the case that Aqua's rates charged to New Garden operations are unjust and unreasonable, if the approved rates resulted in Aqua collecting less revenues than it was authorized to collect under the *Rate Case Order* and resulted in Aqua collecting less than the full cost of service for New Garden wastewater operations.

1. Complainant did not carry has burden of proof with respect to the Expense Complaint.

The ID correctly acknowledged that Aqua's claim for Purchased Wastewater expense in the *2021 Rate Case* was based upon a reasonable projection, using Aqua's understanding of the facts in existence when the FPFTY was prepared. ID, pp. 13-14. Complainant advances two primary arguments in support of the Expense Complaint. First, he claims that Aqua's projection made in the FPFTY for the *2021 Rate Case* was inaccurate and, therefore, unreasonable based upon information unknown to Aqua at the time it designed the FPFTY. Compl. Exc., pp. 16-17. Second, he claims that Aqua should have updated the FPFTY in January 2022, after Aqua "made

other adjustments to its FPFTY on January 4, 2022." Compl. Exc., pp. 18, 20. Neither of these claims has merit.

On the first point, the ID correctly recognized that ratemaking is prospective. ID, p. 16. Indeed:

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

ID, p. 16.

Aqua witness Ms. Feeney, the Manager of Rates for Aqua, credibly testified that the Company's historic test year, which is based on actual costs, usually ends about four months before the filing. Tr. 143. Therefore, she explained, the Company's initial filing in the *2021 Rate Case* contained the best information that the Company possessed at the time the filing was submitted, i.e., August 20, 2021, using appropriate ratemaking estimates. Tr. 143. With specific respect to the Expense Complaint, the Company's "Purchased Wastewater Expense" was based upon the actual expense that Aqua was incurring for hauling wastewater between two facilities in New Garden. Tr. 143. Relatedly, at the time that the *2021 Rate Case* was prepared, the Company was searching for an alternative, but did not yet have one in place; therefore, the test year utilized by Aqua reflected its reasonable belief that it would continue to incur this expense. Tr. 143.

Complainant provides zero evidence that the Company's projections and expectations with regard to the Purchased Wastewater Expense for New Garden operations was unreasonable at the time the *2021 Rate Case* was filed. Rather, all of the evidence that Complainant presented, and recites in his Exceptions, are facts that came into existence well after the *2021 Rate Case* was filed. In his Exceptions, Complainant attempts to argue for the first time that Aqua stopped incurring this expense between August and October 2021 after a pipeline was activated. Compl. Exc., p. 18. However, he provides no citation to any evidence of record in this matter to support this claim that clearly demonstrates the alternative solution was put into place during this time frame. Even if he did, all it shows is that an alternative solution was put in place after Aqua developed its projections and after the record in the *2021 Rate Case* closed.[2]

On his second argument, Aqua did not "update its initial rate case filing on January 4, 2022." Compl. Exc., p. 18. Rather, this was simply the date that certain of Aqua's pre-served testimony and exhibits, including the initial filing, were posted to the *2021 Rate Case* docket after having been admitted into the record.[3] Complainant simply misunderstands the *2021 Rate Case* record.

The remainder of Complainant's arguments are baseless attempts to discredit the unrebutted testimony of Aqua's witness. Compl. Exc., pp. 19-20. These arguments lack merit, and should be rejected. Ms. Feeney's testimony was credible, and the Complainant did not present any evidence to rebut her testimony that the *2021 Rate Case* utilized reasonable projections of

[2] Further, any "alternative solution" would incur its own costs, which are not accounted for by the Complainant, and which Aqua would not be entitled to recover under the same legal principles. As noted above, and explained in *National Fuel*, just as it is not proper to determine rates to be unjust and unreasonable when an item of the utility's revenue is greater than anticipated at the time of tariff approval, or an item of expense is or should have been less than anticipated, it would also not be proper for Aqua to receive retroactive rate relief on account of expense items which are greater than anticipated or of revenue items which are lesser.

[3] *See* Docket Nos. R-2021-3027385 and R-2021-3027386, available at https://www.puc.pa.gov/docket/R-2021-3027385 (last visited April 29, 2025). Evidence was admitted into the record at a hearing held on December 20, 2021.

costs that the Company expected to incur based on the information available to it at the time it prepared the test year.

Therefore, and for the reasons identified at the hearing in this matter, even if the Expense Complaint was not properly barred by law (and it was), the Complainant failed to carry his heavy burden with respect to the Expense Complaint. Exception No. 4 should be denied with respect to the Expense Complaint.

2. Complainant did not carry has burden of proof with respect to the Revenue Complaint.

As with his claims regarding the merits of the Expense Complaint, Complainant's assertions regarding the Revenue Complaint are similarly flawed. The ID correctly cited to and discussed the testimony provided by Aqua Ms. Feeney at the evidentiary hearing in this matter. ID, pp. 14-15. Aqua utilized the actual consumption data from New Garden that had been provided to Aqua during the proceeding to acquire the New Garden system, which was the best information available to Aqua at the time it filed the *2021 Rate Case*. Tr. 145-146. The usage data utilized by Aqua was not challenged by any active party in the case. Tr. 121-123. Furthermore, when the Commission issued the *Rate Case Order*, it authorized a lower revenue requirement increase than what Aqua sought and, with respect to New Garden operations, authorized Aqua to collect $4.4 million in revenue using a rate design proposed by I&E. Tr. 124-125. The *Compliance Tariff* was submitted consistent with the *Rate Case Order* and reviewed and approved by the Commission. Tr. 139-141; Aqua Exhibits C, D.

Ultimately, as explained by Aqua witness Ms. Feeney, the Complainant's issue with the usage data utilized in the *Compliance Tariff* is a rate design problem. Tr. 153. Importantly, if the Company were to reset the rate bands used in the *Compliance Tariff* using more recent data, as

Mr. Ferguson requests, then the current rate for the first two rate bands (i.e., the rates paid by most residential customers) would be higher and not lower as Complainant believes, to collect and design rates equal to the $4.4 million authorized increase. Tr. 153. Mr. Ferguson's claims to the contrary (Compl. Exc., pp. 23, 24) are wrong.

Moreover, Complainant's concerns that "using 106 million gallons results in higher rates to generate the permitted revenue" and "[i]f customers actually used 124 million gallons, Aqua's revenue would increase well above the permitted revenue" is without basis. Compl. Exc., pp. 23, 24. Importantly, as explained above, Aqua demonstrated that it collected less revenues for New Garden operations than it was authorized. (Tr. 130-132; Aqua Exhibit E, p. 22 of 30 (showing actual revenues recovered from New Garden wastewater operations for the calendar year end January 31, 2023 to be less than the $4.4 million in revenues Aqua was authorized to collect)). Mr. Ferguson's claim that Aqua was recovering revenue in excess its authorized revenue requirement for New Garden operations is completely unfounded.

Finally, Complainant continues to claim that while the *Compliance Tariff* "did demonstrate compliance," it only did so because "the Commission was unaware of the data issues." Compl. Exc., p. 24. Complainant provides no basis for this claim. Moreover, it ignores the fact that the *2021 Rate Case* was fully litigated, and the usage data used by Aqua was not challenged by any party. ID, pp. 14-15.

Therefore, and for the reasons identified at the hearing in this matter, even if the Revenue Complaint was not properly barred by law (and it was), the Complainant failed to carry his heavy burden with respect to the Revenue Complaint. Exception No. 4 should be denied with respect to the Revenue Complaint.

F. REPLY TO EXCEPTION NO. 5 – The Cited Findings Of Fact Are Correct, And Undisputed Facts Of Record.

Complainant's final Exception No. 5 takes issue with Findings of Fact Nos. 8, 12, and 13 of the ID. Compl. Exc., pp. 24-26. Specifically, he claims that "[a]ll of these findings when taken together are incomplete and misleading because they wrongly suggest that Ferguson's complaints should be dismissed" due to the doctrine of collateral estoppel. Compl Exc., p. 25.

While Aqua raised collateral estoppel as an affirmative defense in its Answer and New Matter to each of the Formal Complaints, the ID does not render a ruling on this issue. Rather, each of these Findings of Fact establish that the wastewater rates for New Garden wastewater operations challenged by Mr. Ferguson were established by a fully-litigated base rate proceeding, in order to establish the presumption that these rates are just and reasonable. *See* ID, pp. 15-16.

Moreover, even if the ID had applied the doctrine of collateral estoppel and barred his Complaints on these grounds, and it did not, it would have been correct to bar the Complaints on this and other related grounds. Section 316 of the Public Utility Code states, in relevant part:

> Whenever the [c]ommission 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.

66 Pa.C.S. § 316. Under Section 316, a complainant is prohibited from raising issues that were previously decided. *See Moore, Jr. v. PECO Energy Co.*, Docket No. C-2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), *adopted without modification*, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012); *see also Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Initial Decision issued Feb. 24, 2020), *adopted without modification*, Docket No. C-2019-3014786 (Order entered May 21, 2020). Section 316 of the Code precludes a collateral attack upon a Commission order which has not been reversed upon

appeal. *See Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989) (citing 66 Pa. C.S. § 316).

The *2021 Rate Case Order* has not been set aside, annulled, or otherwise overturned. *See Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order entered May 19, 2016) (dismissing First and Second Complaints on remand), *affirmed*, *Moyer v. Pa. PUC*, 2017 Pa. Commw. Unpub. LEXIS 167 (Pa. Cmwlth. 2017), *allocatur denied*, *Moyer v. Pa. PUC*, 2017 Pa. LEXIS 2145 (Pa. 2017); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered Aug. 8, 2019) (dismissing Third Complaint); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683 (Order entered Oct. 28, 2021) (dismissing Fourth Complaint); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2022-3031294 (Order entered Dec. 8, 2022) (dismissing Fifth Complaint with prejudice). Therefore, the Commission could properly bar the Complaint pursuant to Section 316 of the Code.

Collateral estoppel could similarly bar the Complaints because Mr. Ferguson's claims and issues related to Aqua authorized revenue requirement for New Garden wastewater operations were raised or could have been raised and ruled upon in the *2021 Rate Case*. Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *See Fiore v. Commonwealth*, 508 A.2d 371, 374 (Pa. Cmwlth. 1986).

The doctrine of collateral estoppel, or issue preclusion, applies where: (1) "[a]n issue decided in a prior action is identical to the one presented in a later action"; (2) "[t]he prior action resulted in a final judgment on the merits"; (3) "[t]he party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action"; and (4) "[t]he party against whom collateral estoppel is asserted had a full and fair opportunity to litigate

the issue in the prior action." *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998) (emphasis added) (citations omitted).

Therefore, the instant Complaints could properly be barred by collateral estoppel because in the *2021 Rate Case* and the instant Complaint: (1) the issues are about Aqua's wastewater rates charged to customers in New Garden Township (ID, pp. 2, 4; Compl. Exc., p. 2) (2) the *2021 Rate Case* was adjudicated on the merits (ID, pp. 8-9; Compl. Exc., p. 2) ; (3) parties in the prior action and the instant proceeding are the same (*i.e.*, William Ferguson provided sworn testimony on the record in Aqua's *2021 Rate Case*) (ID, p. 13); and (4) in the prior action, the Complainant had a full and fair opportunity to raise claims and litigate issues regarding the rates proposed by Aqua for New Garden wastewater operations (ID, p. 13). Therefore, even if the doctrine of collateral estoppel had been applied to bar the Complaints, its application would have been lawful and appropriate under the facts of this case.

For these reasons, the Complainant's Exception No. 5 should be denied, and the ID should be affirmed.

III. CONCLUSION

WHEREFORE, and for all of the foregoing reasons, Aqua Pennsylvania Wastewater, Inc., respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Exceptions of the Complainant, William Ferguson; and (2) adopt the Initial Decision of the Administrative Law Judge Eranda Vero as its final action without modification.

Respectfully submitted,

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