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May 29, 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

Dear Secretary Homsher:

Attached for filing is the Answer of Aqua Pennsylvania Wastewater, Inc. to the Motion to Strike 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
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zzzferg@gmail.com

Date: May 29, 2025

Garrett P. Lent

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. TO THE MOTION TO STRIKE OF WILLIAM FERGUSON

Aqua Pennsylvania Wastewater, Inc. ("Aqua," or the "Company") hereby files this Answer to the Motion to Strike of Complainant William C. Ferguson (the "Complainant"), pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.103. Through the Motion, Complainant restates the arguments raised in his Exceptions, and claims these same arguments justify striking Aqua's Replies to Exceptions to the Complainant's Exception Nos. 1-3 from the record. Motion, at p. 4. The Complainant provides no ground(s) whatsoever that would justify the relief he seeks. Rather, the Complainant has lodged this Motion as an impermissible "reply" to Aqua's Replies to Exceptions and is attempting to re-argue his Exceptions Nos. 1-3. The Motion is nothing more than an attempt to an improper and unnecessary second bite at the apple for the Complainant to except to the Initial Decision in this matter. For these reasons and as more fully explained below, this Motion should be disregarded and denied by the Commission.

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"). Aqua filed its Answer to the Petition on May 19, 2025.

Also on May 9, 2025, Complainant filed the instant Motion. Aqua hereby submits its Answer to the Motion.

II. ANSWER TO THE MOTION TO STRIKE

The Commission has previously rejected motions to strike replies to exceptions, where a complainant argues without basis that the replies contain misrepresentations of fact and the motion provides no factual or legal support to strike the replies. *See, e.g., Koger v. Duquesne Light Company*, Docket No. C-2023-3038703, 2025 Pa. PUC LEXIS 11 (Order entered Jan. 8, 2025). In particular, the Commission has explained that a motion to strike replies to exceptions "is a collateral attack" on an initial decision where "it merely restates averments made in the Complainant's Exceptions." *Id.*, at *11. The Complainant's Motion clearly matches this description and, therefore, should be denied.

The Complainant advances no specific facts (new or otherwise) in support of the Motion. Rather, he merely restates the basis for his Complaint, which he was provided the opportunity to submit at the hearing held in this matter, and rehashes the same arguments he advanced in his Exceptions. Indeed, the statements in Paragraphs 3-4 of the Motion are restatements of his claims

regarding the appropriate burden of proof in this proceeding. *See* Motion ¶¶ 3-4; Exceptions, at pp. 8-12. Paragraphs 5-8 of the Motion are restatements of the same arguments from his Exceptions regarding the merits of his Complaint. *See* Motion ¶¶ 5-8; Exceptions, at pp. 1-2 (describing nature of the Complaint and relief sought), 15-24 (describing the Complainant's Exception No. 4).

Similarly, the Complainant provides no legal basis for his Motion. Rather, he restates the law applied by the ID, which he disputed in his Exceptions to the ID. *See* Motion ¶¶ 2-4, 6-7; *see also* Exceptions, at pp. 8-12 (challenging the application of the legal standards applicable to the Complainant's burden of proof), and 12-15 (challenging the ID's correct application of the general prohibition against retroactive and/or single-issue ratemaking to deny the instant Complaint). Complainant supplies no legal support for his Motion because there is none.

Moreover, the Complainant admits that he is not offering any new basis for his Motion, but is instead relying upon the same arguments he advanced in his Exceptions. Motion ¶ 8 ("Consequently, for these reasons <u>and the reasons further explained in Ferguson's Exceptions</u>, portions of Aqua's Reply Exceptions should be stricken and excluded from consideration of the merits of Ferguson's complaints." (emphasis added)). His additional attempt to bootstrap his Motion by citing to and incorporating his Petition further shows the Motion offers nothing new. Motion ¶ 9 ("Ferguson incorporates herein by reference the entirety of his Petition to Reopen the Record for the Purpose of Taking Additional Evidence filed simultaneously herewith."). Aqua has properly and permissibly responded to the Complainant's Exceptions and Petition, and demonstrated why the arguments advanced by the Complainant in those submissions are without merit. The Complainant's attempt to re-litigate his Exceptions and Petition through this impermissible Motion should be denied.

Finally, the Commission's regulations at 52 Pa. Code Ch. 5, Subch. H govern the procedure for filing exceptions to an initial or recommended decision, and replies to such exceptions. While 52 Pa. Code § 5.533 provides a party with the right to file exceptions to an initial decision and while 52 Pa. Code § 5.535 provides a party with the right to file replies to exceptions, there is no provision under the Commission's regulations that provides a party with the right to file an answer or reply to replies to exceptions. Given that the Motion provides no factual or legal basis to strike Aqua's Replies to Exceptions, except to simply restate the Complainant's previously-raised arguments from his Exceptions, the Motion is clearly an impermissible collateral attack on Aqua's Replies to Exceptions.

III. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Motion to Strike 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 29, 2025

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