

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held July 10, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

SCH USA, LLC

C-2022-3036893

C-2022-3037118

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of SCH USA, LLC (SCH USA or Complainant), filed on May 14, 2025, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on April 24, 2025, in the above-captioned proceeding. Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company) filed

Replies to Exceptions on May 27, 2025.¹ For the reasons stated, *infra*, consistent with this Opinion and Order, we shall deny the Complainant’s Exceptions and adopt ALJ Coogan’s Initial Decision.

I. Background and Procedural History

By way of background, SCH USA is a commercial wastewater customer of Aqua that owns and operates a large commercial resort property known as the Split Rock Resort (the Resort),² which is located in Lake Harmony, Kidder Township, Carbon County, Pennsylvania. SCH USA St. 1 at 2. Aqua provides wastewater collection and treatment services to SCH USA, which owns and operates its own sewer collection system on its property that discharges to the Company’s wastewater system. Water for the Resort is provided by private wells which SCH USA acquired when it purchased the Resort in October 2020. SCH USA M.B. at 1-2.

As a result of recent and prior acquisitions of wastewater systems, Aqua’s wastewater rates are comprised of several varying rate structures, including fixed

¹ Pursuant to the Commission’s Regulations at 52 Pa. Code § 5.535, Replies to Exceptions are due within 10 days of the due date of Exceptions. Therefore, Replies to Exceptions were due on May 24, 2025, which was a Saturday. Additionally, Monday, May 26, 2025 was the Memorial Day Holiday. Therefore, Replies to Exceptions were due on the next business day, Tuesday, May 27, 2025.

² The Resort consists of the following buildings and amenities: (1) Willowbrook, a resort hotel with 256 guest rooms; (2) the Galleria, a resort hotel with 77 guest rooms and 8 VIP rooms, as well as other features including a food court, shops, restaurants, movie theater, racquetball court, waterpark, indoor pool, lobby, bar, and large meeting space; (3) the Lodge, a luxury resort hotel with 50 hotel rooms, a restaurant and a meeting room; and (4) a laundry that serves the Resort properties. *See* SCH USA St. 1 at 2.

customer or Equivalent Dwelling Unit (EDU)³ charges, plus usage charges, unmetered flat rates, and structures with minimum usage allowances.

³ The Company's current wastewater tariff defines an EDU as follows:

Equivalent Dwelling Unit or "EDU": Except for existing Customers acquired by the Company through a purchase or acquisition and for billing purposes only, the EDU is a measure assigned by the Company based upon the estimated average daily wastewater flow for the type of business, as calculated by the PaDEP regulation at 25 Pa. Code § 73.17(b) divided by the Company's typical estimated average daily wastewater flow from a current single-family unit. Residential Customers are designated as one (1) EDU; however, in the Company's sole discretion, the Company may assign more than one (1) EDU for a residential Property.

For existing customers without a predetermined EDU allocation, the EDU is a measure based upon the estimated average daily wastewater flow for the type of business based on water usage, divided by the typical estimated average daily wastewater flow from a current single-family unit. For other existing customers acquired by the Company through a purchase or acquisition, the number of equivalent dwelling units is available at <https://www.aquawater.com/about/states-we-serve/pennsylvania/index.php>.

Any Customer who modifies their properties in a manner that impacts the EDU calculation, including in areas previously acquired by the Company, will be subject to the EDU definition described above. The Company will consider a Customer's request for a change in the number of assigned EDUs upon presentation of substantial evidence, satisfactory to the Company in its sole discretion. The Customer shall bear the burden of proof for all such requests.

See Tariff Sewer – PA P.U.C. No. 4 (Tariff Sewer No. 4) at Original Page 26, effective February 22, 2025.

Aqua became the wastewater service provider for the Resort as a result of Aqua’s Commission-approved acquisition of Kidder Township’s wastewater assets in 2012.⁴ Aqua M.B. at 8 (citing Aqua Exh. CM-1). SCH USA is located in Rate Zone 4 of the Company’s current wastewater tariff, and, since SCH USA does not currently have metered water service, it is billed a monthly flat rate for unmetered wastewater service based on predetermined EDUs, totaling 330 EDUs, as follows:⁵

Willowbrook at Lake Harmony	128 EDUs
Galleria and the Water Park	145 EDUs
The Lodge	53 EDUs
Laundry (serves the above premises)	4 EDUs
Total EDUs Charged to SCH USA	330 EDUs

See Aqua St. 1 at 3-5. Aqua currently charges SCH USA \$144.17 per EDU (excluding the Distribution System Improvement Charge (DSIC)), which recently increased from \$131.00 per EDU, as approved by the Commission in Aqua’s most recent base rate proceeding, at Docket Nos. R-2024-3047822 and R-2024-3047824. See *Pa. PUC, et al.*

⁴ See *Application of Little Washington Wastewater Co. for approval of the acquisition by Little Washington of the wastewater system assets of the Twp. of Kidder situated in a portion of Kidder Twp., Carbon Cnty., PA and the Right of Little Washington to supply wastewater service to the public in an additional portion of Kidder Township, Carbon County., PA*, Docket No. A-2012-2298067 (Order entered July 19, 2012) (*Kidder Township Order*). Little Washington Wastewater Company (LWWC) is a subsidiary of Aqua. Pursuant to a Notice of Name Change filed on November 26, 2013, the Company changed the name of LWWC to Aqua Pennsylvania Wastewater, Inc., *i.e.*, Aqua Wastewater. See Docket No. R-2013-2395509.

⁵ The EDUs assigned to SCH USA were determined during litigation initiated in 2007 between a prior owner of the Resort and the Township of Kidder. During the course of that proceeding, the litigants reached a settlement agreement (Kidder Settlement) on several issues, including the number of EDUs that would be used in calculating the Resort’s wastewater charges. See SCH USA Exh. FL-1, Release and Settlement Agreement, *Vacation Charters LTD., Split Rock Country Club, Inc., Summit Management & Utilities, Inc. v. Kidder Township*, In the Court of Common Pleas of Carbon County, Pennsylvania, Docket No. CV-07-4079.

v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., Docket Nos. R-2024-3047822 and R-2024-3047824, *et al.* (Opinion and Order entered February 7, 2025) (*Aqua 2024 Rate Case*) and the Order on Reconsideration of the Commission Order in the *Aqua 2024 Rate Case* (Opinion and Order entered April 10, 2025) (*Aqua 2024 Reconsideration Order*).⁶ *See also* Tariff Sewer No. 4 at Original Page 26, effective February 22, 2025.

On November 21, 2022, SCH USA filed a Formal Complaint against Aqua at Docket No. C-2022-3036893 (First Complaint), concerning unmetered wastewater service to three separate accounts at three separate service locations. On November 29, 2022, SCH USA filed a separate Formal Complaint against Aqua at Docket No. C-2022-3037118 (Second Complaint),⁷ concerning unmetered wastewater service to one account at one service location.⁸ In both Complaints, SCH USA: (1) alleged that Aqua was threatening to, or had already, shut off its service; (2) alleged that Aqua was incorrectly charging for unmetered wastewater service;⁹ (3) alleged that Aqua has been unapproachable and has not responded directly to its request to be charged on a

⁶ SCH USA filed a Petition for Reconsideration on February 24, 2025, seeking reconsideration of the Commission Order in the *Aqua 2024 Rate Case* (SCH USA Petition), specifically requesting that the Commission reconsider permitting Aqua to maintain its current practice of billing SCH USA using a flat rate for unmetered wastewater service based on EDUs. In our *Aqua 2024 Reconsideration Order*, we declined to exercise our discretion to reconsider our Order in the *Aqua 2024 Rate Case*, finding that the SCH USA Petition did not raise any new or novel arguments, or considerations that were not addressed by the Commission Order in the *Aqua 2024 Rate Case*. *Aqua 2024 Reconsideration Order* at 52-58.

⁷ On December 7, 2022, the Second Complaint was served on Aqua for an answer due within twenty (20) days.

⁸ SCH USA noted that the bills for the Laundry are no longer in dispute. SCH USA St. 1 at 6.

⁹ SCH USA claimed it was being incorrectly charged because it was being charged pursuant to a settlement agreement that neither of the Parties have agreed to and contended that its actual wastewater usage is far less than the volume reflected in the unmetered rate. Complaints at ¶ 5.

metered basis; and (4) requested a payment agreement. Complaints at ¶ 4. For the requested relief, SCH USA set forth the following, *inter alia*: (1) that it would like to be charged on a metered basis going forward; and (2) that it be issued a payment arrangement.¹⁰ *Id.* at ¶ 5.

On December 12, 2022 and December 27, 2022, in response to the First Complaint and Second Complaint, respectively, Aqua filed Answers and New Matters, both properly endorsed with a Notice to Plead. In both Answers, Aqua averred that SCH USA is billed under Rate Zone 4, pursuant to the Company's Commission-approved tariff, and denied there were any incorrect charges on the accounts. Aqua also denied that the Commission can direct a payment arrangement for SCH USA because it is not a residential customer. Answers at ¶ 4. In both New Matters, Aqua averred that the Complainant did not allege that the Company has violated the Public Utility Code (Code), a Commission Regulation or Order, or Aqua's Commission-approved tariff. *Id.* at ¶ 11.

On December 29, 2022, the Complainant filed a reply to both of Aqua's New Matters. Therein, SCH USA alleged that it was being incorrectly charged based on the number of EDUs included in a settlement agreement, rather than the Company applying the definition of EDU contained in Aqua's tariff. Reply to Answers at ¶ 11.

On January 4, 2023, the Commission issued an Initial Telephonic Hearing Notice scheduling this matter for an evidentiary hearing on March 17, 2023, and assigning ALJ Coogan as the Presiding Officer. On January 6, 2023, a Prehearing and Consolidation Order was issued setting forth the procedural rules that would govern the hearing and consolidating the two Complaints for litigation purposes.

¹⁰ During the Telephonic Prehearing Conference, SCH USA agreed to withdraw its request for a Commission-issued payment arrangement.

On March 10, 2023, the Commission issued a Hearing Type Change Notice, converting the March 17, 2023, evidentiary hearing to a Telephonic Prehearing Conference.

On March 17, 2023, the Telephonic Prehearing Conference was held as scheduled, at which the Parties discussed settlement, witnesses, presently identified issues, and a litigation schedule. On March 17, 2023, the Commission issued a Scheduling Order, setting April 17, 2023 as the date by which Aqua should file a motion regarding issues it wished to resolve prior to scheduling an evidentiary hearing.

On April 17, 2023, Aqua filed a Motion for Judgment on the Pleadings. On May 8, 2023, SCH USA filed an Answer to the Motion for Judgment on the Pleadings. By Order dated May 22, 2023, Aqua's Motion for Judgment on the Pleadings was denied.

By Order dated May 31, 2023, ALJ Coogan stayed this proceeding and directed each Party to provide a status report by June 30, 2023. Subsequent to the May 31, 2023 Order, the Parties continued to engage in settlement discussions and provided several status reports by e-mail indicating that settlement discussions were ongoing. By Order dated January 11, 2024, the litigation schedule agreed to by the Parties was memorialized and provided further instructions regarding this proceeding.

By Order dated June 5, 2024, ALJ Coogan adopted a new litigation schedule, as agreed to by the Parties.

On July 11, 2024, Aqua filed a Motion to Consolidate SCH USA's First and Second Complaints with the *Aqua 2024 Rate Case*. Also on July 11, 2024, Aqua filed a Motion to Stay the Procedural Schedule in the Formal Complaint proceedings (Motion to Stay) because of its pending Motion to Consolidate.

On July 31, 2024, SCH USA filed Answers to both Aqua's Motion to Consolidate and Motion to Stay. On August 12, 2024, the Commission issued an Order denying Aqua's Motion to Consolidate and Motion to Stay.

An evidentiary hearing was held on September 24, 2024. During the hearing, the Parties' pre-served testimony and exhibits were admitted into 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 January 31, 2025, SCH USA filed a Motion to Strike portions of Aqua's Reply Brief. On February 20, 2025, Aqua filed an Answer to the Motion to Strike.

On February 20, 2025, Aqua filed a Motion for Notice of the *Aqua 2024 Rate Case*. On March 12, 2025, SCH USA filed an Answer to the Motion for Notice.

On April 23, 2025, the Commission issued an Order granting SCH USA's Motion to Strike and denying Aqua's Motion for Notice.

On April 24, 2025, the Commission issued the Initial Decision of ALJ Coogan, wherein he dismissed both Complaints for failure of the Complainant to carry its burden of proof. *See* I.D. at 1, 15-18, 20.

As noted, *supra*, the Complainant filed Exceptions on May 14, 2025. Aqua filed Replies to Exceptions on May 27, 2025.

II. Discussion

A. Legal Standards

1. Burden of Proof, 66 Pa.C.S. § 332(a)

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the “preponderance of the evidence” standard. *Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (1992) (*Lansberry*); *see also North American Coal Corporation. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 855 (Pa. 1950).

The burden of proof comprises two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *Id.* It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s

evidence. *See Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie, Burleson; see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the ultimate factfinder¹¹ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber*).

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated*

¹¹ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing 66 Pa.C.S. § 335(a)).

Edison Company of New York v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1983). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Company v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corporation v. Unemployment Compensation Board of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Commonwealth Department of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

2. Commission-Approved Tariffs

It is well accepted that a tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corporation v. Pa. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations, and practices so that the public may inspect its contents. 66 Pa.C.S. § 1302; 52 Pa. Code § 53.25; *Philadelphia Suburban Water Company v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (*Phila. Suburban Water*). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Company v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water*.

3. General Standards

In the Initial Decision, the ALJ made sixteen (16) Findings of Fact and reached eleven (11) Conclusions of Law. I.D. at 6-8, 18-20. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without

comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

B. Positions of the Parties

1. SCH USA

The crux of the Complainant's claims in this proceeding is that Aqua is assessing EDUs to SCH USA in a discriminatory manner; therefore, the existing EDU allocation to SCH USA is unjust and unreasonable. SCH USA M.B. at 3-13. SCH USA argued that Aqua's charges for wastewater service are not just and reasonable pursuant to 66 Pa.C.S. § 1301 because: (1) Aqua currently bills SCH USA based on a number of EDUs originally determined in a Settlement Agreement that Aqua did not assume when purchasing the system, and which has long since expired; (2) Aqua's practice of billing SCH USA on a flat, per EDU, basis results in charges that have no relationship to actual usage at the property and may significantly overstate wastewater usage at the Resort, as occupancy at the Resort varies widely and is often significantly less than 100%; and (3) there are other reliable and technically feasible options to bill SCH USA for actual usage at the property. *Id.* at 4. Specifically, SCH USA argued that it is "being charged for more wastewater usage than what Aqua is collecting and treating" and that its

“actual usage is consistently much lower than what is being billed by Aqua.” SCH USA St. 1 at 3.

2. Aqua

Regarding the reasonableness of the use of a flat, EDU-based rate for the unmetered wastewater service being provided to SCH USA, Aqua pointed out that, because SCH USA obtains water from its privately-owned wells, Aqua does not know the water usage of SCH USA. When a wastewater utility cannot bill wastewater service based on water usage, as is the case here, the Company argued that it is appropriate and common practice across the wastewater industry to bill a flat rate based upon an assigned number of EDUs. Aqua R.B. at 5. Aqua further explained that the use of an EDU from a system design and rate perspective is reasonable because the Company must consider the “sewer capacity needed to treat wastewater from the customer/premises at all times.” Aqua M.B. at 15.

Therefore, Aqua argued that, contrary to SCH USA’s claims, the number of EDUs being charged to SCH USA is appropriate, and more specifically, that it is appropriate to utilize the number of EDUs from the Kidder Settlement for SCH USA’s billing. Aqua noted that SCH USA’s predecessor and Kidder Township voluntarily agreed on these values; and Aqua has merely continued to apply those historically agreed upon values. Aqua M.B. at 12-13. Moreover, as indicated in Aqua’s Main Brief, it is important to recognize that Aqua is billing SCH USA pursuant to the Company’s Commission-approved tariff. Aqua M.B. at 4-5, 11.

Aqua submitted that once Aqua acquired the Kidder Township assets, the assigned EDUs from the Township’s billing system were transferred to Aqua for billing purposes. The assets of the acquired system were placed into Aqua’s rate base in *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*,

Docket Nos. R-2018-3003558 and R-2018-3003561, *et al.* (Order entered May 9, 2019) (*Aqua 2018 Rate Case*). The number of EDUs billed to SCH USA were reviewed and included in the revenue requirements as set forth in the respective Commission Orders in the *Aqua 2018 Rate Case* and the proceeding in *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2021-3027385 and R-2021-3027386, *et al.* (Order entered May 16, 2022) (*Aqua 2021 Rate Case*). Aqua M.B. at 8-9.

In response to SCH USA's request for metered wastewater service, Aqua explained that the technologies supported by SCH USA can only be used on pumped flow and do not work on non-pressurized flow, of which SCH USA's system consists of. Aqua M.B. at 13. Aqua stated that SCH USA has not presented a feasible way for wastewater consumption to be measured. *Id.* at 14. Aqua acknowledged that while it is possible to bill wastewater customers based on metered water usage, it is only possible where there is metered water usage, which SCH USA does not have. *Id.*

Additionally, Aqua noted that the three disputed accounts before the Commission involve significant delinquencies for the period May 2021 through March 2023 that SCH USA has accrued as a result of non or partial payments for wastewater service provided. According to Aqua, the outstanding balance, as of July 12, 2024, was \$1,000,075.34 (\$437,618.49 + \$130,793.31 + \$431,663.54). Aqua St. 2-R at 3.

C. ALJ's Initial Decision

In his Initial Decision, ALJ Coogan found that SCH USA failed to carry its burden of proof that the rates it has been and is being charged violated 66 Pa.C.S. § 1301, and denied SCH USA's Complaints. ALJ Coogan also noted that many arguments raised in this proceeding were similarly rejected by the Commission in the *Aqua 2024 Rate Case*.

First, ALJ Coogan found that SCH USA did not meet its burden of proving that it is being charged incorrectly according to either the Kidder Settlement or Aqua's tariff. ALJ Coogan stated that the number of EDUs billed to SCH USA were reviewed and authorized in the revenue requirements approved in both the *Aqua 2018 Rate Case* and *Aqua 2021 Rate Case*. I.D. at 15-16.

Next, ALJ Coogan was not persuaded by SCH USA's argument that billing on a flat, per EDU basis is unjust and unreasonable because it overstates the volume of wastewater produced at the property. I.D. at 16. Rather, ALJ Coogan reasoned that Aqua's wastewater treatment plant is designed to treat 100% of every customer's flow and the Company cannot adjust its wastewater treatment to match variations in SCH USA's occupancy, and therefore, it is reasonable to bill SCH USA assuming a 100% occupancy. *Id.* at 16-17. Additionally, ALJ Coogan noted that while the Commission has expressed its preference for volumetric billing, as opposed to flat-rate billing, it has acknowledged the standard industry practice of flat-rate billing where metered water information is unavailable. *Id.* at 17 (citing *Aqua 2021 Rate Case* at 272).

Lastly, ALJ Coogan determined that metered billing is not possible where neither SCH USA's water or wastewater usage is currently metered and the Commission has not authorized metering wastewater service. According to the ALJ, any billing variation sought by SCH USA should be pursued in the context of a base rate proceeding. I.D. at 17.

D. Exceptions and Replies

In its Exceptions, SCH USA continues to dispute the number of EDUs assigned to the Resort. Specifically, in its Exception No. 1, SCH USA contends that ALJ Coogan erred by finding that SCH USA is being appropriately billed at the EDUs established in the Kidder Settlement. SCH USA restates its position that the Kidder

Settlement has long expired and was not assumed by Aqua when it acquired the wastewater system. It is SCH USA's position that the EDU determinations outlined in the Kidder Settlement have no bearing whatsoever on how SCH USA's current wastewater bills should be calculated. SCH USA states that the ALJ ignored that Aqua's position violates its own tariff by failing to calculate EDUs in the manner described by its tariff. Exc. at 2-4.

Next, SCH USA contends that the ALJ erred by finding that Aqua's utilization of a flat, EDU-based rate to bill SCH USA is reasonable. SCH USA acknowledges that while there may be situations where flat rate billing can be applied in a reasonable manner, applying flat rate billing to a large commercial resort is entirely unreasonable because it assumes 100% occupancy of the Resort. SCH USA contends that the Commission has articulated its preference for charges to be based on actual meter usage, as opposed to estimated, flat rate billing. Exc. at 5.

Lastly, SCH USA claims that the ALJ erred by finding that the alternative billing methods proposed by SCH USA are not feasible. Exc. at 6. SCH USA contends there is record evidence in this proceeding that shows that SCH USA's actual water consumption could be metered and that Aqua could use water consumption as a proxy for wastewater usage for billing purposes. *Id.* at 7. SCH USA also proposes, as an alternative, that Aqua use wastewater meters to measure SCH USA's actual discharge into its wastewater system and bill SCH USA based on the actual measurements. *Id.* Another potential option, SCH USA proposes, would include Aqua adjusting SCH USA's EDUs for billing purposes or assigning some other proxy that more accurately reflects usage and occupancy. *Id.* at 8.

In response to SCH USA's first Exception, Aqua asserts that SCH USA is billed in accordance with its Commission-approved tariff rates. Aqua states that SCH USA's position ignores the Commission's Order in the *Aqua 2024 Rate Case* in which

the Commission rejected SCH USA’s argument and 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. R. Exc. at 6.

In its Reply Exceptions, Aqua also contends that metered water information is not available for SCH USA and the Commission has acknowledged the standard industry practice of flat rate billing. Aqua supports the ALJ’s conclusion that SCH USA did not carry its burden of proof that Aqua’s billing on a flat, per EDU basis is unjust or unreasonable. R. Exc. at 7.

Finally, Aqua reiterates that metering SCH USA’s wastewater usage is not possible where neither SCH USA’s water nor wastewater usage is currently metered. Aqua contends that any variation on how SCH USA is to be billed in the future should be pursued through a base rate proceeding. Furthermore, Aqua points to the Commission’s rejection of the same arguments raised in the *Aqua 2024 Rate Case*. R. Exc. at 8.

E. Disposition

As explained, *supra*, although the instant Complaints were predicated upon the same issues that the Commission ultimately dismissed in the *Aqua 2024 Rate Case*, Aqua’s Motion to Consolidate SCH USA’s First and Second Complaints with the *Aqua 2024 Rate Case* was denied by Commission Order, issued August 12, 2024, stating in relevant part, as follows:¹²

I agree with both Aqua Wastewater and SCH [USA] that the Formal Complaints include some common issues of fact and law with the issues raised in Aqua Wastewater’s pending base rate proceeding. However, I agree with SCH [USA] that

¹² One of the goals of consolidating proceedings is to avoid “unnecessary costs or delay.” See 52 Pa. Code § 5.81(a).

Aqua Wastewater's Motion to Consolidate should be denied because the issues raised by SCH [USA]'s Formal Complaints also implicate matters related to individual account and billing issues that may not be adequately addressed in a base rate proceeding. For instance, SCH [USA] states that it seeks adjustments to claimed overcharges by Aqua Wastewater since October 29, 2020. These claims may not be adequately addressed in Aqua Wastewater's base rate proceeding, and administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

Order Denying Motion to Consolidate and Motion to Stay at 5. Nonetheless, the inherent issue, *i.e.*, Aqua's current practice of billing SCH USA a flat rate for unmetered wastewater service based on EDUs, giving rise to SCH USA's objections expressed in both the instant Complaints and the *Aqua 2024 Rate Case*, has, in essence, already been litigated fully and separately as part of the *Aqua 2024 Rate Case*; therefore, the Commission's decision in the *Aqua 2024 Rate Case* lends support to the findings we make here.

In its Exceptions, SCH USA proffers the following reasons why it believes that the ALJ erred in his finding that SCH USA failed to carry its burden of proof that the rates it has been and is being charged violate 66 Pa.C.S. § 1301. First, SCH USA contends that the ALJ failed to acknowledge that the Commission's decisions in the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case* did not expressly approve the allocation of costs or EDUs specific to SCH USA, maintaining that SCH USA's assigned number of EDUs improperly relies on outdated and baseless EDU calculations from the Kidder Settlement, which do not comport with the calculation method outlined in the Company's tariff. Second, SCH USA contends that the ALJ erred by finding that billing SCH USA a flat, EDU-based rate is reasonable, arguing that its property is "a large commercial resort" and that "[b]illing on a per EDU basis assumes full occupancy of the Resort," but "the Resort is rarely if ever at 100% occupancy." Exc. at 5 (citing SCH USA M.B.

at 8-9; SCH USA St. 1 at 5). Lastly, SCH USA submits that ALJ Coogan overlooked substantial evidence of reasonable and feasible alternatives for billing based on actual usage. Exc. at 6-8.

Regarding its first argument, that the ALJ improperly relied on outdated and baseless EDU calculations from the Kidder Settlement which has expired, we agree with ALJ Coogan's conclusion that SCH USA previously raised the same arguments which were addressed and rejected by the Commission in the *Aqua 2024 Rate Case* and in the *Aqua 2024 Reconsideration Order*. There, we explained that the EDUs proposed to be included in Aqua's tariff were the result of several prior proceedings beginning with the Commission's approval of Aqua's acquisition of the Kidder Township wastewater system in the *Kidder Township Order*. Additionally, we clarified that it is commonplace with any acquisition for the number of EDUs, or billing determinants, associated with a customer to remain consistent with what the system's previous owner had been charging. We reasoned that the Commission approved Aqua's acquisition of the Kidder Township wastewater system and found that the Compliance Tariff for the Kidder Township acquisition explicitly listed the number of EDUs associated with the Resort. *Aqua 2024 Rate Case* at 160.¹³

Thereafter, we explained:

[T]he Commission has reviewed the EDUs billed to SCH USA's accounts as part of Aqua's previous two base rate proceedings in 2018 and 2021, which were included in the revenue requirements as set forth in the respective Commission Orders in both the *Aqua 2018 Rate Case* and the *Aqua 2021 Rate Case*. The Commission approved those rates through the Compliance Tariffs filed in the referenced

¹³ See Compliance Tariff filed on October 11, 2012, in accordance with the *Kidder Township Order*. Little Washington Wastewater Company, d/b/a Suburban Wastewater Company, Supplement No. 83 to Tariff Sewer-PA. P.U.C. No. 1 at Original Page No. 10Q, effective October 1, 2012 (*Kidder Township Order – Compliance Tariff*).

dockets and those rates were determined by the Commission to be just and reasonable.

Aqua 2024 Rate Case at 160.

Moreover, in our Order on Reconsideration, we explained:

It is evident that the argument of SCH USA pertaining to the alleged reliance on the Kidder Settlement has been rejected on two occasions: first, as recommended by the ALJs in the Recommended Decision, and second by the Commission in the [*Aqua 2024 Rate Case*] Order. We decline to exercise our discretion to entertain the same argument a third time here. More importantly, we find no reason to depart from our rationale 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. Beginning with the *Kidder Township Order* in 2012 and the Compliance Tariff filed in response to that Order, and later by two subsequent Aqua rate case proceedings in 2018 and 2021, the number of EDUs applicable to the accounts of SCH USA have been well established.

Aqua 2024 Reconsideration Order at 54.

Therefore, we disagree with the contention of SCH USA that ALJ Coogan overlooked the fact that neither the Commission's decision in the *Aqua 2018 Rate Case* nor its decision in the *Aqua 2021 Rate Case* specifically approved an allocation of costs or a number of EDUs applicable to SCH USA. Such argument fails to acknowledge that the rate applicable to SCH USA has long been established. As reasoned above, it is clear, pursuant to the *Kidder Township Order*, the *Kidder Township Order – Compliance Tariff*, the *Aqua 2018 Rate Case*, the *Aqua 2021 Rate Case*, and the *Aqua 2024 Rate Case* that the number of EDUs applicable to the accounts of SCH USA has been confirmed for some time. Thus, SCH USA's repeated reliance on the Kidder Settlement for support

that its rate is somehow inconsistent with the terms of the Company's tariff is not persuasive.

Regarding SCH USA's claims as to its occupancy rate, SCH USA reiterates arguments that have previously been addressed and resolved by the Commission in the *Aqua 2024 Rate Case* and the *Aqua 2024 Reconsideration Order*. There, we explained that SCH USA was requesting different billing than what had been authorized by the Commission when the Company acquired the system, and in the *Aqua 2021 Rate Case*. However, the record indicated that SCH USA had been operating the same type of business that had always been at this location – *i.e.*, a combination of hotels, restaurants, *etc.* Reasoning that there had been no significant change in the nature of the original wastewater usage at the location, we concluded that no change to the number of assigned EDUs was warranted. *Aqua 2024 Rate Case* at 160-61.

In the *Aqua 2024 Rate Case*, we further reasoned that, absent actual use data for the Resort, the practice of using a surrogate to actual measures (*i.e.*, the EDU) is a reasonable practice. There, we found that SCH USA offered no evidence to tie actual use to the costs Aqua incurs to provide wastewater service, nor any evidence regarding its actual occupancy rate. *Aqua 2024 Rate Case* at 163.

Although Commission-approved tariffs are *prima facie* reasonable, it is possible for a complainant to challenge an existing tariff provision, albeit with a very heavy burden to demonstrate the approved tariff provision is unreasonable. *See Kossman v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997); *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. 1979). *See also Sean Petty v. Community Utilities of Pennsylvania, Inc.*, Docket No. C-2024-3052590 (Opinion and Order entered June 6, 2025) at 10. In this instance, for the reasons discussed above, we find that SCH USA has failed to meet its

high burden of proof that circumstances have changed so drastically that the tariffs and associated charges in dispute are unjust and unreasonable.

Accordingly, regarding SCH USA's requested adjustment to its prior bills associated with the three accounts in dispute, based on its occupancy levels, we find no basis that would support a retroactive adjustment from the time the Complainant purchased the property on October 29, 2020. Each bill issued to the Complainant was issued in accordance with the Company's Commission-approved tariff and SCH USA was billed under Rate Zone 4 pursuant to the Company's tariff.

Lastly, SCH USA asserts that ALJ Coogan overlooked substantial evidence showing there are feasible and cost-effective methods that would allow SCH USA to be billed for actual usage. In support of its contention, SCH USA argues that Aqua is already using water meters to measure water consumption from private wells along with wastewater meters to measure actual wastewater usage in other parts of its system. Additionally, SCH USA contends that its actual water consumption could be metered and that Aqua could use water consumption as a proxy for wastewater usage for billing purposes. Exc. at 7-8.

However, SCH USA previously raised the same arguments that have been addressed and resolved by the Commission in the *Aqua 2024 Rate Case* and *Aqua 2024 Reconsideration Order*. In ruling on these arguments, we found that SCH USA failed to meet its burden of proof that any option is actually viable as it pertains to the Resort. *Aqua 2024 Rate Case* at 163. We examined each of the alternatives offered by SCH USA and explained why SCH USA failed to satisfy its burden. *Id.* at 163-67. In summary, we determined that SCH USA's evidence fell short because it disregarded the makeup of the Resort's specific system and whether the proposals could be reasonably implemented. For example, we explained that SCH USA's proposal to measure the wastewater usage for the Resort using ultrasonic flowmeters and electromagnetic

flowmeters is unsupported. *Id.* at 163-64. Moreover, we determined that SCH USA’s proposed alternatives of either adjusting the EDUs of SCH USA used for billing purposes to better reflect actual usage and occupancy or assigning some other proxy that more accurately reflects actual usage and occupancy effectively seek a special rate from Aqua, in violation of the Code. *Id.* at 166-67 (citing 66 Pa.C.S. §§ 1303 and 1304). In the *Aqua 2024 Reconsideration Order*, we declined to exercise our discretion to reconsider our Order in the *Aqua 2024 Rate Case*, finding no new or novel arguments or any considerations overlooked by the Commission. *Aqua 2024 Reconsideration Order* at 58.

Based upon our review of the record evidence, we find no basis to reverse or modify the ALJ’s Initial Decision. Accordingly, SCH USA Exception Nos. 1 through 3 are denied.

III. Conclusion

Consistent with the foregoing discussion, we shall deny the Complainant’s Exceptions, adopt the Initial Decision of ALJ Coogan, and dismiss the Complaints, consistent with this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by SCH USA, LLC on May 14, 2025, to the Initial Decision of Administrative Law Judge John M. Coogan, issued on April 24, 2025, at Docket Nos. C-2022-3036893 and C-2022-3037118, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on April 24, 2025, at Docket Nos. C-2022-3036893 and C-2022-3037118, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaints filed by SCH USA, LLC on November 21, 2022 and November 29, 2022, at Docket Nos. C-2022-3036893 and C-2022-3037118, respectively, are dismissed.

4. That the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: July 10, 2025

ORDER ENTERED: July 10, 2025