

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Isaac Scholle	:	
	:	
v.	:	C-2024-3050056
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Isaac Scholle against Aqua Pennsylvania Wastewater, Inc. because he failed to prove that the public utility violated a statute, regulation, Commission order or tariff.

HISTORY OF THE PROCEEDING

On July 11, 2024, Isaac Scholle (Mr. Scholle or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania Wastewater, Inc. (Aqua, the Company, or Respondent) alleging that Aqua incorrectly charges a Customer Charge of \$53.49 per month in addition to a consumption charge, despite the tariff schedule for Rate Zone 12 mentioning a Minimum Charge of \$53.49 and not a Customer Charge of \$53.49. As relief, the Complainant requests that the Commission order Aqua to refund all overpayments due to

incorrect charges, order Aqua to bill correctly in the future, and fine the utility for not following the tariff schedule.

On August 1, 2024, Aqua filed an Answer and New Matter to the Complaint. In its Answer, Aqua denied the material allegations of the Complaint, whereas in the New Matter Aqua averred that the Complainant's account is billed monthly for residential wastewater service consistent with the Company's Commission-approved Rate Zone 12 Tariff. The monthly bills reflect a minimum charge of \$53.49 which is consistent with the Company's Commission-approved Rate Zone 12 Tariff and is billed regardless of whether any wastewater is used. Aqua further explained that pursuant to 66 Pa.C.S. § 1301 and *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1967, 1070 (Pa. Cmwlth. 1981), its Rate Zone 12 Tariff has the force and effect of law and is binding on both the public utility and its customers. Finally, Aqua requested that the matter be referred to the Mediation Unit.

On August 1, 2024, Mr. Scholle filed a Response to New Matter asserting that a minimum monthly charge is distinct from a customer charge. He explained that a minimum charge generally refers to the lowest amount billed to ensure service availability, regardless of actual usage, whereas a customer charge typically includes fixed costs associated with maintaining service availability and infrastructure.

By Hearing Notice dated August 5, 2024, a telephonic hearing was scheduled for October 8, 2024, and the matter was assigned to me.

On September 19, 2024, I issued a Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On September 30, 2024, Aqua submitted three proposed exhibits in preparation for the hearing:

- Aqua Exhibit 1 – Customer screen
- Aqua Exhibit 2 – Relevant Tariff provisions
- Aqua Exhibit 3 – Current monthly bill, dated 9/5/24

The proposed exhibits were served on me and Mr. Scholle.

The hearing convened as scheduled on October 8, 2024. Mr. Scholle appeared *pro se*. Margaret Morris, Esq., appeared representing the Respondent. The parties expressed their interest in exploring settlement discussions through the Settlement Judge Process. Settlement discussions were conducted off the record, but the parties were unable to reach a resolution to the issues raised in the Complaint. Instead, the parties requested and were granted permission to brief the legal issues raised in the Complaint. I instructed the parties that main briefs were due on November 12, 2024, and reply briefs were due on December 31, 2024.

The parties submitted timely Main and Reply Briefs in which they addressed the information contained in Aqua's proposed exhibits. However, a review of the record revealed that Aqua's proposed exhibits were not moved or admitted into the record in this matter.

By Order dated March 27, 2025, I reopened the record to allow Aqua to move for the admission of its proposed exhibits into the record. Pursuant to the Order, Aqua's motion was due on April 4, 2025. The Complainant was given 10 days, or until April 14, 2025, to file any written objections to the proposed exhibits. In the alternative, the parties were given the option to file a joint stipulation for the admission of the exhibits into the record, by no later than April 14, 2025.

By email dated April 2, 2025, Aqua's counsel informed me that the parties had agreed to proceed by filing a joint stipulation for the admission of the exhibits into the record. By email dated April 14, 2025, counsel for Aqua requested that the time for filing the joint stipulation be extended to April 17, 2025. Aqua's request was granted in an email dated April 15, 2025.

The record in this case closed upon receipt of the Joint Stipulation on April 17, 2025. In accordance with my March 27, 2025, Order and the parties' Joint Stipulation, Aqua's Exhibits 1-3 are admitted into the record as stated in the ordering paragraphs below.

FINDINGS OF FACT

1. Complainant is Isaac Scholle.
2. Respondent is Aqua Pennsylvania Wastewater, Inc.
3. Mr. Scholle receives wastewater service from Aqua at 1401 Silo Road, Yardley, PA 19067. Aqua Exhibit 3.
4. On May 14, 2021, Aqua filed an *Application pursuant to 66 Pa. C.S. §§ 1102(a) and 1329 for approval of the acquisition of the Lower Makefield Township's wastewater system assets, and the right to begin to offer or furnish wastewater service to the public in Lower Makefield Township, Bucks County at Docket No. A-2021-3024267 (Application). Judicial Notice No. 1 - Application at ¶ 5.*
5. The Commission approved the Application by Opinion and Order, entered January 13, 2022, and directed the Company to file, after the closing, a

Compliance Tariff implementing the existing rates of Lower Makefield Township.
Judicial Notice No. 2 - Opinion and Order, Ordering Paragraph # 11.

6. The Opinion and Order also approved Aqua’s request to convert customers in Lower Makefield Township from quarterly billing into monthly billing. Ordering Paragraph # 5(o).

7. The Lower Makefield Township’s then existing tariff for residential establishments stated:

Each dwelling unit (private dwelling) shall pay a minimum charge of One Hundred Sixty Dollars and forty-eight cents (\$160.48) per quarter, and in addition thereto, pay for each one thousand (1,000) gallons consumed during each quarter, consumption shall be determined by water meter readings, the following amounts:

<u>Water Consumed Per Quarter</u>	<u>Cents Per Thousand Gallons</u>
first 10,000 gallons	\$4.37
second 10,000 gallons	\$4.60
third 10,000 gallons	\$4.81
fourth 10,000 gallons	\$5.29
fifth 10,000 gallons	\$5.90
excess over 50,000 gallons	\$6.77

Judicial Notice No.1 - Application Exhibit H. (Emphasis added).

8. The Lower Makefield Township’s then existing tariff for commercial and industrial establishments stated in pertinent part that:

Sewer rentals based upon water consumption shall be billed at the rate of Twenty Two Dollars and ninety-three cents (\$22.93) per one thousand (1,000) gallons of water consumed during the quarter for which the billing is rendered; provided, however, that no sewer rental bill rendered to each commercial or industrial establishment shall be less than Two hundred Ninety-Seven Dollars and sixty-five cents (\$297.65) per quarter.

Judicial Notice No.1 - Application Exhibit H.

9. Aqua acquired the Lower Makefield system on March 4, 2022.

Judicial Notice No. 3.

10. On March 7, 2022, the Company filed the Compliance Tariff reflecting Lower Makefield's then existing tariff with rates converted into monthly billing. Judicial Notice No. 3.

11. By Secretarial Letter dated March 9, 2022, the Proposed Tariff for Lower Makefield was approved and was effective March 8, 2022. Judicial Notice No. 4.

12. As of the time of the filing of the present Complaint, Lower Makefield was part of Aqua's Rate Zone 12.¹ Aqua Exhibit 2.

¹ At the time of the filing of the present Complaint, Aqua's last approved rate application was filed in 2021, at Docket No. R-2021-3027486, with Opinion and Order entered May 16, 2022. By the time of the closing for the Lower Makefield system in March 2022, the rate case proceeding record was closed.

Aqua's current Tariff approved by the Commission in its Opinion and Order entered February 7, 2025, at Docket Nos. R-2024-3047824 et al., reflects the Lower Makefield's acquisition and Aqua's request that the Lower Makefield system be moved to Rate Zone 1 where there is no usage allowance and all residential customers are billed a customer charge (2024 Rate Case). Judicial Notice Nos. 5, 6.

13. Aqua’s residential customers are billed a flat “minimum charge” of \$53.49 per month,² plus consumption charges billed in increments of 1,000 gallons.

14. For Rate Zone 12, Aqua’s Tariff regarding quarterly service & consumption charges provides in pertinent part as follows:

A. Residential

Minimum Charge per quarter:

Per Dwelling Unit (private dwelling)	\$160.48
Exception: Residential Building with 1 meter meter and no more than 2 dwelling units	\$269.22

Consumption Charge:

(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 10,000 gallons per quarter	\$4.37	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.60	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.81	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.29	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.90	per 1,000 gallons
Over 50,000 gallons per quarter	\$6.77	per 1,000 gallons

C. Commercial (Other than Customers in subsection B above), Industrial, and Public Customers

Minimum Charge per quarter: \$297.65

² This represents the Lower Makefield Township’s minimum charge of \$160.48 per quarter converted into a monthly minimum charge of \$59.49 ($\$160.48 \div 3 = \59.49).

Consumption Charge:
(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 12,981 gallons per quarter	Included in Minimum Charge
Over 12,981 gallons per quarter	\$22.93 per 1,000 gallons ³

Aqua Exhibit 2.

15. Mr. Scholle's residence is located in the Lower Makefield Division of Aqua. Aqua Exhibit 1.

16. Mr. Scholle became a customer of Aqua on April 26, 2024. Aqua Exhibit 1.

17. Mr. Scholle's monthly bill from Aqua reflects a flat "Customer Charge" of \$53.49. Aqua Exhibit 3.

18. Aqua's bill includes fine print definitions for both the Minimum Charge and the Customer Charge. Aqua Exhibit 3.

19. Aqua's Customer Charge "covers the cost of having wastewater service available, including operations, maintenance, and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater." Aqua Exhibit 3.

20. Aqua's Minimum Charge "includes a wastewater allowance, plus the cost of having service available, including operations, maintenance, and other necessary

³ Aqua then proceeds to break down these charges on a monthly basis in subsequent pages of its Tariff. Aqua Exhibit 2.

services that are not covered under the consumption charge. It is billed whether or not you use any wastewater.” Aqua Exhibit 3.

DISCUSSION

Preliminary Matter

In its Main Brief, Aqua requested that I take judicial notice of the following documents from prior Commission proceedings:

- 1) Docket No. A-2021-3024267, Application and Exhibit H;
- 2) Docket No. A-2021-3024267, Opinion and Order, entered 1/13/22, w/ Exhibit H;
- 3) Docket No. A-2021-3024267, Compliance Tariff, 3/7/22;
- 4) Docket No. A-2021-3024267, Sec. Letter, 3/9/22 approving Compliance Tariff;
- 5) Docket No. R-2024-3047822, Proposed Tariff for Lower Makefield filed with 2024 Rate Application;
- 6) Docket No. R-2024-3047822, Proposed Tariff for Lower Makefield filed with 2024 Rate Case Settlement.

The Complainant has not objected to this request. Consequently, I will take judicial notice of the information contained in these documents pursuant to 52 Pa. Code § 5.408 (relating to official and judicial notice of fact).

Burden of Proof

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 Public Utility Code (Code),

66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 666 A.2d 744 (Pa. Cmwlth. 1995) (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Legal Standard

Pennsylvania courts have repeatedly held that tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *C & D Tech., Inc. v. Pa. Power & Light Co.*, 2005 Pa.P.U.C. LEXIS 1 *18 (Feb. 4, 2005); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996); *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997). Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

Although Pennsylvania courts have held that a tariff is not a statute enacted by the legislature for purposes of determining the legal rate of post-judgment interest, a tariff, like a statute, must be construed so as to give effect to all of its terms, and when the words are clear and free from ambiguity, they are not to be disregarded under the pretext of pursuing its spirit. *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002); *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006).

In addition, when a tariff is plain on its face, the Commission need not and cannot look beyond the four corners of the tariff to determine its meaning. The intent of the parties comes into play only if and when the Commission, applying its expertise, determines that the tariff is ambiguous. When a tariff is ambiguous, the Commission may look to extrinsic evidence to determine the intention of the parties and the meaning

of the tariff. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006).

Analysis

The following facts are undisputed in this case. On May 14, 2021, Aqua filed *Application of Aqua Pennsylvania Wastewater, Inc.*, pursuant to 66 Pa. C.S. §§ 1102(a) and 1329 (relating to enumeration of acts requiring certificate; and valuation of acquired water and wastewater systems) for approval of: (1) the transfer by sale, of substantially all of the wastewater system assets, properties and rights of Lower Makefield Township related to its wastewater collection and conveyance system; (2) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer or furnish wastewater service to the public in Lower Makefield Township, Bucks County; and (3) the use for ratemaking purposes of the lesser fair market value or the negotiated purchase price of the Lower Makefield Township assets related to its wastewater collection and conveyance system, Docket No. A-2021-3024267 (Application). In the Application, Aqua also requested approval of the Asset Purchase Agreement, dated September 17, 2020, as well as other municipal agreements, pursuant to Section 507 of the Code, 66 Pa.C.S. § 507, and requested that the Commission issue an order and a certificate of public convenience approving and addressing the items requested in its Application. Judicial Notice No. 1 - Application at ¶ 5.

The Commission approved the acquisition by Opinion and Order, entered January 13, 2022, and directed the Company to file, after the closing, a Compliance Tariff implementing the existing rates of Lower Makefield Township. Judicial Notice No. 2 - Opinion and Order, Ordering Paragraph # 11. The Opinion and Order also approved Aqua's request to convert customers in Lower Makefield Township from quarterly billing to monthly billing. Ordering Paragraph # 5(o).

The Lower Makefield Township's then existing tariff for residential establishments stated:

Each dwelling unit (private dwelling) shall pay a minimum charge of One Hundred Sixty Dollars and forty-eight cents (\$160.48) per quarter, and in addition thereto, pay for each one thousand (1,000) gallons consumed during each quarter, consumption shall be determined by water meter readings, the following amounts:

<u>Water Consumed</u> <u>Per Quarter</u>	<u>Cents Per</u> <u>Thousand Gallons</u>
first 10,000 gallons	\$4.37
second 10,000 gallons	\$4.60
third 10,000 gallons	\$4.81
fourth 10,000 gallons	\$5.29
fifth 10,000 gallons	\$5.90
excess over 50,000 gallons	\$6.77

Judicial Notice No.1 - Application Exhibit H. (Emphasis added).

The Lower Makefield Township's then existing tariff for commercial and industrial establishments stated in pertinent part that:

Sewer rentals based upon water consumption shall be billed at the rate of Twenty Two Dollars and ninety-three cents (\$22.93) per one thousand (1,000) gallons of water consumed during the quarter for which the billing is rendered; provided, however, that no sewer rental bill rendered to each commercial or industrial establishment shall be less than Two hundred Ninety-Seven Dollars and sixty-five cents (\$297.65) per quarter.

Judicial Notice No.1 - Application Exhibit H.

Aqua acquired the Lower Makefield system on March 4, 2022. Judicial Notice No. 3. On March 7, 2022, the Company filed the Compliance Tariff reflecting Lower Makefield’s then existing tariff with rates converted into monthly billing. Judicial Notice No. 3. By Secretarial Letter dated March 9, 2022, the Proposed Tariff for Lower Makefield was approved and was effective March 8, 2022. Judicial Notice No. 4.

Aqua’s Commission-approved Tariff provides the rate and rules for service that it provides. As of the time of the filing of the present Complaint, Lower Makefield was part of Rate Zone 12. Aqua Exhibit 2. Residential customers are billed a flat “minimum charge” of \$53.49 per month, plus consumption charges billed in increments of 1,000 gallons. For Rate Zone 12, Aqua’s Tariff regarding quarterly service & consumption charges provides in pertinent part as follows:

A. Residential

Minimum Charge per quarter:

Per Dwelling Unit (private dwelling)	\$160.48
Exception: Residential Building with 1 meter meter and no more than 2 dwelling units	\$269.22

Consumption Charge:

(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 10,000 gallons per quarter	\$4.37	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.60	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.81	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.29	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.90	per 1,000 gallons
Over 50,000 gallons per quarter	\$6.77	per 1,000 gallons

C. Commercial (Other than Customers in subsection B above), Industrial, and Public Customers

Minimum Charge per quarter: \$297.65

Consumption Charge:
(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 12,981 gallons per quarter	Included in Minimum Charge
Over 12,981 gallons per quarter	\$22.93 per 1,000 gallons ⁴

Aqua Exhibit 2.

Mr. Scholle's residence is located in the Lower Makefield Division of Aqua. Aqua Exhibit 1. He became a customer of Aqua on April 26, 2024. Aqua Exhibit 1. Instead of a flat "Minimum Charge" of \$53.49, Mr. Scholle's monthly bill from Aqua reflects a flat "Customer Charge" of \$53.49. Aqua Exhibit 3. In addition, Aqua's bill includes fine print definitions for both terms, Minimum Charge and Customer Charge. *Id.*

The Customer Charge "covers the cost of having wastewater service available, including operations, maintenance, and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater." Aqua Exhibit 3.

The Minimum Charge "includes a wastewater allowance, plus the cost of having service available, including operations, maintenance, and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater." Aqua Exhibit 3. (Emphasis added).

⁴ Aqua then proceeds to break down these charges on a monthly basis in subsequent pages of its Tariff. Aqua Exhibit 2.

The existing rates of Lower Makefield, adopted by the Company and authorized by the Commission, did not state a usage allowance for residential customers. Aqua Exhibit 2.

Complainant's Position

In his Main Brief, Mr. Scholle emphasizes the differences between the “customer charge” and the “minimum charge”: the former being “a fixed fee intended to cover the basic, non-variable costs of providing service to customers” and “independent of the customer's actual usage,” whereas the latter “typically includes a certain amount of usage within the fixed fee.” Scholle M.B. at 2. Mr. Scholle avers that Aqua's tariff includes a minimum monthly payment but does not specify any usage included within this payment. Scholle M.B. at 3. Instead, according to Mr. Scholle Aqua is treating this payment as a customer charge and billing customers additional charges for all consumption, including usage below the minimum threshold. He argues that this practice is inconsistent with the standard interpretation of a minimum monthly payment and contradicts the expectations set by the tariff. *Id.* In Mr. Scholle's view, Aqua is effectively double-charging customers, violating principles of fair billing and transparency by charging additional consumption fees for usage that should be included within the minimum payment. *Id.*

Mr. Scholle further maintains that Aqua's practice fails to provide clear and accurate billing information to customers in violation of 66 Pa.C.S. § 1509, and that the Respondent failed to set in place tariffs that plainly state the rates and services provided, thereby violating the provision of 52 Pa. Code § 53.21.⁵ Scholle M.B. at 3. Additionally,

⁵ The Commission's regulation at 52 Pa. Code § 53.21 contains provisions relating to the content included in the Title Page of Tariffs.

he states that Aqua's practice of charging both a minimum monthly payment without included usage and additional consumption fees results in unreasonable charges to customers and violates the provisions of 66 Pa.C.S. § 1301. *Id.*

Next, Mr. Scholle cites *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2015-2468056⁶ as support for his position that utilities must ensure billing structures are understandable to prevent customer confusion and unfair practices. He added that Pennsylvania courts have consistently held that ambiguities in a utility's tariff should be construed against the utility and in favor of the customer. Scholle M.B. at 3. To support his position, Mr. Scholle cites *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 63 Pa. Cmwlth. 238, 241 (Pa. Cmwlth. 1981), and *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), which according to him stand for the proposition that where a tariff provision is ambiguous, it should be construed strictly against the utility and in favor of the customer.⁷ Scholle M.B. at 4.

After addressing his claim of ambiguity in Aqua's tariff, Mr. Scholle addresses the amount of the minimum usage allowance that he believes should be included in Aqua's bills. According to Mr. Scholle, the American Water Works Association's *Principles of Water Rates, Fees, and Charges* (Manual M1, 7th Edition, 2017) stated that "minimum charges are often designed to recover the utility's fixed costs and may include an allowance for a certain amount of water usage. If no usage allowance is specified, it is customary to include consumption up to the minimum charge

⁶ This citation is incomplete and cannot be verified.

⁷ Neither *Brockway Glass* nor *Lloyd* address tariff ambiguities or stand for the proposition claimed by Mr. Scholle. However, in 1933 the Superior Court of Pennsylvania held that, in case of ambiguity, the utility's tariff should be construed against the company which framed it and in favor of the consumer. *Lewistown-Reedsville Water Co. v. Pub. Serv. Comm'n*, 169 A. 406, 408 (Pa. Super. 1933).

amount."⁸ Scholle M.B. at 5. Applying these principles, Mr. Scholle argues that when a tariff specifies a minimum monthly payment without explicitly stating that consumption below that amount will incur additional charges, it is presumed that the minimum payment includes all consumption up to that dollar amount. *Id.*

Respondent's Position

In its Main Brief, Aqua explained that Lower Makefield is part of Rate Zone 12 in Aqua's Commission-approved Tariff. Pursuant to the Compliance Tariff filed by Aqua on March 7, 2022, and approved by the Commission on March 8, 2022, Residential Customers are billed a flat charge per month of \$53.49 plus consumption charges billed in increments of 1,000 gallons. However, Commercial (excluding Apartments), Industrial and Public Customers are billed a flat charge per month of \$99.22 plus consumption charges billed in increments of 1,000 gallons. For those Commercial, Industrial and Public Customers, the first 4,400 gallons are included in the billed flat charge of \$99.22. Aqua M.B. at 5-6.

Aqua emphasized that the existing rates of Lower Makefield, adopted by the Company and authorized by the Commission, did not include a usage allowance for residential customers. According to Aqua, to use the terminology "minimum charge" on the issued monthly bill, when there is no usage allowance, would be misleading to customers. Aqua M.B. at 6. To avoid this confusion, Aqua uses the term "customer charge" on the Complainant's issued bills. *Id.* The Respondent maintains that Mr. Scholle's account was properly billed in accordance with the Rate Zone 12 Tariff and Aqua's definitions. *Id.*

⁸ This citation is incomplete and cannot be verified.

Disposition

Mr. Scholle's arguments would be persuasive were they not based on the faulty premise that Lower Makefield's tariffs, adopted by Aqua after its acquisition, simply failed to specify a minimum usage allowance for its Residential Customer rates. On the contrary, a careful reading of the tariff section about residential customers indicates the following. First, no minimum usage allowance was intended to be included in the minimum charge for the Residential Customer class. This is evidenced by the existence of such an allowance for the other customer classes and its absence in the Residential and Commercial with residential use customer classes. Second, and more importantly, the language of the tariff leaves no room for minimum usage allowance.

As mentioned above, the Lower Makefield Township's then existing tariff for residential establishments stated:

Each dwelling unit (private dwelling) shall pay a minimum charge of One Hundred Sixty Dollars and forty-eight cents (\$160.48) per quarter, and in addition thereto, pay for each one thousand (1,000) gallons consumed during each quarter, consumption shall be determined by water meter readings, the following amounts:

<u>Water Consumed</u> <u>Per Quarter</u>	<u>Cents Per</u> <u>Thousand Gallons</u>
first 10,000 gallons	\$4.37
second 10,000 gallons	\$4.60
third 10,000 gallons	\$4.81
fourth 10,000 gallons	\$5.29
fifth 10,000 gallons	\$5.90
excess over 50,000 gallons	\$6.77

Judicial Notice No. 1 - Application Exhibit H. (Emphasis added). This tariff specified in no uncertain terms that the billing will consist of two elements: the minimum charge and

the usage charges. Residential customers are specifically required to pay the minimum charge and “pay for each one thousand (1,000) gallons consumed during each [billing period].” Usage charges begin at the first gallon, with the residential customers billed \$4.37 for each 1,000 gallons consumed up to 10,000 gallons, then \$4.60 for each subsequent thousand gallons up to 20,000 gallons, and so on. Read in its totality, the language of the tariff indicates that there is no minimum usage allowance for the residential-use customer classes, or stated differently, that the minimum usage allowance is set at zero gallons.

Mr. Scholle’s proposed reading of the tariff, where the minimum charge includes all consumption up to the dollar amount corresponding to the minimum charge, would not only go against the intent and terms of Lower Makefield Township’s tariff incorporated in Aqua’s tariff, but would also lead to confusing and awkward billing problems. First, the minimum charge would cover only consumption charges but not “the cost of having service available, including operations, maintenance, and other necessary services that are not covered under the consumption charge.” Second, it would be unclear whether or not “the first 10,000 gallons” are accounted for in the minimum charge or begin to be counted after the consumption charge corresponding to the minimum charge is exhausted.⁹

In view of the above, I find that Mr. Scholle failed to carry his burden of proving that Aqua violated a statute, regulation, Commission order or tariff when it issued its wastewater bills to him. Upon careful reading, I find that the Lower Makefield Township’s last existing tariff did not have a usage allowance included in its minimum

⁹ By way of reference, according to the United States Environmental Protection Agency, “The average American uses around 82 gallons per day per person in the household. That means a family of four would use around 10,000 gallons in a 30-day period.” <https://www.epa.gov/watersense/understanding-your-water-bill>. (Retrieved on July 3, 2025).

charge or had the usage allowance set at zero gallons. To read that tariff differently requires the reader to make assumptions that are not supported by the record and reach conclusions that are ambiguous or confusing. With no minimum usage allowance provided by the tariff, I find no fault with Aqua’s decision to replace the “minimum charge” with the “customer charge” in its bills to the residential customers. Ultimately, I find that Mr. Scholle has failed to prove by a preponderance of the evidence that Aqua has charged him incorrectly. Consequently, Mr. Scholle’s Formal Complaint against Aqua is denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

4. The Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

5. Tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *C & D Tech., Inc. v. Pa. Power & Light Co.*, 2005 Pa.P.U.C. LEXIS 1 *18 (Feb. 4, 2005); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996); *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997).

6. A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

7. A tariff, like a statute, must be construed so as to give effect to all of its terms, and when the words are clear and free from ambiguity, they are not to be disregarded under the pretext of pursuing its spirit. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006).

8. When a tariff is plain on its face, the Commission need not and cannot look beyond the four corners of the tariff to determine its meaning. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006).

9. When a tariff is ambiguous, the Commission may look to extrinsic evidence to determine the intention of the parties and the meaning of the tariff. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006).

10. The Company's Tariff in effect at the time of the filing of the Formal Complaint is not ambiguous with regard to the rates charged to residential customers in Zone 12.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Aqua Exhibits 1-3 are admitted into the record in this matter.
2. That the Formal Complaint of Isaac Scholle in *Isaac Scholle v. Aqua Pennsylvania Wastewater, Inc.* at Docket No. C-2024-3050056 is denied.
3. That the Docket in this proceeding, Docket No. C-2024-3050056, be marked closed.

Date: July 15, 2025

_____/s/
Eranda Vero
Administrative Law Judge