

May 27, 2025

Via Electronic Filing

Matthew Homsher, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket Nos. C-2022-3036893 and C-2022-3037118
SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.
Reply Exceptions of Aqua**

Dear Secretary Homsher:

Attached for filing is the Reply of Aqua Pennsylvania Wastewater, Inc. to the Exceptions filed by SCH USA, LLC (Complainant) in the above referenced proceeding.

A copy of the Reply Exceptions has been provided to the relevant parties in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosures

cc: The Hon. John Coogan, PA Public Utility Commission [w/encl.]
Office of Special Assistants, PA Public Utility Commission [w/encls.]
Heather S. D. Harrison, Aqua Pennsylvania, Inc. [w/encl.]
Service List [w/encl.]

**Re: Docket Nos. C-2022-3036893 and C-2022-3037118
SCH USA, LLC v. Aqua Pennsylvania Wastewater, Inc.
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CERTIFICATE OF SERVICE

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

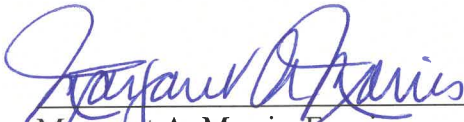
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Dated: May 27, 2025


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCH USA, LLC :
 :
 v. : Docket Nos.: C-2022-3036893
 : C-2022-3037118
 AQUA PENNSYLVANIA :
 WASTEWATER, INC. :

**REPLY EXCEPTIONS OF AQUA PENNSYLVANIA WASTEWATER, INC.
TO THE EXCEPTIONS OF SCH USA, LLC**

Margaret A. Morris, Esq.
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2929 Arch Street
Philadelphia, PA 19104

Dated: May 27, 2025

Counsel for Aqua Pennsylvania Wastewater, Inc.

I. Introduction

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) by and through its attorneys, Reger Rizzo & Darnall LLP, and pursuant to Section 5.535 of Commission’s regulation and 52 Pa. Code § 5.535, hereby file its Reply to the Exceptions of SCH USA, LLC (“Complainant” or “SCH USA”) which supports the adoption of the Initial Decision (“ID”) of the Honorable John Coogan (“Judge Coogan”) without modification. The Pennsylvania Public Utility Commission (“Commission”) should deny the Exceptions of SCH USA and affirm the Initial Decision in its entirety.

II. Relevant Procedural Background

On November 21, 2022, SCH USA filed a Formal Complaint with the Commission against Aqua at Docket No. C-2022-3036893 concerning unmetered wastewater service to three separate accounts at three separate service locations. On November 29, 2022, SCH USA filed a Formal Complaint against Aqua 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. In both Formal Complaints, Complainant is alleging Aqua is threatening to shut off its service and is incorrectly charging it for unmetered wastewater service.

On December 12, 2022, Aqua filed an Answer and New Matter to the Formal Complaint filed at Docket No. C-2022-3036893. On December 27, 2022, Aqua filed an Answer and New Matter to the Formal Complaint filed at Docket No. C-2022-3037118. In both pleadings Aqua averred that SCH USA is billed pursuant to the Commission-approved Rate Zone 4 tariff and

denies there are any incorrect charges on the accounts. In both new matters Aqua avers Complainant does not allege Respondent has violated the Pennsylvania Public Utility Code (“Code”) Commission regulations or orders, or its Commission-approved tariff.

On December 29, 2022, SCH USA filed a Reply to New Matter at both dockets. In both pleadings, although SCH USA admits it is being billed pursuant to Aqua’s Rate Zone 4 tariff, SCH USA 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’s tariff.

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, an *Order* was issued on Briefs, Admitting Evidence, and Closing the Record.

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

On April 24, 2025, the Initial Decision was entered, dismissing both Formal Complaints for failure to carry their burden of proof. The Complainant filed Exceptions to the Initial Decision on May 14, 2025.

III. Legal Standard

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 Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence in the record, which is defined as 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 & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980). Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the complainant, shifts to the respondent. If the evidence presented by the respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v Pa. PUC*, 443 A.2d 1371 (Pa. Cmwlth. 1982), aff'd, 433 A.2d 1234 (Pa. 1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The

burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

IV. Initial Decision

Judge Coogan found that SCH USA failed to carry its burden of proof that the rates it has been and are being charged violated 66 Pa.C.S. § 1301. Judge Coogan also noted that many arguments raised in this Complaint proceeding were similarly rejected by the Commission in Aqua's *2025 Rate Order*.¹

Judge Coogan reached the following determinations:

- SCH USA has not been charged pursuant to the 2010 Settlement. The number of EDUs were reviewed and authorized in the Commission's *2019 Rate Order* and the *2022 Rate Order*. ID at 15-16.
- Aqua's wastewater treatment plant is designed to treat 100% of every customer's flow and cannot adjust its wastewater treatment capacity to match variations in the resort occupancy. Therefore, it is reasonable to bill them assuming 100% occupancy of the Resort. ID at 16-17.
- Meter billing is not possible since Aqua does not meter the water nor wastewater usage. ID at 17.
- The Commission has not authorized metering wastewater service. ID at 17.
- Any variation on how SCH USA is billed should be pursued in the context of a base rate proceeding. ID at 18.
- SCH USA did not carry the high burden of proving that circumstances have changed so drastically that the complained of tariff provisions approved by the *2019 Rate Order* and the *2022 Rate Order* are unreasonable. ID at 18.

V. Exceptions

- A. SCH USA EXCEPTION No. 1:** The ID Erred By Finding That SCH USA Is Being Appropriately Billed EDUs Established In The 2010 Kidder Township Settlement (ID at 15-16).

¹ Docket R-2024-3047822, *et al.*, Opinion and Order entered April 10, 2025.

In its Exceptions, SCH USA continues to dispute the number of EDUs assigned to Split Rock Resort. It claims that the ID erred in accepting Aqua's claims that that the Commission approved the EDU-based billing in the *2019 Rate Order* and the *2022 Rate Order*. Exceptions at 3.

Response of Aqua

The ID correctly recognized that Aqua has billed SCH USA in accordance with its Commission-approved tariff rates, as established in Aqua's *2019 Rate Order* and its *2022 Rate Order*. SCH USA's arguments do not deny that (1) the tariffs in effect prior to and approved in the *2019 Rate Order* and *2022 Rate Order* apply to the service SCH USA receives, or (2) it has been billed or is being billed consistent with those tariffs. The same reasoning applies to its arguments in its Exceptions.

In addition, SCH USA ignores the Commission's rejection of their argument in the *2025 Rate Order*. In its *Order Denying Reconsideration of the 2025 Rate Order*, the Commission specifically found that the EDUs which form the basis of the revenue requirement for the rate zone applicable to SCH USA have been included in Aqua's tariff as a result of a number of prior proceedings. The Commission also noted that SCH USA had the opportunity to address its concerns in the 2021 base rate proceeding but did not.

For these reasons, and the reasons explained in Aqua briefs, SCH USA's Exception No. 1 should be denied.

B. SCH USA EXCEPTION No. 2: The ID Erred by Finding that Billing SCH USA a Flat, EDU-Based Rate is Reasonable (ID at 16-17).

SCH USA argues that the “ID ignores the significant disparity that exists between SCH USA’s actual usage and the 100% constant usage assumed by the EDUs billed to SCH USA, which as specifically applied to SCH USA results in rates that are not just and reasonable.” Exceptions at 5.

Response of Aqua

The ID correctly found that SCH USA did not carry its burden that billing on a flat, per EDU basis is unjust or unreasonable. Metered water information is not available for SCH USA, and the Commission has acknowledged the standard industry practice of flat rate billing.

In addition, SCH USA ignores the Commission’s rejection of their argument in the *2025 Rate Order* wherein the Commission found that SCH USA is operating the same type of business that has always been and that an individual customer’s rates cannot be considered in a vacuum, as it would impact other customers in Rate Zone 4. *2025 Rate Order* at 162.

For these reasons, and the reasons explained in Aqua’s briefs, SCH USA’s Exception No. 2 should be denied.

C. SCH USA EXCEPTION No. 3 The ID Erred by Finding that Alternative Billing Methods Proposed by SCH USA are Not Feasible (ID at 17).

SCH USA argues its witness showed that there are feasible and cost-effective methods to bill SCH USA for *actual* usage but Aqua has refused to implement these billing methods. Exceptions at 6-7.

Response of Aqua

The ID correctly found that metered billing is not possible where neither SCH USA's water or wastewater usage is currently metered, and the Commission had not authorized metering wastewater service. Any variation on how it is billed should be pursued in the context of a base rate proceeding. ID at 17.

In addition, SCH USA ignores the Commission's rejection of their argument in the *2025 Rate Order* wherein the Commission found that SCH USA failed to prove that any option is actually viable as it pertains to Split Rock Resort. *2025 Rate Order* at 163.

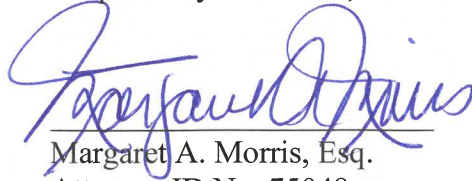
For these reasons, and the reasons explained in Aqua briefs, SCH USA's Exception No. 3 should be denied.

VI. Conclusion

SCH USA has simply reargued its position that was soundly rejected by Judge Coogan as well as the Commission in the *2025 Rate Order*. SCH USA's arguments are without merit and should be rejected. The Commission should adopt the Initial Decision of the Honorable John Coogan without modification.

WHEREFORE, for the reasons set forth in its Reply to Exceptions, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Commission deny the Exceptions of SCH USA, LLC and adopt the Initial Decision of the Honorable John M. Coogan without modification.

Respectfully submitted,



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Dated: May 27, 2025

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