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File #: 203069

May 19, 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 Wastewater, Inc.  
Docket Nos. C-2023-3043108 and C-2023-3043109**

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Dear Secretary Homsher:

Attached for filing is the Answer of Aqua Pennsylvania Wastewater, Inc. to the Petition to Reopen the Record of Complainant William C. Ferguson in the above-referenced proceeding. Copies are being 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*)  
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

William Ferguson  
313 Hyde Park Road  
Landenberg, PA 19350  
zzzferg@gmail.com

Date: May 19, 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.	:	

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**ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. TO THE  
PETITION TO REOPEN THE RECORD**

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Aqua Pennsylvania Wastewater, Inc. (“Aqua,” or the “Company”) hereby files this Answer to the Petition to Reopen the Record of Complainant William C. Ferguson (the “Complainant”), pursuant to Section 5.571(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.571(c). In his Petition, the Complainant seeks to reopen the record to serve discovery and gather evidence related to the timing of trucking expenses incurred and alleged adjustments to the Company’s Compliance Tariff. Petition, p. 2. The Complainant also alleges that failing to reopen the record would set a dangerous precedent for utility duties in rate cases and claims to be seeking clarification regarding the burden of proof in this proceeding. *Id.* The Complainant requests this “limited” opening of the record in a second attempt to meet his burden to prove that Aqua’s existing, Commission-approved wastewater rates were unjust and unreasonable. However, the Complainant has failed to meet his burden to demonstrate that there has been a material change of fact or law since the conclusion of the hearing that warrants reopening the record, or that the public interest requires the record be reopened. Moreover, the majority of the Petition is devoted to arguments in response to the Company’s Replies to his

Exceptions. These arguments should be disregarded by the Commission because the Commission's regulations do not authorize the filing of a response to Replies to Exceptions. For these reasons and as more fully explained below, the Complainant's Petition should be denied

In support thereof, Aqua states as follows:

**I. BACKGROUND AND PROCEDURAL HISTORY**

On September 19, 2023, Aqua was served with two interrelated Formal Complaints filed by the Complainant related to Aqua's wastewater rates for its New Garden operations that were established by the 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"). On October 10, 2023, Aqua filed separate Answers and New Matter to each of the Complaints. In its New Matters, Aqua averred that the Complaints are barred by Section 316 of the Public Utility Code (66 Pa. C.S. § 316) and the doctrine of collateral estoppel, and, if granted, would constitute impermissible retroactive ratemaking, constitute impermissible single-issue ratemaking and violate the Commission-made rate doctrine.

An evidentiary hearing was held on November 25, 2024. At the hearing, the Complainant sponsored 14 exhibits, each of which were admitted into the record, and the Company sponsored

7 exhibits that were admitted into the record. The record consists of a 192-page transcript and a total of 21 exhibits. The record closed on December 30, 2024.

The well-reasoned Initial Decision (“ID”) of Administrative Law Judge Eranda Vero (“ALJ”) was issued on March 31, 2025. Therein, 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 without proof that Aqua’s rates overall were unjust or unreasonable. *See* ID, p. 17.

On April 21, 2025, the Complainant filed Exceptions to the findings and conclusions reached in the ID. On May 1, 2025, the Company filed its Replies to the Exceptions. The Exceptions and Replies to Exceptions are currently pending before the Commission for disposition.

On May 9, 2025, Complainant filed the Petition to Reopen the Record (“Petition”). For the reasons explained below, the Petition should be denied.

## **II. LEGAL STANDARD**

The Commission’s Rules of Practice and Procedure permit a party to petition to reopen the record in a proceeding at any time after the record is closed, but before a final decision is issued, for the purpose of taking additional evidence. 52 Pa. Code § 5.571(a). A party that seeks to reopen the record is requesting affirmative relief from the Commission and, therefore, has the burden of proof. 66 Pa. C.S. § 332(a).

In order to meet the burden of proof required to reopen the record for additional evidence, a party must clearly set forth the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the

conclusion of the hearing. 52 Pa. Code § 5.571(b). Where an initial decision has been issued, the Commission may reopen the record “if there is reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding.” 52 Pa. Code § 5.571(d). “The Commission may deny a request where evidence of all of the additional facts alleged was available at the time of the hearing.” *Hess v. Pa. PUC*, 107 A.3d 246 at 266 n.12 (Pa. Cmwlth. 2014) citing *City of Philadelphia v. Pa. PUC*, 138 A.2d 698 (Pa. Super. 1958).

### **III. ARGUMENT**

In a second attempt to meet his burden of proof, the Complainant now seeks to have the record reopened to serve discovery and gather evidence related to the timing of trucking expenses incurred and alleged adjustments to the Company’s Compliance Tariff. Petition, p. 2. The Complainant alleges that failing to reopen the record would set a dangerous precedent for utility duties in rate cases and claims to be seeking clarification regarding the burden of proof in this proceeding. *Id.* The Complainant also improperly seeks to reply to the Company’s Replies to his Exceptions through the instant Petition. *See* Petition, pp. 4-8. The Complainant’s Petition must be denied for several reasons.

Initially, the Complainant’s Petition to Reopen the Record utterly fails to meet the legal standard required by the Commission’s regulations. The Complainant failed to articulate any material change in law or fact that would justify reopening the record. In fact, the Complainant openly states: “Here, the facts and law have not changed since the record was closed . . .” Petition, p. 2. The Company agrees that there have been no material changes in law or fact in this proceeding that warrant reopening the record and maintains that for this reason alone, the Complainant’s request should be denied. Having conceded that there have been no material

changes of fact or law since the record closed, the Complainant argues instead that the public interest requires reopening the record. These arguments are meritless and should be rejected.

First, the Complainant claims that “essential facts have not been adequately elucidated” about the timing of the trucking expenses incurred and alleged adjustments made to the Compliance Tariff at the time of its filing. Petition, p. 2. The Complainant asks that the record be reopened to allow him to propound discovery related to these issues. *Id.*, p. 3. However, the Complainant offers no explanation of how re-opening the record to allow additional discovery on facts he concedes were known and discoverable throughout this proceeding would serve the public interest. The Complainant was afforded ample opportunity to conduct discovery on these matters in advance of the evidentiary hearing to gather the materials he now requests. Furthermore, the Complainant was afforded the opportunity to cross-examine Aqua’s witness on these points in lieu of engaging in discovery. The Complainant was provided a full and fair opportunity to pursue his claims. The public interest does not require any additional discovery or hearing in this case.

Next, the Complainant claims that failing to reopen the record “will produce an unjust result and a disincentive for honest rate case behavior.” Petition, p. 2. Here, the Complainant rests on cynical mischaracterizations of the findings and conclusions of the ID. Contrary to the Complainant’s assertions, the ID is devoid of any finding 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.” *Id.*, p. 2. Similarly, the ID cannot be reasonably read to condone a utility acting to “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.” *Id.*<sup>1</sup> The conclusions in the ID rest on well-established

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<sup>1</sup> Any assertion that Aqua “gamed” its compliance filing is contrary to the facts. Aqua’s compliance filing properly reflected the unchallenged pro forma usage that was presented in the case.

precedent barring single-issue and retroactive ratemaking. *See* ID at 15-19. The Complainant's flawed interpretations of the findings of the ID are entirely unsupported by record evidence or anything set forth in the well-reasoned ID. As such, the public interest does not require the record to be reopened to revisit the ID's conclusions.

Third, the Complainant argues that the record should be opened to "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." Petition, p. 2. However, the Complainant began his testimony at hearing by describing his burden of proof in this case, stating in relevant part:

A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving 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. Again, a high standard, but reasonable.

Tr. 11 (emphasis added). The Complainant's clear articulation of his burden at the start of the hearing directly contradicts his alleged confusion now. That the Complainant may disagree with the finding that he failed to carry his burden of proof does not justify reopening the record on this point.

Finally, the remainder of the Complainant's Petition is devoted to responding to the Company's Replies to his Exceptions. Petition, pp. 4-8. The Commission's regulations do not permit the filing of responses to Replies to Exceptions. *See* 52 Pa. Code §§ 5.533, 5.535. As such, these arguments should not be considered by the Commission in its final determination in this case.

In conclusion, the Complainant has failed to meet his legal burden to demonstrate a material change of fact or of law that would warrant the time and expense to reopen the record. Nor has the Complainant demonstrated that the public interest requires reopening of the record. For the reasons explained above, the Complainant's request to reopen the record should be denied

and, for the reasons more fully explained in the ID and Aqua's Replies to the Exceptions, the Commission should deny Complainant's Exceptions and adopt the ID without modification.

**IV. CONCLUSION**

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Petition to Reopen the Record 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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Date: May 19, 2025

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Inc.*