

**William E. Ferguson**  
313 Hyde Park Road  
Landenberg, PA 19350  
(610) 268-5731

May 9, 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  
**Petition to Reopen the Record for the Purpose of Taking  
Additional Evidence**

Dear Secretary Homsher:

Enclosed for electronic filing, please find the **Petition to Reopen the Record for the Purpose of Taking Additional Evidence** in the above-referenced proceeding. Copies have been served in accordance with the Certificate of Service.

Please contact me if you have any questions about this filing.

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 Petition to Reopen the Record for the Purpose of Taking Additional Evidence of William Ferguson, 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).

**Served via Electronic Mail:**

Honorable Eranda Vero  
Administrative Law Judge  
E-mail: [evero@pa.gov](mailto:evero@pa.gov)

Michael W. Hassell, Esq.  
Garrett P. Lent, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101  
E-mail: [mhassell@postschell.com](mailto:mhassell@postschell.com)  
E-mail: [glent@postschell.com](mailto:glent@postschell.com)

Matthew Homsher, Secretary  
Pennsylvania Public Utility Commission  
<http://www/puc.state.pa.us/efiling/default.aspx>

Office of Special Assistants  
Pennsylvania Public Utility Commission  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)

/s/ William Ferguson

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William E. Ferguson  
313 Hyde Park Road  
Landenberg, PA 19350  
[zzzferg@gmail.com](mailto:zzzferg@gmail.com)  
(610) 268-5731

Dated: May 9, 2025

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	:	C-2023-3043109
	:	
Aqua Pennsylvania Wastewater, Inc.,	:	
Respondent	:	

**NOTICE TO PLEAD**

TO: Michael W. Hassell, Esq.  
Garrett P. Lent, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101  
E-mail: [mhassell@postschell.com](mailto:mhassell@postschell.com)  
E-mail: [glent@postschell.com](mailto:glent@postschell.com)

Pursuant to Pennsylvania Public Utility Commission Rule of Administrative Practice and Procedure § 5.65 (relating to answers to amendments of pleadings), 52 Pa. Code § 5.65, you are hereby notified **that you have ten (10) days from the date you receive the attached Petition to Reopen the Record for the Purpose of Taking Additional Evidence of William Ferguson** to file a written response with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17120.

If you fail to file a written response within ten (10) days from your receipt of it, it may be decided without further notice to you.

As a formal party to the proceeding, you may represent yourself or you may be represented at your expense by an attorney-at-law of your choosing.

If you have any questions about this Notice, you may call the Secretary of the Pennsylvania Public Utility Commission at (717) 772-7777.

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[zzzferg@gmail.com](mailto:zzzferg@gmail.com)  
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	:	C-2023-3043109
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Aqua Pennsylvania Wastewater,	:	
Respondent	:	

**Petition to Reopen the Record  
for the Purpose of Taking Additional Evidence**

Pursuant to Section 5.571 (relating to reopening prior to a final decision) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.571, Complainant William Ferguson (“Ferguson”) submits this Petition to Reopen the Record for the Purpose of Taking Additional Evidence, and in support thereof states as follows:

1. For relief in these consolidated complaint proceedings filed on September 19, 2023, Ferguson sought a Commission investigation and, if found to be appropriate, refunds from Aqua (i.e., its shareholders, not its customers) to make whole New Garden Township customers who were overcharged as a result of serious improprieties by Aqua Pennsylvania Wastewater (“Aqua”) in its 2021 rate case, which went beyond typical utility “reasonable minds can differ” rate case claims.

2. (a) Subsections 5.571(d) and (d)(2) provide that the Commission may reopen the record for the reception of further evidence after the presiding officer has issued a decision but before a final decision is issued “if there is reason to believe that conditions of

fact or of law have so changed as to require, *or that the public interest requires*, the reopening of the proceeding.” (Emphasis added.)

(b) Here, the facts and law have not changed since the record was closed, but the public interest requires reopening because the essential facts have not been adequately elucidated which has allowed Aqua to make evasive and disingenuous arguments that, if not countered with the complete facts, will produce an unjust result and a disincentive for honest rate case behavior. As the examples below of Aqua’s advocacy demonstrate, two precedents will be created:

*First*, that a public utility has no obligation to update its initial expense claims during a rate case, even when it knows them to no longer be accurate, if no active party to the case has challenged the claim.

*Second*, that a utility, after the record has closed and the Commission has entered a final order, a utility can game its proposed compliance tariff to inflate its permitted revenue without having to explain how and why it made billing adjustments in response to a valid Section 1309(a) challenge.

The record is therefore devoid of vital additional information necessary for a fair resolution of Ferguson’s claims. Specifically, forthright explanations to the essential questions stated in ¶ 3 below.

(c) There is a further need to reopen the record to provide the factual background for the presiding officer to clarify the interaction of Public Utility Code Sections 332(a) and 315(b) regarding the burden of proof, as described in Ferguson’s Exceptions at page 11.

3. Ferguson believes and has offered strong evidence that Aqua committed two improprieties in its 2021 rate case, which it has taken great pains never to directly explain or

refute. It could easily have done so (a) by producing company documents regarding the end date of its trucking of sewage and the start date of piping it, and (b) by providing an explanation of why and how it made “Billing Adjustments” to its “Consumption Analysis” when it prepared its Compliance Tariff. Instead, it has unleashed very seasoned top-notch lawyers upon a *pro se* non-lawyer customer (who relied on the Commission’s “Consumer Complaint Procedures Guide,” which does not mention “discovery”) to drag out the case for 1 ½ years with multiple pleadings marked by evasions and deflections. Examples of these in Aqua’s Reply Exceptions are given below.

4. In light of Aqua’s over-the-top and suspicious resistance to transparency, the purpose of this petition is twofold: First, to reemphasize the need for a Commission investigation into Aqua’s rate case behavior, if only as a deterrent to further misbehavior by Aqua and other utilities, even if Aqua might be punished in ways that do not include refunds to New Garden customers. Second, to request a limited reopening of the record confined to the subjects described in the second sentence of paragraph 3 above, with an opportunity for Ferguson to propound written interrogatories regarding the same.

5. Before giving examples of Aqua’s evasions and deflections, Ferguson notes that the Initial Decision dismissed his complaints as a matter of law without reaching the merits of the complaints. Therefore, technically, there was no reason to file exceptions to any matter not dealt with in that decision. Out of an abundance of caution, however, Ferguson’s Exceptions addressed burden of proof issues regarding the merits of his claims and the doctrine of collateral estoppel. Aqua did the same, although not technically required to do so. Ferguson suggests that, if a limited reopening of the record is granted, the parties be directed to begin anew by filing any exceptions after the Administrative Law Judge issues an Initial Decision

on the merits.

6. Examples of Aqua's disingenuous evasions and deflections in Aqua's Reply Exceptions, pages 13-18, in response to Ferguson's Exception No. 4 regarding *Prima Facie* Burden of Proof:

- (a) Page 13 (third line from bottom); Page 17 (fifth line from bottom):

These are two of several instances where Aqua claims invulnerability to Ferguson's claims because its Compliance Tariff was submitted consistent with the 2021 rate case order and approved by the Commission after staff review.

Aqua fails to acknowledge the obvious. Ferguson's complaints challenged the resulting *existing* rates, but did not seek a retrying of the rate case so as to produce a different approved revenue requirement and different rates to customers. The gravamen of the complaints was that *the resulting rates* were unjust, unreasonable, and unlawful because of improprieties by Aqua during the case: its failure to eliminate a trucking expense claim that it knew no longer existed, and its billing adjustments in the proposed tariff that raised individual customer rates and may have inflated rates beyond those permitted.

These improprieties were not discovered and challenged during the case because Aqua, regarding the trucking expense claim, opaquely titled it a "Purchased Wastewater Expense" and did not eliminate it when no active party to the case challenged it. Aqua's billing adjustments occurred after the record was closed and after the Commission's decision when Aqua prepared its Compliance Tariff proposal. Aqua seeks to avoid scrutiny of those adjustments with the excuse that "[t]he usage data utilized by Aqua was not challenged by any active party in the case."<sup>1</sup>

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<sup>1</sup> Aqua Reply Exceptions at page 17; see also page 18: "Moreover, [Ferguson's claim] ignores the fact that the *2021 Rate Case* was fully litigated, and the usage data used by Aqua was not challenged by any party."

Aqua seeks to nullify the purpose of Section 1309(a) to give complainants an opportunity to challenge the unjustness, unreasonableness, and unlawfulness of the rates resulting from such rate case improprieties.

(b) Page 14 (sixth line from the top), repeated on Pages 7, 8, 17-18:

Aqua repeats four times that its New Garden division rates cannot be unjust and unreasonable because (1) it collected less than \$4.4 million from New Garden operations than it was authorized to collect by the Compliance Tariff for calendar year end January 31, 2023, and that (2) “the rates charged by Aqua for New Garden operations do not actually reflect the full cost of service for those operations.

These arguments are classic examples of defensive deflection, well known to psychologists and lawyers in their legal arguments. Such a tactic involves redirecting or “deflecting” blame or cause for one’s actions onto someone or something else in an attempt to preserve one’s own position or self-image.

Aqua seeks to deflect attention away from its self-serving billing adjustments by pointing instead to later actual results (i.e., some other cause) that seemingly demonstrate it could not possibly have done anything wrong. The fallacy in Aqua’s argument is that it *did* wrongly game the gallonage—by understating customer usage volume over which the permitted revenue was to be collected, which raised rates, instead of using the higher actual customer usage volume from its “Consumption Analysis,” which would have lowered the per gallon charge. The subsequent drop in customer usage revenue proves only that elasticity of demand occurred—in reaction to the higher rates, customers conserved their usage, and revenues dropped.

In short, Aqua’s behavior was reprehensible, even if later events foiled its efforts to game the system. Whether the rates were above or below the cost of service is irrelevant. The fact

remains that Aqua’s resulting rates were set at an unreasonable, unjust, and unlawful level due to Aqua’s actions.

(c) Page 14 (bottom ¶) – Page 17 (top ¶)

As to Aqua’s \$1.2 million/year trucking expense (“Purchased Wastewater Expense”) claim, Aqua begins by mischaracterizing Ferguson’s claim, saying it was “based upon information unknown to Aqua at the time it designed the FPFTY.” Instead, Ferguson claimed that Aqua knew the trucking expense had ended or would end at or about the time of its rate case filing and that it definitely ended by year-end 2021. Yet Aqua included the expense and never removed it because no active rate case party challenged it. That is, it knew it could get away with a false expense claim.

According to Aqua, the best information<sup>2</sup> it had was that it was incurring a “large expense,” but no solution had been found. Yet Ferguson’s evidence clearly showed that Aqua was actively working on a project to commission a pipeline renovation to replace the trucking. In fact, that project was at or near completion at the time of the rate case filing on August 20, 2021.

Aqua could have quickly and definitively refuted Ferguson’s evidence establishing the pipeline activation date by producing documentation that proved when the trucking stopped and the piping began. Instead, it had Ms. Feeney testify that “the best information that the Company possessed at the time the filing was submitted, i.e., August 20, 2021 ... was based

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<sup>2</sup> Aqua also claimed “best evidence available” as an excuse for its billing adjustments to its proposed Compliance Tariff on Page 17, middle ¶: “Aqua utilized the actual consumption data from New Garden that had been provided to Aqua during the proceeding to acquire the New Garden system [acquisition date: December 20, 2020], which was the best information available to Aqua at the time it filed the *2021 Rate Case*.” But Aqua never provided actual New Garden data to validate that statement, and it never refuted Ferguson’s claims that the data could not possibly represent actual customer use.

upon the actual expense that Aqua was incurring for hauling wastewater between two facilities in New Garden.” (Page 15, bottom ¶) And, because Aqua was still searching for an alternative to the trucking, “the test year utilized by Aqua reflected its reasonable belief that it would continue to incur this expense” until the end of the FPFTY March 31, 2023 (one year, seven months, and eleven days after rate case filing date!).

But why rely on such an elaborate story of “estimates and projections” when the transfer date from trucking to piping could have been established so easily instead?

Aqua damages its credibility even more by saying (Page 16, top ¶) that the facts relied upon by Ferguson “came into existence well after the 2021 Rate Case was filed ...[and] an alternative solution [activation of the pipeline] was put in place ... after the record in the 2021 Rate Case closed [January 24, 2022].”

In fact, Aqua knew at the time of, or shortly after its initial filing that its \$1.2 million/yr trucking expense claim was incorrect, as detailed in Ferguson’s Exceptions, pages 15-20. The pipeline began operation about eight months after Aqua acquired the system on December 20, 2020 (in the August-October 2021 timeframe), and, at the very least, the expense ended no later than December 31, 2021.

It is outlandish in the extreme for Aqua to argue that the reasonableness of the trucking expense claim should be judged as of the filing date of the rate case without regard to changed circumstances affecting the validity of the claim during the case simply because the claim was not challenged by any active party to the case. *If the Commission were to condone such behavior, it would create the precedent that a utility has no obligation to update its rate case claims after filing its case, not even when it knows them to be incorrect.*

Finally, Aqua attempts to explain away its failure to update its trucking claim in its January 4, 2022, filing by saying that date “was simply the date that certain of Aqua’s preserved testimony and exhibits, including the initial filing, were posted to the 2021 Rate Case docket after having been admitted into the record.” Page 16, 2<sup>nd</sup> ¶. But Aqua moved for the admission of a late-filed exhibit as late as January 20, 2022, four days before the record closed, even then failing to update its trucking expense claim. Consequently, the annual \$1.2 million expense was paid by New Garden’s customers until February 22, 2025, the effective date of Aqua’s 2024 rate case (a total of \$3.3 million).

WHEREFORE, Ferguson respectfully requests that, if the Commission does not grant the relief requested in his complaints (i.e., an investigation and refunds if found appropriate), the Commission grant a limited reopening of the record, confined to the matters described in the second sentence of paragraph 3 above, with discovery limited to the same subjects.

Respectfully submitted,

/s/ William Ferguson

William E. Ferguson  
313 Hyde Park Road  
Landenberg, PA 19350  
[zzzferg@gmail.com](mailto:zzzferg@gmail.com)  
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Dated: May 9, 2025