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File #: 203069

October 10, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, 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 No. C-2023-3043108

Dear Secretary Chiavetta:

Attached for filing please find the Answer and New Matter on behalf of Aqua Pennsylvania Wastewater, Inc., in response to the Complaint of William Ferguson in the above-referenced proceeding. Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,

Garrett P. Lent
Principal

GPL/kls
Attachment

cc: Certificate of Service

CERTIFICATE OF SERVICE

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

VIA EMAIL AND FIRST-CLASS MAIL

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

Date: October 10, 2023

Garrett P. Lent

26397544v1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3043108
	:	
Aqua Pennsylvania Wastewater, Inc.,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.63, YOU MAY FILE A REPLY TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully submitted,

Michael W. Hassell, Esq. (ID # 34851)
Garrett P. Lent, Esq. (ID # 321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
Phone: 717-731-1970
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E-mail: glent@postschell.com

Date: October 10, 2023

Attorneys for Aqua Pennsylvania Wastewater, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3043108
	:	
Aqua Pennsylvania Wastewater, Inc.,	:	
	:	
Respondent.	:	

ANSWER AND NEW MATTER OF
AQUA PENNSYLVANIA WASTEWATER, INC. TO
THE COMPLAINT OF WILLIAM FERGUSON

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Aqua Pennsylvania Wastewater, Inc. ("Aqua PA WW" or the "Company") files this Answer and New Matter to the Complaint of William Ferguson ("Complainant") pursuant to Section 5.61(d) of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.61(d), and responds to each of the separately-numbered paragraphs of the Complaint as follows:

ANSWER

1. Admitted.

2. Paragraph 2 sets forth the Method of Communication by the Commission related to the Complaint, to which no responsive pleading is required.

3. Admitted

4. Admitted.

5. Admitted in part and denied in part. It is denied that there are any "irregularities in how Aqua [PA WW] set New Garden wastewater tariffs in the rate case." It is also denied that "[e]xtensive documentation is attached [to the Complaint] detailing all the issues." Although the additional information attached to the Complaint is not set forth in specifically numbered paragraphs, Aqua PA WW further responds as follows.[1]

Summary

The averments contained on page 7 of the Complaint (entitled "Summary") are admitted in part and denied in part. It is admitted that on May 16, 2022, the Commission entered an Opinion and Order (the "*Rate Case Order*") at Docket Nos. R-2021-3027385 and R-2021-3027386 (the "*2021 Rate Case*") that authorized a rate increase for Aqua PA WW. It is also admitted that the *Rate Case Order* authorized Aqua PA WW to prepare a tariff to collect a revenue requirement of $4,428,399 from New Garden ratepayers. It is also admitted that Aqua PA WW filed its compliance tariff and proof of revenues (the "*Compliance Tariff*") consistent with the *Rate Case Order* on May 23, 2022. It is denied that Aqua PA WW's *Compliance Tariff* is not in compliance with the revenue requirement authorized by the *Rate Case Order*; Complainant's characterization of (a) the compliance data used by Aqua PA WW, (b) the compliance volumes used by Aqua PA WW, and (c) the rates Aqua PA WW collects pursuant to the *Rate Case Order* and its *Compliance Tariff* are denied. By way of further response, the Commission issued a Secretarial Letter dated June 3, 2023, which stated that "Commission Staff reviewed the [Compliance Tariff] revisions and proof of revenues and found that suspension or further investigation does not appear warranted at this time," and permitted the *Compliance Tariff* to

[1] Unless specifically admitted, the averments contained in the Complaint and documents attached to the Complaint and incorporated in Paragraphs 5 and 6 thereto are denied.

become effective by operation of law. By way of further response, Aqua PA WW incorporates its further responses to the averments contained in Paragraph 5 of the Complaint as though fully set forth herein. The remaining statements on page 7 of the Complaint are requests for relief to which no responsive pleading is required. To the extent a response is deemed necessary, Aqua PA WW denies that the Complainant is entitled to the relief requested.

Complaint Details

The averments contained on pages 8-9 of the Complaint (entitled "Complaint Details") are admitted in part and denied in part. It is admitted that page 8 of the Complaint contains references to information from the Company's initial August 20, 2021 filing in the *2021 Rate Case* and the *Compliance Tariff*. It is admitted that certain of the information (i.e., references to "Exhibit A" to the Complaint) reproduced on page 8 of the Complaint comes from Exhibit 5-B to the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself. It is also admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on page 8 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself. It is admitted that certain of the information (i.e., references to "Exhibit C" to the Complaint) reproduced on page 9 of the Complaint appears to come from a table included as "Exhibit C" to the Complaint. Any characterization of Exhibit C, or the information contained therein, is denied; Exhibit C is a document the entirety of which speaks for itself. The Complainant's characterization of the information set forth on pages 8-9 of the Complaint, including any data submitted as a part of the *2021 Rate Case* and/or the *Compliance Tariff*, is denied.

Major Issue #1- Residential Volumes

The averments contained on pages 9-10 of the Complaint (entitled "Major Issue #1 – Residential Volume") are admitted in part and denied in part. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on page 9 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself. It is admitted that certain of the information (i.e., references to "Exhibit D" to the Complaint) reproduced on page 9-10 of the Complaint appears to come from a document included as "Exhibit D" to the Complaint. Any characterization of Exhibit D, or the information contained therein, is denied; Exhibit D is a document the entirety of which speaks for itself. It is admitted that certain of the information (i.e., references to "Exhibit E" to the Complaint) reproduced on page 9-10 of the Complaint appears to come from a document included as "Exhibit E" to the Complaint. Any characterization of Exhibit E, or the information contained therein, is denied; Exhibit E is a document the entirety of which speaks for itself.

It is further denied that any of the averments on pages 9-10 of the Complaint demonstrate that Aqua PA WW's existing, Commission-made rates are unjust and unreasonable.

Major Issue #2 – Commercial 1 Volume

The averments contained on page 10 of the Complaint (entitled "Major Issue #2 – Commercial 1 Volume") are admitted in part and denied in part. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on page 10 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself.

It is further denied that any of the averments on page 10 of the Complaint demonstrate that Aqua PA WW's existing, Commission-made rates are unjust and unreasonable.

Major Issue #3 – Commercial 2 Volume

The averments contained on page 11 of the Complaint (entitled "Major Issue #3 – Commercial 2 Volume") are admitted in part and denied in part. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on page 11 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself.

It is further denied that any of the averments on page 11 of the Complaint demonstrate that Aqua PA WW's existing, Commission-made rates are unjust and unreasonable.

Major Issue #4 – The Percentage Rate Increases

The averments contained on pages 12-16 of the Complaint (entitled "Major Issue #4 – The Percentage Rate Increases") are admitted in part and denied in part. It is admitted that the total revenue percentage increase to New Garden ratepayers permitted by the *Rate Case Order* and reflected in the *Compliance Tariff* is 53.5%. It is denied that the rates reflected in Aqua PA WW's *Compliance Tariff* are in excess of or inconsistent with the rates it is permitted to charge pursuant to the *Rate Case Order*. Aqua PA WW further denies the information contained in each of the charts on pages 12-15 of the Complaint and denies that these charts show the actual increases experienced by customers. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on pages 12-16 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself. It is

also admitted that certain of the information (i.e., references to "Exhibit I" to the Complaint) reproduced on pages 12-16 of the Complaint comes from the February 21, 2020 Joint Petition for Settlement entered into at Docket No. A-2016-2580061 ("*New Garden Acquisition Settlement*"). Any characterization of the *New Garden Acquisition Settlement*, or the information contained therein, is denied; the *New Garden Acquisition Settlement* is a document the entirety of which speaks for itself.

It is admitted that certain of the information (i.e., references to "Exhibit E" to the Complaint) reproduced on page 16 of the Complaint appears to come from a table included as "Exhibit G" to the Complaint. Any characterization of Exhibit G, or the information contained therein, is denied; Exhibit G is a document the entirety of which speaks for itself. The Complaint's "estimated" rate increases to Residential, Commercial 1 and Commercial 2 customers are denied. By way of further response, the estimated increases presented by the Complainant were not part of the record in the *2021 Rate Case*. It is admitted that certain of the information (i.e., references to "Exhibit J" to the Complaint) reproduced on page 16 of the Complaint appears to come from a table included as "Exhibit J" to the Complaint. Any characterization of Exhibit J, or the information contained therein, is denied; Exhibit J is a document the entirety of which speaks for itself.

By way of further response, Aqua PA WW notes that the estimated rate increases presented by Mr. Ferguson estimate the impact of a customer bill at a specific usage, which is different than the rate impact to an entire class of customers. It is further denied that any of the averments on pages 12-16 of the Complaint demonstrate that Aqua PA WW's existing, Commission-made rates are unjust and unreasonable.

Major Issue #5 – Aqua's Compliance Volumes Predate the Acquisition

The averments contained on page 17 of the Complaint (entitled "Major Issue #5 – Aqua's Compliance Volumes Predate the Acquisition") are admitted in part and denied in part. It is admitted that certain of the information (i.e., references to "Exhibit I" to the Complaint) reproduced on page 17 of the Complaint comes from the *New Garden Acquisition Settlement*. Any characterization of the *New Garden Acquisition Settlement*, or the information contained therein, is denied; the *New Garden Acquisition Settlement* is a document the entirety of which speaks for itself. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on page 17 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself. It is admitted that page 16 of the Complaint contains an excerpt of an email dated August 14, 2019. Any characterization of this e-mail, or the attachments thereto, is denied; they are documents the entirety of which speaks for themselves.

It is further denied that any of the averments on page 17 of the Complaint demonstrate that Aqua PA WW's existing rates are unjust and unreasonable.

Major Issue #6 – The Total Volume Used By New Garden Customers

The averments contained on page 18 of the Complaint (in the section entitled "Major Issue #6 – The Total Volume Used By New Garden Customers") are admitted in part and denied in part. It is admitted that certain of the information (i.e., references to "Exhibit H" to the Complaint) reproduced on page 18 of the Complaint appears to come from documents included as "Exhibit H" to the Complaint. Any characterization of Exhibit H, or the information contained therein, is denied; Exhibit H is a document the entirety of which speaks for itself. Moreover, based upon a reasonable investigation, Aqua PA WW lacks sufficient information to form a reasonable

belief as to the veracity of Exhibit H and/or its author or custodian and, therefore, denies the same. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on page 18 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself.

It is further denied that any of the averments on page 18 of the Complaint demonstrate that Aqua PA WW's existing rates are unjust and unreasonable.

Other Issues related to compliance volumes

The averments contained on pages 18-19 of the Complaint (entitled "Other Issues related to compliance volumes") are admitted in part and denied in part. It is admitted that certain of the information (i.e., references to "Exhibit B" to the Complaint) reproduced on pages 18-19 of the Complaint comes from the *Compliance Tariff*. Any characterization of the *Compliance Tariff* filing, or the information contained therein, is denied; the *Compliance Tariff* filing is a document the entirety of which speaks for itself. It is admitted that certain of the information (i.e., references to "Exhibit I" to the Complaint) reproduced on page 18 of the Complaint comes from the *New Garden Acquisition Settlement*. Any characterization of the *New Garden Acquisition Settlement*, or the information contained therein, is denied; the *New Garden Acquisition Settlement* is a document the entirety of which speaks for itself. It is admitted that the Complaint references a Commercial 1 New Garden customer's bill (i.e., references to "Exhibit F" to the Complaint) on page 18 of the Complaint. Any characterization of Exhibit F, or the information contained therein, is denied; Exhibit F is a document the entirety of which speaks for itself.

It is further denied that any of the averments on pages 18-19 of the Complaint demonstrate that Aqua PA WW's existing, Commission-made rates are unjust and unreasonable.

Conclusions

The averments contained on page 19 of the Complaint (entitled "Conclusions") constitute legal arguments to which no responsive pleading is required. To the extent a response is deemed necessary, Aqua PA WW denies the same. By way of further response, Aqua PA WW incorporates its further responses to the averments contained in Paragraph 5 of the Complaint, *supra*, as though fully set forth herein.

Recommendations

The averments contained on page 20 of the Complaint (entitled "Recommendations") are requests for relief to which no responsive pleading is required. To the extent a response is deemed necessary, Aqua PA WW denies that the Complainant is entitled to the relief requested. By way of further response, Aqua PA WW incorporates its further responses to the averments contained in Paragraph 5 of the Complaint, *supra*, as though fully set forth herein.

Exhibits

Pages 21-42 of the Complaint include "Exhibits" labeled "Exhibit A" through "Exhibit J." Any averments contained in pages 21-42 of the Complaint are admitted in part and denied in part; by way of further response, Aqua PA WW incorporates its further responses to the averments contained in Paragraph 5 of the Complaint, *supra*, as though fully set forth herein.

6. The averments contained in Paragraph 6 are requests for relief to which no responsive pleading is required. To the extent a response is deemed necessary, Aqua PA WW denies that the Complainant is entitled to the relief requested. By way of further response, Aqua PA WW incorporates Paragraph 5, *supra*, as though fully set forth herein.

7. Paragraph 7 of the Complaint relates to protection from abuse orders, to which no responsive pleading is required.

8. Admitted. It is admitted that the Complaint is not an appeal from a decision of the Commission's Bureau of Consumer Services ("BCS"). It is further admitted that the Company has not had contact with the Complainant about the issues raised in the Complaint. By way of further response, Aqua PA WW will attempt to be responsive to all contacts and communications from the Complainant and with treat the Complainant in the same respectful manner that it treats all other customers.

9. Paragraph 9 of the Complaint relates to legal representation, to which no responsive pleading is required.

10. Paragraph 10 sets forth the verification and signature, to which no responsive pleading is required.

11. Paragraph 11 sets forth the instructions for filing the Complaint, to which no responsive pleading is required.

NEW MATTER

1. Aqua PA WW incorporates by reference Paragraphs 1 through 11 of the Answer, *supra*, as if fully set forth herein.

2. The Complaint is barred by Section 316 of the Public Utility Code 66 Pa. C.S. § 316 and the doctrine of collateral estoppel.

3. On August 20, 2021, Aqua PA WW submitted the *2021 Rate Case* to the Commission at Docket No. R-2021-3027386.

4. Aqua PA WW's initial filing in the *2021 Rate Case* included a proposed revenue requirement for wastewater customers in New Garden as Exhibit 1-G, which was part of the overall proposed revenue requirement for Aqua PA WW as a whole. In addition, Aqua PA WW's initial

filing in the *2021 Rate Case* included a cost of service allocation study in Exhibit 5-B, Part I, Schedule A-NG through Schedule E-NG, that presented *pro forma* usage data for New Garden customers.

5. Aqua PA WW filed the *2021 Rate Case* in compliance with the Commission's regulations, and its filing contained all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

6. The Complainant, Mr. William Ferguson, was afforded notice of the *2021 Rate Case* in compliance with the Commission's regulations.

7. On October 8, 2021, a Prehearing Order was issued in the *2021 Rate Case*. In paragraph 3 of this Prehearing Order, the assigned Administrative Law Judge provided instructions regarding participation as an inactive party, testifying at public input hearings, and becoming an active party of record. In paragraph 8 of the Prehearing Order, the Administrative Law Judge also provided instructions regarding how a party may request to change its status from an inactive party to an active party or vice versa.

8. The Complainant participated in the public input hearings held in the *2021 Rate Case*. Specifically, at the public input hearing held on November 12, 2021, at 1:00 p.m., Mr. Ferguson provided testimony under oath regarding the proposed rate increase and its applicability to New Garden customers. Mr. Ferguson presented no testimony challenging the *pro forma* usage data for New Garden customers.

9. Direct, rebuttal, surrebuttal and rejoinder testimony was presented by all active parties to the *2021 Rate Case*. No party challenged the *pro forma* usage data presented by the Company with respect to New Garden customers.

10. An evidentiary hearing for the *2021 Rate Case* was held on December 21, 2021.

11. Parties, including Aqua PA WW, submitted Main Briefs on January 11, 2022, and submitted Reply Briefs on January 21, 2022. In its testimony and its briefs, Aqua PA WW addressed the Complainant's testimony from the November 12, 2021 public input hearing. No party challenged the *pro forma* usage data specific to New Garden wastewater customers.

12. On February 18, 2022, the Administrative Law Judge issued the Recommended Decision in the *2021 Rate Case*. The Recommended Decision addressed the issues raised by the Complainant at the public input hearings.

13. On May 16, 2022, the Commission entered the *Rate Case Order*. The *Rate Case Order* authorized Aqua PA WW to file tariffs reflecting, among other things, a revenue requirement for New Garden wastewater operations of $4,428,399, as part of the overall allowed revenue requirement of Aqua PA WW of $18,740,978 for wastewater service. The authorized revenue requirement of $4,428,399 reflected the impacts of the Commission-approved Act 11 allocation of certain wastewater revenues to water customers.

14. On May 23, 2022, Aqua PA WW submitted its *Compliance Tariff*. The *Compliance Tariff* was filed in compliance with the *Rate Case Order* and the Commission's regulations. The usage data used in the *Compliance Tariff* filing for New Garden operations was the same as the usage data presented in Exhibit 5-B, Part I, Schedules A-NG through E-NG as submitted by Aqua PA WW as a part of its initial filing in the *2021 Rate Case* proceeding.

15. The Commission issued a Secretarial Letter dated June 3, 2023, which stated that "Commission Staff reviewed the [Compliance Tariff] revisions and proof of revenues and found that suspension or further investigation does not appear warranted at this time," and permitted the *Compliance Tariff* to become effective by operation of law.

16. Pursuant to 66 Pa. C.S. § 316, the instant Complaint is barred by the *Rate Case Order*. Section 316 states, in relevant part:

> Whenever the [c]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316.

17. Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. *See Moore, Jr. v. PECO Energy Co.*, Docket No. C-2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), *adopted without modification*, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012); *see also Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Initial Decision issued Feb. 24, 2020), *adopted without modification*, Docket No. C-2019-3014786 (Order entered May 21, 2020).

18. Section 316 of the Code precludes a collateral attack upon a Commission order which has not been reversed upon appeal. *See Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989) (citing 66 Pa. C.S. § 316).

19. The *Rate Case Order* has not been set aside, annulled, or otherwise overturned.[2] *See Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order entered May 19, 2016) (dismissing *First* and *Second Complaints* on remand), *affirmed*, *Moyer v. Pa. PUC*, 2017 Pa. Commw. Unpub. LEXIS 167 (Pa. Cmwlth. 2017), *allocatur denied*, *Moyer v. Pa. PUC*, 2017 Pa. LEXIS 2145 (Pa. 2017); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered Aug. 8, 2019) (dismissing *Third Complaint*); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683 (Order entered Oct. 28, 2021) (dismissing *Fourth Complaint*);

[2] The *Rate Case Order* is currently the subject of an appeal pending before the Commonwealth Court at *Sabre v. PUC*, 1307 C.D. 2022.

Moyer v. PPL Elec. Utils. Corp., Docket No. C-2022-3031294 (Order entered Dec. 8, 2022) (dismissing *Fifth Complaint* with prejudice).

20. The Complainant's claims and issues also are barred by collateral estoppel because such claims and issues related to Aqua PA WW's authorized revenue requirement for New Garden wastewater operations were raised or could have been raised and ruled upon in the *2021 Base Rate Case* proceeding.

21. Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *See Fiore v. Commonwealth*, 508 A.2d 371, 374 (Pa. Cmwlth. 1986).

22. The doctrine of collateral estoppel, or issue preclusion, applies where: (1) "[a]n issue decided in a prior action is identical to the one presented in a later action"; (2) "[t]he prior action resulted in a final judgment on the merits"; (3) "[t]he party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action"; and (4) "[t]he party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action." *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998) (emphasis added) (citations omitted).

23. The instant Complaint is barred by collateral estoppel because in the *2021 Base Rate Case* and the instant Complaint: (1) the issues are about Aqua PA WW's wastewater rates charged to customers in New Garden township; (2) the *2021 Base Rate Case* was adjudicated on the merits; (3) parties in the prior action and the instant proceeding are the same (*i.e.*, William Ferguson provided sworn testimony on the record in Aqua PA WW's *2021 Base Rate Case*); and (4) in the prior action, the Complainant had a full and fair opportunity to raise claims and litigate issues regarding the rates charged by Aqua PA WW to New Garden wastewater customers.

24. Thus, the Complainant's claims and issues are barred by collateral estoppel.

25. The Complainant's claims and issues, if adopted by the Commission, would also constitute impermissible retroactive ratemaking.

26. The Complainant's claims and issues, if adopted by the Commission, would also constitute impermissible single-issue ratemaking. Mr. Ferguson improperly seeks to challenge rates established for a single rate division, based solely upon a question of usage data, without examining the entirety of Aqua PA WW's revenues and expenses.

27. The Complainant's claims and issues, if adopted by the Commission, would also violate the Commission-made rate doctrine. Mr. Ferguson seeks refunds with respect to rates that were established by the Commission.

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Complaint of William Ferguson be denied in its entirety and with prejudice.

Respectfully submitted,

Michael W. Hassell, Esq. (ID # 34851)
Garrett P. Lent, Esq. (ID # 321566)
Post & Schell, P.C.
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Harrisburg, PA 17101
Phone: 717-731-1970
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E-mail: glent@postschell.com

Date: October 10, 2023

Attorneys for Aqua Pennsylvania Wastewater, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Ferguson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3043108
	:	
Aqua Pennsylvania Wastewater, Inc.,	:	
	:	
Respondent.	:	

VERIFICATION

I, Erin M. Feeney, being Manager of Rates for Aqua Pennsylvania, Inc., hereby state that the fact above set forth are true and correct to the best of my knowledge, information, and belief and that I expect Aqua Pennsylvania Wastewater, Inc. to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: October 10, 2023

Erin Feeney

Erin M. Feeney
Manager of Rates
Aqua Pennsylvania, Inc

Date Created	Filing Number
10/10/2023	2498765

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Harrisburg, PA 17105-3265
EFILING - FILING DETAIL

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

Docket Number: C-2023-3043108
Case Description:
Transmission Date: 10/10/2023 4:12 PM
Filed On: 10/10/2023 4:12 PM
eFiling Confirmation Number: 2498765

File Name	Document Type	Upload Date
Aqua PA WW - Ferguson (Revenue Complaint) - Answer and New Matter (FINAL).pdf	Answer to Formal Complaint	10/10/2023 4:12:00 PM

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg PA 17120 a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

No paper submission is necessary for filings under 250 pages.

You can view a record of this filing and previous filings you have submitted to the PUC by using the links in the Filings menu at the top of the page. Filings that have been submitted within the last 30 days can be viewed by using the Recent Filings link. Older filings can be viewed by using the search options available in the Filing History link.