

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Ferguson, :  
Petitioner :  
v. : No. 876 CD 2025  
Pennsylvania Public Utility Commission, :  
Respondent :

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**INTERVENOR AQUA PENNSYLVANIA  
WASTEWATER, INC.'S BRIEF**

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## I. INTRODUCTION

This appeal concerns the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) June 18, 2025 Opinion and Order<sup>1</sup> (“Opinion and Order”), in which the PUC dismissed the Complaint of Petitioner, William Ferguson (“Petitioner” or “Mr. Ferguson”), against Aqua Pennsylvania Wastewater, Inc., (“Aqua” or the “Company”). Mr. Ferguson’s Complaint centered upon his claim that Aqua did not incur a single-line item of expense related to its wastewater operations in one part of its system, i.e., “Purchased Water Expense” for New Garden Township operations, that Aqua projected it would incur during its 2021 Rate Case.<sup>2</sup> Critically, the 2021 Rate Case was a fully-litigated base rate case where, *inter alia*, the PUC’s *2021 Rate Case Order*<sup>3</sup> did not authorize Aqua to recover the full cost of service related to its New Garden Township wastewater operations. Aqua’s compliance tariffs filed in accordance with the *2021 Rate Case Order* were approved on June 3, 2022.<sup>4</sup> Thus, Petitioner’s Complaint sought to challenge one

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<sup>1</sup> *William Ferguson v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. C-2023-3043108, (Opinion and Order entered Jun 18, 2025) (“Opinion and Order”).

<sup>2</sup> PUC Docket Nos. Docket Nos. R-2021-3027385 and R-2021-3027386, *et al.*

<sup>3</sup> *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2021-3027385 and R-2021-3027386, *et al.* (Opinion and Order entered May 16, 2022) (“*2021 Rate Case Order*”). The *2021 Rate Case Order* was appealed upon a separate issue to the Commonwealth Court at No. 1370 C.D. 2022. *See Sabree v. Pa. PUC*, No. 1307 C.D. 2022, 2025 Pa. Commw. LEXIS 188 (Pa. Cmwlth. 2025). Three separate petitions for allowance of appeal of *Sabree* are pending before the Supreme Court of Pennsylvania at Nos. 722 MAL 2025, 723 MAL 2025, and 724 MAL 2025.

<sup>4</sup> (R. 170a-71a.)

line item of expense related to existing, Commission-approved rates for one segment of Aqua's wastewater operations.

Under these circumstances, the PUC correctly held that the relief sought by Petitioner amounted to impermissible retroactive and single-issue ratemaking, and properly dismissed the Complaint. The PUC's Opinion and Order reflects a disciplined application of settled principles of utility law: that PUC-approved tariffs have the force and effect of law, are *prima facie* reasonable, and that a complainant bears a heavy burden to prove that the facts and circumstances leading to the creation of a tariff provision have changed so drastically that such provision is unreasonable. Moreover, the PUC's Opinion and Order correctly applied the general prohibition against retroactive and single-issue ratemaking, where a complainant attempts to challenge a single line-item of expense underlying an existing, PUC-approved utility rate. Petitioner failed to demonstrate that an exception to this general prohibition existed, and now, dissatisfied with the result, attempts to re-write the records of both the 2021 Rate Case and his Complaint proceeding.

For the reasons set forth herein, the PUC's Opinion and Order is free of legal error and supported by substantial evidence of record. It upholds a PUC-approved rate consistent with statutory mandate and decades of precedent. Because the rates charged were established consistent with the law and well-understood ratemaking principles, and were in conformity with Aqua's PUC-approved tariff and the Public

Utility Code, and because Mr. Ferguson failed to meet his burden of proving otherwise, the PUC's Opinion and Order should be affirmed.

## **II. COUNTER-STATEMENT OF SCOPE AND STANDARD OF REVIEW**

The Commonwealth Court's standard of review in an appeal from a state agency's adjudication is limited to a determination of whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact were supported by substantial competent evidence.<sup>5</sup>

In his Petition for Review and Brief, Mr. Ferguson asserts that the PUC committed an error of law by incorrectly applying the rule against retroactive ratemaking to his complaint. With respect to whether the PUC committed an error of law, the Pennsylvania Supreme Court has explained that:

The proper place to begin the appropriate inquiry is...due deference to the views of the regulatory agency directly involved in administering the statute in question.... An administrative agency's expert interpretation of a statute for which it has enforcement responsibility is entitled to great deference and will not be reversed unless clearly erroneous.<sup>6</sup>

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<sup>5</sup> 2 Pa.C.S. § 704; *see Leung v. Pa. PUC*, 582 A.2d 719, 721 (Pa. Cmwlth. 1990); *Teltron, Inc. v. Pa. PUC*, 477 A.2d 599, 600 (Pa. Cmwlth. 1984) (citation omitted).

<sup>6</sup> *Popowsky v. Pa. PUC*, 706 A.2d 1197, 1203 (Pa. 1997) (citation omitted).

Thus, upon review of the PUC's interpretation of ratemaking, this Court owes deference to the PUC's interpretation, and that interpretation is entitled to great weight and should not be reversed unless clearly erroneous.

Additionally, Mr. Ferguson argues that the PUC's decision was not supported by substantial evidence. With respect to the issue of whether the PUC's findings and conclusions are supported by substantial evidence, substantial evidence has been defined as "that quantum of evidence which reasonable minds might accept as adequate to support a conclusion."<sup>7</sup> However, the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking."<sup>8</sup> Further, the Pennsylvania Supreme Court has explained that the Court's duty "is to determine only whether or not the PUC's findings are supported by substantial evidence; we may not substitute our judgment for that of the PUC, nor may we 'indulge in the processes of weighing evidence and resolving conflicting testimony.'"<sup>9</sup>

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<sup>7</sup> *Nat'l Fuel Gas Distrib. Corp. v. Pa. PUC*, 677 A.2d 861, 863-64 (Pa. Cmwlth. 1996) (quoting *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037, 1046 (Pa. 1980)); see *Pa. PUC v. Dep't of Transp.*, 346 A.2d 376, 378 (Pa. Cmwlth. 1975) (quotation omitted).

<sup>8</sup> *Allied Mech. & Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

<sup>9</sup> *Popowsky v. Pa. PUC*, 706 A.2d at 1201 (quoting *Johnstown-Pittsburgh Express, Inc. v. Pa. PUC*, 291 A.2d 545, 547 (Pa. Cmwlth. 1972)).

### **III. COUNTER-STATEMENT OF THE CASE**

The Petitioner's Statement of the Case lacks appropriate context, which is essential to understanding this matter. Aqua provides the following Counter-Statement of the Case in order to supply this context.

#### **A. BACKGROUND**

By Order entered December 3, 2020, at Docket No. A-2016-2580061, Aqua was authorized to purchase the New Garden wastewater system.

On August 20, 2021, Aqua filed the 2021 Rate Case. Relevant to this appeal, the initial filing in the 2021 Rate Case proposed a revenue requirement for wastewater customers in New Garden Township,<sup>10</sup> reflected in a separate accounting exhibit prepared for this system.<sup>11</sup>

As a part of the revenue requirement for New Garden Township wastewater operations, Aqua projected it would incur \$1.2 million of "Purchased Wastewater Expense," of which \$800,000 was a trucking expense.<sup>12</sup> While the Company was searching for a solution to mitigate this expense, at the time of the filing the 2021 Rate Case no solution had been found and the Company believed the expense would continue to occur.<sup>13</sup> No party challenged this expense.<sup>14</sup> Moreover, the Company

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<sup>10</sup> (R. 157a.)

<sup>11</sup> (R. 158a.)

<sup>12</sup> (R. 185a.)

<sup>13</sup> (R. 186a-87a.)

<sup>14</sup> (R. 165a.)

did not finalize a solution related to this expense during the course of the 2021 Rate Case and, therefore, did not update this expense while the record in this proceeding remained open.<sup>15</sup>

On November 12, 2021, Mr. Ferguson participated in a public input hearing for the 2021 Rate Case where he provided sworn testimony.<sup>16</sup>

On December 21, 2021, an evidentiary hearing was held in the 2021 Rate Case.<sup>17</sup>

On January 11, 2022, main briefs were filed in the 2021 Rate Case with reply briefs filed on January 21, 2022.<sup>18</sup>

On February 18, 2022, a Recommended Decision was issued in the 2021 Rate Case.<sup>19</sup> This decision addressed the issues raised by Mr. Ferguson in his sworn testimony.<sup>20</sup>

On May 16, 2022, the PUC issued the *2021 Rate Case Order*.<sup>21</sup> In this order, the PUC authorized a lower increase in rates than those proposed in Aqua's initial filing.<sup>22</sup> Specific to New Garden Township wastewater operations, the PUC adopted I&E's proposed rate design, ultimately authorizing Aqua to collect \$4.4 million of

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<sup>15</sup> (R. 193-94a.)

<sup>16</sup> (R. 164a.)

<sup>17</sup> (R. 164a.)

<sup>18</sup> (R. 165a.)

<sup>19</sup> (R. 166a.)

<sup>20</sup> (R. 166a.)

<sup>21</sup> (R. 167a.)

<sup>22</sup> (R. 167a.)

revenue.<sup>23</sup> Notably, Aqua calculated the full cost of service for New Garden Township wastewater operations as approximately \$5.4 million.<sup>24</sup>

On May 23, 2022, pursuant to the *2021 Rate Case Order*, Aqua filed a compliance tariff to reflect the new rates under the authorized revenue requirement.<sup>25</sup> This compliance tariff underwent a vetting process with I&E staff, who reached out to the Company with questions during their review, but no corrections.<sup>26</sup>

On June 3, 2022, the Commission approved the compliance tariff via Secretarial Letter.<sup>27</sup>

During calendar year 2023, Aqua collected \$4.3 million in revenues for wastewater operations in New Garden Township, pursuant to its Commission-approved rates; this is less than the \$4.4 million in revenues Aqua was authorized to collect by the *2021 Rate Case Order*.<sup>28</sup>

On May 23, 2024, Aqua filed for an increase in water and wastewater rates at Docket Nos. R-2024-3047822 and R-2024-3047824 (“2024 Rate Case”). The 2024 Rate Case involved an investigation of both Aqua’s proposed rates and its existing rates.<sup>29</sup>

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<sup>23</sup> (R. 167a.)

<sup>24</sup> (R. 175a-76a.)

<sup>25</sup> (R. 168a-69a.)

<sup>26</sup> (R. 183a.)

<sup>27</sup> (R. 170a-71a.)

<sup>28</sup> (R. 173a.)

<sup>29</sup> *Pa. PUC, et al. v. Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc.*, Docket No. R-2024-3047822 *et. al.* (Order entered June 13, 2024).

## **B. FERGUSON COMPLAINT PROCEEDING**

On September 19, 2023, Aqua was served with two Formal Complaints related to the wastewater rates for New Garden Township operations that were established by the *2021 Rate Case Order*. Germane to this appeal is the Formal Complaint at Docket No. C-2023-3043109, which attempted to contest the Purchased Wastewater Expense for New Garden Township operations.

On October 10, 2023, Aqua filed separate Answers and New Matter to this Complaint. In its New Matter, Aqua specifically averred that the subject Complaint was barred by Section 316 of the Public Utility Code<sup>30</sup> and the doctrine of collateral estoppel, and, if granted, would constitute impermissible retroactive ratemaking, constitute impermissible single-issue ratemaking and violate the Commission-made rate doctrine.

On November 15, 2023, Aqua filed a motion seeking the continuance of the hearing scheduled and referral of the two matters to the PUC's Mediation Unit.<sup>31</sup> Prior to the filing of that Motion, Aqua conferred with Petitioner about its requests, and Petitioner agreed with both requests, and was supportive of both.<sup>32</sup> By order issued November 21, 2023, the motion was granted and the two Complaints were

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<sup>30</sup> 66 Pa.C.S. § 316.

<sup>31</sup> See *William Ferguson v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. C-2023-3043108, Unopposed Motion for Continuance and Referral to Mediation of Aqua Pennsylvania Wastewater, Inc. (dated Nov. 15, 2023) (“Motion for Continuance and Mediation”).

<sup>32</sup> See *id.*, ¶¶ 13 and 21.

consolidated and referred to the Mediation Unit. The parties were unable to resolve the Complaint through mediation, and the matter was set for hearing.

On July 10, 2024, Aqua filed a motion seeking to consolidate Mr. Ferguson’s Complaints with the pending *2024 Rate Case* pursuant to 52 Pa. Code § 5.81 for purposes of adjudication because they raised common issues of fact and law, and because the 2024 Rate Case involved consideration of the lawfulness, justness, and reasonableness of Aqua’s existing rates, which the Petitioner sought to challenge.<sup>33</sup> Mr. Ferguson filed an answer opposing this motion on July 24, 2024, and the motion was denied by order issued on August 8, 2024.

An evidentiary hearing was held on November 25, 2024. At the hearing, the Complainant sponsored 14 exhibits, each of which were admitted into the record, and the Company sponsored 7 exhibits that were admitted into the record. The record consists of a 192-page transcript and a total of 21 exhibits. Aqua’s witness, Ms. Feeney, offered testimony consistent with the facts outlined in Section III.A., *supra*. The record closed on December 30, 2024.

The well-reasoned Initial Decision (“Initial Decision”) of Administrative Law Judge Eranda Vero (the “ALJ”) was issued on March 31, 2025. Therein, the ID correctly applied the general prohibition against retroactive and single-issue

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<sup>33</sup> *William Ferguson v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. C-2023-3043108, Motion to Consolidate of Aqua Pennsylvania Wastewater, Inc., ¶ 24 (dated Nov. 15, 2023).

ratemaking, determined that Petitioner had not demonstrated an exception to the general prohibition existed in this matter, and concluded that the subject Complaint should be denied.<sup>34</sup>

On April 21, 2025, the Complainant filed Exceptions to the findings and conclusions reached in the ID.<sup>35</sup> On May 1, 2025, the Company filed its Replies to the Exceptions.<sup>36</sup>

On May 9, 2025, Complainant filed the Petition to Reopen the Record.<sup>37</sup> Aqua filed its Answer to the Petition on May 19, 2025.<sup>38</sup>

Also on May 9, 2025, Complainant filed a Motion to Strike portions of Aqua's Replies to Exceptions.<sup>39</sup> Aqua submitted its Answer to that Motion on May 29, 2025.<sup>40</sup>

On June 18, 2025, the PUC issued its Opinion and Order, (1) denying the Complainant's Exceptions; (2) adopting the Initial Decision of the ALJ; (3) dismissing the Complaints; (4) denying the Petition to Reopen the Record; and (5) denying the Motion to Strike.<sup>41</sup>

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<sup>34</sup> See (R. 466a).

<sup>35</sup> (R. 470-97a.)

<sup>36</sup> (R. 498-524a.)

<sup>37</sup> (R. 530-38a.)

<sup>38</sup> (R. 539-46a.)

<sup>39</sup> (R. 525-29a.)

<sup>40</sup> (R. 547-52a.)

<sup>41</sup> Opinion and Order at 33.

### **C. FERGUSON'S PETITION FOR REVIEW**

On August 29, 2025, Mr. Ferguson filed the instant Petition for Review in the above-captioned matter.

The Company filed its Notice of Intervention in this matter on July 22, 2025.

Following requests for extension and consistent with the court's approvals of those extensions, Petitioner filed his brief on November 10, 2025. The Company was served with a copy of Petitioner's Brief that same day.

On December 1, 2025, the court approved a request for an extension of time for the PUC and Aqua to file Briefs until January 29, 2026.

#### **IV. SUMMARY OF THE ARGUMENT**

The PUC's Opinion and Order should be affirmed because it correctly applied binding precedent to substantial evidence of record. Dissatisfied with the result of the PUC's analysis of his Complaint, Petitioner asks this Court to give credence to his attempts to ignore the law, re-write the records of both the proceeding below and a prior, fully-litigated base rate case, and smear Aqua, its witness, and the PUC. The Court should reject these efforts.

While the Petitioner attempts to twist the record, the primary issue on appeal is whether the PUC properly and correctly applied the general prohibitions against retroactive and single-issue ratemaking in this matter. One of the primary purposes of these well-understood principles of public utility law is to prevent a hindsight analysis by the utility, its ratepayers, or a regulatory commission with respect to the utility's claims once a final order is issued. Here, the Petitioner's Complaint ran afoul of those principles, by attempting to retroactively challenge a single line-item of expense underlying Aqua's initial revenue requirement request for one segment of its wastewater operations (i.e., its New Garden Township wastewater operations) in the 2021 Rate Case, which concluded over a year prior to the filing of his Complaint. Petitioner simply failed to demonstrate an exception to these general prohibitions existed,

as correctly found by both the ALJ and the PUC. Moreover, and critically, Aqua's undisputed evidence of record demonstrated that (1) the Commission-approved rates at issue did not permit Aqua to recover the full cost of wastewater service applicable to its New Garden Township operations, and (2) Aqua did not recover revenues in excess of the Commission-approved revenue requirement for its New Garden Township operations.

Although the Petitioner attempts to claim that Aqua did not disclose certain information to the PUC in its 2021 Rate Case, this claim is without merit. Aqua provided the PUC with all necessary information to establish just and reasonable rates based on a fully-projected future test year ("FPFTY"), and properly projected the single expense at issue in this matter based upon the information available to it at the time of the 2021 Rate Case. In this regard, the Petitioner is not only attempting to re-write the record of the Complaint proceeding below, but also attempts to re-write the record of the 2021 Rate Case. The Court should reject these efforts, which ask it to step far afield of the scope of its appellate review.

Third, substantial evidence of record shows that Petitioner failed to demonstrate Aqua's existing rates were unjust and unreasonable. Indeed, while the Petitioner attempts to second-guess the evaluation of evidence and

assessment of witness credibility by the ALJ and the PUC, the fact remains that he presented zero evidence that demonstrated (a) an exception to the general prohibitions against retroactive and single-issue ratemaking were satisfied, and/or (b) that Aqua was earning revenues in excess of its authorized revenue requirement for New Garden Township operations.

Fourth, the PUC properly and correctly denied the Petitioner's Request to Reopen the Record. The PUC has discretion regarding whether, and under what circumstances, it may reopen the record. It is not required to do so, and it need not do so where the justification offered by a complainant is based upon the complainant's failure to engage in discovery and/or dissatisfaction with their cross-examination of an identified witness.

Petitioner has failed to demonstrate that the PUC's Opinion and Order contains any legal error or abuse of discretion warranting this Court's review. Moreover, the Petitioner has failed to demonstrate the PUC's decisions are not supported by substantial evidence. Instead, the Petitioner advances claims that attempt to re-write the records of two proceedings, and smear Aqua, its witness, and the PUC. These claims are baseless and should be rejected by this Court.

For these reasons, the Court should affirm the Opinion and Order and deny Petitioner's appeal.

## V. ARGUMENT

### A. **THE COMMISSION PROPERLY AND CORRECTLY APPLIED THE GENERAL PROHIBITIONS AGAINST RETROACTIVE AND SINGLE-ISSUE RATEMAKING IN THIS MATTER**

The Court can, and should, resolve this appeal by determining the PUC did not err by denying Petitioner’s Complaint based upon the application of the general prohibition of retroactive and single-issue ratemaking. Rather than focus upon this issue, Petitioner’s Brief is primarily devoted to attempting to rewrite the records of two separate proceedings before the PUC and raise baseless “factual” disputes that the Court need not reach. The Court need not engage with these claims because (a) the Petitioner does not dispute that these general prohibitions under the law exist and apply, and (b) Petitioner failed to demonstrate below, and fails to demonstrate here, that an exception to these prohibitions applied in this matter.

#### 1. **Both retroactive and single-issue ratemaking are generally prohibited under Pennsylvania law**

Retroactive and single-issue ratemaking<sup>42</sup> are generally prohibited under Pennsylvania law.<sup>43</sup> Petitioner does not dispute this reality, and these legal

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<sup>42</sup> Retroactive ratemaking is similar to single-issue ratemaking. *Pa. Indus. Energy Coalition v. Pa. PUC*, 653 A.2d 1336, 1349-1350 (Pa. Cmwlth. 1995).

<sup>43</sup> *See id.* at 1349 (discussing the general prohibition on single issue ratemaking); *see Popowsky v. Pa. PUC*, 642 A.2d 648, 650-51 (Pa. Cmwlth. 1994) (“The rule against retroactive ratemaking prohibits a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits.” (citation omitted)).

principles were properly applied by the PUC.<sup>44</sup>

These general prohibitions serve important functions related to the prospective nature of ratemaking.<sup>45</sup> Indeed, a utility typically files a base rate case utilizing a “test year,” whereby the utility establishes twelve-month of anticipated expenses and revenues for a future, rates-effective period that are reflective of its anticipated normal operations in that period.<sup>46</sup>

Retroactive ratemaking is generally prohibited to prevent hindsight analysis by the utility, its ratepayers, or a commission with respect to the utility’s claims once a final order establishing rates is issued.<sup>47</sup> As discussed by the ALJ in the Initial Decision below, “if retroactive ratemaking is allowed, it makes the ‘test year’ method of ratemaking meaningless.”<sup>48</sup>

Single-issue ratemaking is generally prohibited because a line-by-line examination of the utility’s expenses after it is authorized to charge rates is neither

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<sup>44</sup> While Petitioner primarily focuses upon the general prohibition against retroactive ratemaking (Petitioner’s Brief at 46-52), the same prohibition against single-issue ratemaking applies in this case and equally bars the Complaint. Opinion and Order at 28 (“We find that the Complainant is improperly seeking single-issue ratemaking in his claims in . . . the Expense Complaint, based on the wastewater hauling expense.”). Aqua discusses both of these principles in tandem, because of their similarities and equal applicability to Petitioner’s claims.

<sup>45</sup> *Columbia Gas of Pa., Inc., v. Pa. PUC*, 613 A.2d 74 (Pa. Cmwlth. 1992), *affirmed*, 636 A.2d 627 (Pa. 1994) (“Ratemaking is *prospective* in nature, that is, once established by the Commission, base rates are final for the period in which they apply.” (emphasis in original)).

<sup>46</sup> *See, e.g., Popowsky*, 642 A.2d at 651.

<sup>47</sup> (R. 465a-66a). Initial Decision citing *Cheltenham & Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334 (Pa. 1942), and Krieger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 *Univ.Ill.L.Rev.* 983, 984.

<sup>48</sup> (R. 465a-66a).

appropriate nor helpful.<sup>49</sup> The question for ratemaking is not whether a utility's investment and expenses match up on a line-by-line basis with those claimed in a case, but whether the utility is over-earning its authorized return. Indeed, as explained by this Court over 40 years ago:

If a utility's rates are, as in this case, lawful and in conformance with the applicable tariff, Code Section 1312 authorizes retroactive rate relief in the form of a refund only if the utility's rates are unreasonable or unjust. So far as we are able to discern, there is no warrant in Section 1312 for a line-by-line examination of the utility's expenses and revenues actually incurred or received under rates previously in force and the Code does not authorize the imposition of a refund of excess revenues and improvident expenditures without consideration of the reasonableness and justice of the rates as a whole. This is not to say that the legislature could not authorize refunds on such a basis but that it has not done so.

The Legislature's failure to authorize refunds in case an item of the utility's revenue is greater than anticipated at the time of tariff approval or an item of expense is or should have been less than anticipated and approved, is sensible and equitable. It is equitable because the utility may not receive retroactive rate relief on account of expense items which are greater than anticipated or of revenue items which are lesser. It is sensible because the consideration of expense and revenue items in isolation and the requirement of refunds based only on such narrow

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<sup>49</sup> *Phila. Elec. Co. v. Pa. PUC*, 502 A.2d 722, 727-728 (Pa. Cmwlth. 1985) (“The general rule is that there may be no line by line examination of the relative success or failure of the utility to have accurately projected its particular items of expense or revenue and an excess over the projection of an isolated item of revenue or expense may not be, without more, the subject of the Commission's order of refund or recovery, respectively, on the occasion of the utility's subsequent rate increase requests.”) (emphasis added); *see also Columbia Gas*, 613 A.2d at 76-77.

consideration could result in the setting of confiscatory rates.<sup>50</sup>

The Petitioner neither disputes that these general prohibitions apply under Pennsylvania law, nor attempts to distinguish his case from the aforementioned precedent. Indeed, the Petitioner acknowledges that the “prospective effect of rates is protected by the rule against retroactive ratemaking.”<sup>51</sup>

The Petitioner is clearly running afoul of these principles, seeking retroactive relief (i.e., a refund) related to a single line item of expense underlying the rates for one segment of Aqua’s wastewater operations that were approved in the 2021 Rate Case. Petitioner’s Brief repeatedly highlights this point. This is precisely the kind of case that the rules against single issue and retroactive ratemaking seek to prevent, as correctly identified in the well-reasoned decision of the PUC.<sup>52</sup>

Moreover, Petitioner fails to cite, let alone address, *National Fuel*, which confirms that the Public Utility Code “does not authorize the imposition of a refund of excess revenues and improvident expenditures without consideration of the reasonableness and justice of the rates as a whole.”<sup>53</sup> Not only did Petitioner present zero evidence regarding the Aqua rates as a whole, the only record evidence presented on this point showed that (a) Aqua’s rates established for New Garden

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<sup>50</sup> *Nat’l Fuel Gas Distrib. Corp. v. Pa. PUC*, 464 A.2d 546, 567 (Pa. Cmwlth. 1983) (“*National Fuel*”) (emphasis added).

<sup>51</sup> Petitioner’s Brief at 47.

<sup>52</sup> Opinion and Order at 27-28.

<sup>53</sup> *National Fuel*, 464 A.2d at 567 (emphasis added).

Township wastewater operations in the 2021 Rate Case did not allow Aqua to recover the full cost of providing service in New Garden Township,<sup>54</sup> and (b) Aqua did not recover revenues in excess of those authorized by the PUC.<sup>55</sup> In light of this evidence, it is clear that Petitioner’s attempt to narrowly focus upon a circumstance when one line-item of expense for one segment of Aqua’s operations was less than projected, and to seek new rates and refunds based upon this narrow focus “could result in the setting of confiscatory rates.”<sup>56</sup>

For these reasons, the PUC did not err in determining that the general prohibitions against retroactive and single-issue ratemaking applied to and barred the Complaint.

**2. The Petitioner did not satisfy, and has not satisfied, any exception to the general prohibition against retroactive and single-issue ratemaking under Pennsylvania law**

The Petitioner wholly failed to raise the argument that an exception to the prohibition on retroactive ratemaking applies before the PUC, and therefore he has waived such argument.<sup>57</sup> Indeed, the Exceptions filed by the Petitioner argue not

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<sup>54</sup> (R. 167a, 175a-76a.)

<sup>55</sup> (R. 173a.)

<sup>56</sup> *National Fuel*, 464 A.2d at 567 (emphasis added).

<sup>57</sup> 2 Pa.C.S. § 703. (“A party . . . may not raise upon appeal any other question not raised before the agency (notwithstanding the fact that the agency may not be competent to resolve such question) unless allowed by the court upon due cause shown.”); *see also* Pa. R.A.P. 1551(a) (with certain unapplicable exceptions, “[o]nly questions raised before the government unit shall be heard or considered.”); *K.J. v. Dep’t of Pub. Welfare*, 767 A.2d 609, 612 (Pa. Cmwlth. 2001) (“Our case law is unwavering that when a party fails to raise an issue, even one of a constitutional dimension, in an agency proceeding, the issue is waived and cannot be considered for the first time in a judicial appeal.”) (citation omitted); *Griffith v. Workers’ Comp. Appeal Bd.*, 798 A.2d 324, 328 (Pa. 2002)

that an exception to the general prohibition against retroactive or single-issue ratemaking rule applies to the instant case, but that the rule does not apply at all.<sup>58</sup> At most, the Petitioner only vaguely suggested in his Exceptions to the Initial Decision that he articulated “something more” under *Phila. Elec. Co.*, and attempts to hang his hat on a “misconduct” exception that has never been specifically applied or found to exist in Pennsylvania.<sup>59</sup>

Even if the Court finds that the Petitioner did not waive this argument by failing to preserve it below, the Petitioner still failed to demonstrate that any of the several exceptions to the general prohibition of retroactive ratemaking he cites should have been found to apply.<sup>60</sup> This Court has held that, “[a]n exception to this rule in the case of retroactive recovery of unanticipated expenses has been recognized where the expenses are extraordinary and nonrecurring.”<sup>61</sup> The Commission and Pennsylvania appellate courts have developed case law on this

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(concluding an argument not raised before the government unit was waived despite the litigant’s pro se status, noting “[i]t is unfortunate that Claimant’s pro se efforts resulted in a failure to properly preserve and raise his challenges to the proceedings below.... However, any lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing.”).

<sup>58</sup> (R. 482a-83a.) (“The rule against retroactive ratemaking is inapplicable here because, as the ID recognizes at Conclusions of Law Numbers 5 and 6, it is only invoked when future rates are set to allow a utility to ‘recoup past losses or to refund to consumers excess utility profits,’ (citing *Cheltenham & Abington Sewerage Co., Pa. Pub. Util. Comm’n*, 25 A.2d 334 (Pa. 1942)). That is not what Ferguson’s complaints seek to do.”).

<sup>59</sup> (R. 485a.)

<sup>60</sup> Petitioner’s Brief at 48 (referencing the exceptions of “the mistake as a matter of law, windfall, and misconduct”).

<sup>61</sup> *Phila. Elec. Co.*, 502 A.2d at 728.

issue that establishes the following factors to determine whether an expense may be retroactively recovered: (1) whether the increase expenses arose from an extraordinary and non-recurring (*i.e.* one-time) event, (2) whether the increased expenses arose out of inaccurate projections, (3) whether the utility had a prior opportunity to seek recovery of the expenses and failed to do so, and (4) whether the costs are substantial.<sup>62</sup>

This exception does not apply, and Petitioner failed to present any evidence below that it does. Instead, Petitioner principally relies on the misconduct exception, which he admits has not been adopted in Pennsylvania.<sup>63</sup> Because of this, he is entirely unable to cite any case in which such an exception is adopted in Pennsylvania.<sup>64</sup> As the Commission and Pennsylvania courts have made clear, the practices and policies of other jurisdictions have little if any relevance for Pennsylvania.<sup>65</sup>

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<sup>62</sup> See *Popowsky v. Pa. PUC*, 868 A.2d 606 (Pa. Cmwlth. 2004) (“*PAWC II*”); *Columbia Gas*, 613 A.2d 74; *Popowsky*, 642 A.2d 648. In the instant case, it is notable that the challenged expense (1) was recurring and expected to be ongoing at the time the 2021 Rate Case was filed, and (2) the expense arose out of reasonable, but ultimately inaccurate projections.

<sup>63</sup> Petitioner’s Brief at 50.

<sup>64</sup> Petitioner’s Brief at 49-50 (citing *MCI Telecommunications Corp. v. Pub. Serv. Comm’n of Utah*, 840 P.2d 765 (Utah 1992)).

<sup>65</sup> See *Elder v. Orlucky*, 515 A.2d 517, 522 (Pa. 1986) (noting that it was not appropriate to consider another jurisdiction’s statute where there was no indication that the General Assembly based Pennsylvania legislation on legislation adopted in other jurisdictions); see also *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plant*; *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282, 2014 Pa. PUC LEXIS 93, at \*34-35 (Recommended Decision Feb. 25, 2014) (“Although the OCA points to the practice of utilities in other states to support its argument to include ADIT in the DSIC, the jurisdictions that the OCA

With regard to what he calls the “mistake as a matter of law” exception, the Petitioner relies on *Barasch v. Pa. PUC* to argue that the Court will not affirm unjust and unreasonable rates.<sup>66</sup> However, reliance upon this case is flawed for two reasons. First, the *2021 Rate Case Order* established just and reasonable rates with respect to Aqua’s New Garden Township operations. Thus, they are properly considered Commission-approved rates, which are presumed to be just and reasonable.<sup>67</sup> Second, *Barasch* focused upon the application of the “actual taxes paid doctrine” and whether a utility’s normalization of its state taxes violated this doctrine.<sup>68</sup> The case does not discuss and has no applicability to the general

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has identified in this proceeding have mechanisms that are dissimilar from the Pennsylvania mechanism. In the instant case, even if a review of the practices of other states in interpreting the Pennsylvania statute was appropriate, the mechanisms in the other states vary significantly from the Pennsylvania DSIC such that that they provide no relevant guidance in judging the reasonableness of the proposed ADIT adjustment.”), *adopted*, Docket Nos. P-2012-2338282, et al. (Order entered May 22, 2014); *Performance Metrics & Remedies (PMO III F0013) 2008 Guidelines Updates*, 2008 Pa. PUC LEXIS 1105, at \*19-20 (Order entered July 22, 2008) (“[W]hether the NY PSC has adopted a particular change for use in NY (or whether other states in the footprint have adopted a particular change) does not control Pennsylvania’s decision to adopt or reject a particular change for use in Pennsylvania. . . . We shall not, however, adopt changes or refrain from adopting changes for use in Pennsylvania based solely on what happens in NY or any other jurisdiction.”); *Petition for Declaratory Order Regarding Ownership of Alt. Energy Credits, Associated with Non-Utility Generating Facilities Under Contract to Pa. Elec. Co. and Metro. Edison Co.*, 2007 Pa. PUC LEXIS 7, at \*26-27 (Order entered Feb. 12, 2007) (stating that neither the ALJ nor the Commission grounded their decisions on the analysis of the decisions of foreign jurisdictions).

<sup>66</sup> Petitioner’s Brief at 48 (citing *Barasch v. Pa. PUC*, 491 A.2d 94, 107 (Pa. 1985)).

<sup>67</sup> *FirstEnergy Pa. Elec. Co. v. Pa. PUC*, 2026 Pa. LEXIS 34, \*30 (Pa. Jan. 8, 2026) (“As to whether a **rate** charged by a utility is just and reasonable, this Court, in *Duquesne Light Co. v. Pub. Serv. Comm’n*, 273 Pa. 287, 117 A. 63, 66 (Pa. 1922) (*Duquesne Light I*), held that under the Public Services Company Law, there is a presumption that an existing rate is just and reasonable.”)

<sup>68</sup> *Barasch*, 491 A.2d at 106.

prohibitions against retroactive and single-issue ratemaking, and/or the exceptions to this prohibition.

Further, the “windfall” exception does not apply. As demonstrated by record evidence, no windfall has occurred here.<sup>69</sup> The Petitioner cites an Oklahoma decision, *Turpen*, to support the argument that a “windfall” did result and should be remedied by a refund.<sup>70</sup> This case, however, is easily distinguishable. First, it is not a Pennsylvania case. Second, the Petitioner’s Brief notes that this case involved an exception to the rule against retroactive ratemaking “...[b]ecause the excessive gain was not attributable to any mistakes in past ratemaking or faulty rate case projections (that would require correction in a subsequent rate case).”<sup>71</sup> Petitioner’s entire case is that Aqua projected an expense that was reasonable at the time it filed the 2021 Rate Case, but may have turned out to be incorrect at a later date. Relatedly, *Turpen* notes that such an occurrence “would require correction in a subsequent rate case”; yet, Petitioner opposed Aqua’s attempt to consolidate his complaint with the rate case immediately following the 2021 Rate Case (i.e., the 2024 Rate Case),<sup>72</sup> and now

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<sup>69</sup> (R. 176a.) Aqua was not authorized to recover the full cost of service for New Garden Township. Moreover, Aqua did not recover revenues in excess of the authorized revenues for New Garden Township operations.

<sup>70</sup> Petitioner’s Brief at 49-50 (citing *Turpen v. Oklahoma Corp. Comm’n*, 769 P.2d 1309 (Okla. 1989)).

<sup>71</sup> Petitioner’s Brief at 49 (citing *Turpen*, 769 P.2d at 1332).

<sup>72</sup> (R. 454a.)

questions Aqua's decision for seeking consolidation.<sup>73</sup> *Turpen* is not only inapplicable, but even if it was applicable, it hurts, rather than helps, Petitioner's case.

The Petitioner's reliance on *MCI* is also misplaced. *MCI* is similarly not a Pennsylvania case. And, as explained by the Petitioner, it applies an exception to the general prohibition against retroactive ratemaking due to unforeseen windfalls or disasters not caused by the utility.<sup>74</sup> However, there was no windfall here because (1) Aqua was not authorized to recover the full cost of service for New Garden Township operations and (2) Aqua did not recover revenues in excess of the authorized revenue requirement for those operations.<sup>75</sup> Regarding the misconduct exception discussed in *MCI*, it also does not apply. As conceded by the Petitioner, that case involved a failure to disclose overearnings.<sup>76</sup> Here, there is no evidence of overearnings; rather, the only evidence regarding the revenues Aqua recovered related to its New Garden Township operations shows that it recovered less revenues than what it was authorized to recover.<sup>77</sup> Further, with regard to misconduct, the court in *MCI* does not find that misconduct took place, but that the subject commission's failure to hold a hearing on the issue of misconduct was arbitrary and

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<sup>73</sup> See Petitioner Brief at 8 (attempting to characterize and dispute Aqua's request to consolidate the applicable Complaint with its 2024 Rate Case).

<sup>74</sup> Petitioner's Brief at 50 (citing *MCI*, 840 P.2d at 772).

<sup>75</sup> (R. 173a.)

<sup>76</sup> Petitioner's Brief at 51.

<sup>77</sup> (R. 173a.)

capricious.<sup>78</sup> Petitioner was afforded this opportunity below, and he attempted to make this case; the ALJ and the PUC, however, simply found that he failed to carry his burden of proof.

For these reasons, the PUC did not err in determining that Petitioner failed to demonstrate an exception to the general prohibitions against retroactive and single-issue ratemaking applied.

### **3. The Petitioner's attempts to smear Aqua, its witnesses, and the Commission should be rejected**

Unable to dispute that the PUC's Opinion and Order contains no legal error or abuse of discretion regarding this primary issue, Petitioner engages in a series of baseless smears and unsupported claims about the truthfulness and veracity of Aqua and its witnesses.<sup>79</sup> The Petitioner is similarly ungenerous to the PUC, deflecting from the deficiencies and failures in his case by accusing the PUC of treating "Ferguson as if he had graduated first in his class from a top law school, the Commission (again adopting Aqua's arguments completely)."<sup>80</sup>

Not only are these insinuations scurrilous, they ask this Court to reassess the credibility of witnesses and evidence presented to the fact-finder below. This is not proper and outside the province of this Court's appellate review.<sup>81</sup> Moreover, as

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<sup>78</sup> *MCI*, 840 P. 2d at 775.

<sup>79</sup> *See, e.g.*, Petitioner's Brief at 36, 40.

<sup>80</sup> Petitioner's Brief at 53.

<sup>81</sup> *See, e.g., Popowsky v. Pa. PUC*, 706 A.2d at 1201 (on appeal, this Court cannot "indulge in the process of weighing evidence and resolving conflicting testimony.") (quotation omitted);

stated above, this Court need not and should not engage with these baseless claims because the primary legal issue governing this dispute was correctly decided by the PUC.

**B. AQUA PROVIDED THE COMMISSION WITH ALL NECESSARY AND REQUIRED INFORMATION TO ESTABLISH JUST AND REASONABLE RATES BASED UPON A PROJECTED TEST YEAR**

Petitioner’s further claims that Aqua did not supply the PUC with necessary information during the 2021 Rate Case should also be rejected.<sup>82</sup> These claims appear to be based upon Petitioner’s general qualms with the prospective nature of ratemaking, and the fact that utilities in Pennsylvania are authorized to propose rates based upon reasonable projections of expenses they anticipate incurring in a future period. Petitioner’s qualms do not demonstrate the PUC committed an error of law or abused its discretion, and provide no basis for disturbing the well-reasoned Opinion and Order.

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*Spencer v. City of Reading Charter Bd.*, 97 A.3d 834, 842 (Pa. Cmwlth. 2014) (“An appellate court may not reweigh the evidence or make credibility determinations.”) (citing *Leon v. Wintermyer, Inc. v. Workers Comp. Appeal Bd.*, 812 A.2d 478, 487-88 (Pa. 2002)); *Gupta v. Bureau of Workers Comp. Fee Review Hearing Office Erie*, 80 A.3d 569, 573 (Pa. Cmwlth. 2013) (“...[M]atters of credibility, the resolution of conflicts in the evidence, and questions of evidentiary weight are within the sole discretion of the factfinder....”); *Borough of Duncannon v. Pa. PUC*, 713 A.2d 737, 739 (Pa. Cmwlth. 1998) (“The Commission is the ultimate factfinder, and makes all decisions as to the weight and credibility of evidence.”).

<sup>82</sup> Petitioner’s Brief at 31-42.

**1. Aqua’s projected expenses for New Garden Township operations were properly based upon the information available to it during the course of its rate case**

Utilities are permitted by the Public Utility Code to use an FPFTY to establish rates.<sup>83</sup> An FPFTY is “the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates).”<sup>84</sup> Thus, an FPFTY is based upon projected expenses reflective of operations during the rates effective period. Projections must be reasonable and reasonably reflective of operations during this period.

Regarding this matter, Aqua requested to increase wastewater operating revenues for New Garden Township operations based upon a FPFTY ending March 31, 2023, as a part of the 2021 Rate Case. Consistent with the Public Utility Code, Aqua filed the 2021 Rate Case in August of 2021 and projected expenses for its New Garden Township operations during the FPFTY ending March 31, 2023, based upon the expenses it anticipated it would incur for those operations during the FPFTY at that time.

Specifically, at the time it filed the 2021 Rate Case, Aqua was incurring expenses to truck and treat wastewater from a treatment plant in New Garden Township to another location, because the system currently lacked a viable

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<sup>83</sup> 66 Pa.C.S. § 315.

<sup>84</sup> *Id.*

alternative to treat such wastewater. While Aqua was investigating alternatives, none had been determined to be viable, and none were in place.

Aqua witness Ms. Feeney, the Manager of Rates for Aqua, credibly testified below that the Company's historic test year, which is based on actual costs, usually ends about four months before it files a rate case.<sup>85</sup> Therefore, she explained, the Company's initial filing in the 2021 Rate Case contained the best information that the Company possessed regarding its anticipated New Garden Township wastewater operations at the time the filing was submitted, i.e., August 20, 2021, using appropriate ratemaking estimates.<sup>86</sup>

Indeed, with specific respect to the Expense Complaint, the Company's "Purchased Wastewater Expense" was based upon the actual expense that Aqua was incurring for hauling wastewater between two facilities in New Garden Township.<sup>87</sup> Relatedly, at the time that the 2021 Rate Case was prepared, the Company was searching for an alternative, but did not yet have one in place; therefore, the FPFTY utilized by Aqua reflected its reasonable belief that it would continue to incur this expense.<sup>88</sup>

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<sup>85</sup> (R. 186a.)

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

Ultimately, no party disputed this expense.<sup>89</sup> Relatedly, during the time the record was open in the 2021 Rate Case, Ms. Feeney explained that Aqua had not identified any major or significant updates to its projections, which would warrant updating its claims.<sup>90</sup> Thus, the 2021 Rate Case ultimately determined the authorized revenue requirement for Aqua’s New Garden Township wastewater operations based upon a developed record and Aqua’s reasonable projections of such operations.

**2. Petitioner’s attempts to re-write the record in the Aqua 2021 Rate Case and his complaint proceeding should be rejected by this court**

The Petitioner, with this appeal, is attempting to re-write the record in the 2021 Rate Case proceeding and Complaint proceedings to justify his claims. Notably, the Petitioner participated in the 2021 Rate Case, having testified at a public input hearing regarding the proposed rate increase and its applicability to New Garden Township customers.<sup>91</sup>

In that proceeding, the PUC ultimately authorized a lower revenue requirement for New Garden Township operations than what Aqua proposed in its

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<sup>89</sup> Notably, in proving that its proposed rates are just and reasonable, a public utility does not have the burden to affirmatively defend claims made in its filing that no other party has questioned. *Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (explaining that, while a utility bears the burden of proof with respect to its proposed rates, the utility “cannot be called upon to account for every action absent prior notice that such action is to be challenged.”).

<sup>90</sup> (R. 193-94a.)

<sup>91</sup> (R. 451a.)

August 20, 2021 filing.<sup>92</sup> Further, as the Commission correctly noted in its Opinion and Order, “Aqua provided in its testimony that the rates for New Garden wastewater customers were recovering less than the actual cost of service.”<sup>93</sup>

While the Complainant cites *Pa. PUC v. Philadelphia Electric Co.*, Dkt. No. C-850128, 59 Pa. PUC 256, 1985 Pa. PUC LEXIS 64 at ¶¶ 83 & 91 to argue that, in not updating the information about the trucking expense, the Company has, “fail[ed] to reveal all relevant evidence concerning the economic viability and status of its . . . investments in the course of the Commission’s investigation into the lawfulness, justness, and reasonableness of [the utility’s rates]’ in the utility’s last rate case”<sup>94</sup> this case is inapplicable to Petitioner’s claims on appeal. The identified case involved a failure of the utility to provide information sufficient to comply with standard filing requirements, with the violation extending from the date of filing of a tariff supplement.<sup>95</sup> There is no allegation in this case that Aqua violated the PUC’s regulations regarding standard filing requirements applicable to base rate cases; relatedly, Petitioner does not dispute that Aqua’s projections at the time it filed the 2021 Rate Case were reasonable and properly based upon the information available to it.

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<sup>92</sup> (R. 167a.)

<sup>93</sup> Opinion and Order at 24 (citing Tr. at 133 (R. 176a.)).

<sup>94</sup> Petitioner’s Brief at 34.

<sup>95</sup> *Pa. PUC v. Phila. Elec. Co.*, Docket. No. C-850128, 1985 Pa. PUC LEXIS 64 at \*25 (Opinion entered June 28, 1985.)

As the Supreme Court of Pennsylvania has held, “[a]ppellate review of a PUC order is limited to determining whether a constitutional violation, an error of law, or a violation of PUC procedure has occurred and whether necessary findings of fact are supported by substantial evidence.”<sup>96</sup> Further, the PUC, as the ultimate factfinder, is empowered to make all decisions about the “weight and credibility of evidence.”<sup>97</sup> It is not the role of an appellate court to reweigh the evidence.<sup>98</sup>

Here, the Commission considered testimony presented by the Petitioner that Aqua did not continue to incur an expense it estimated in its FPFTY.<sup>99</sup> However, the record was not limited to this claim that the Petitioner seeks to relitigate:

. . . Aqua testified that at the time of the filing of the *2021 Rate Case*, the Company used the data available to it. Aqua was aware of the cost and expected this expense to continue through the FPFTY. Aqua explained that, after the trucking expense ended, the Company incurred additional costs that were not included in the *2021 Rate Case* filing for additional power, labor, and outside contractor costs. Tr. at 151. Mr. Ferguson testified that Aqua spent \$600,000 to reinstate a pipeline to be able to discontinue the trucking expense and that New Garden left the wastewater storage completely full in anticipation of the sale. *Id.* at 21. Mr. Ferguson testified that Aqua “trucked 6,000 to 8,000 gallons [sic] loads 12 hours a day for 8 to 10 months and [that] it cost over \$800,000.” *Id.* at 31. Mr. Ferguson acknowledged that the pipeline was idle for fifteen years and may have required hydrostatic pressure testing to determine its viability. *Id.* at 40.

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<sup>96</sup> *Popowsky v. Pa. PUC*, 910 A.2d 38, 48 (Pa. 2006) (citing 2 Pa.C.S. § 704).

<sup>97</sup> *Duncannon*, 713 A.2d at 739.

<sup>98</sup> *Commonwealth v. Mitchell*, 588 Pa. 19, 51 (Pa 2006) (“It is not for this Court to reweigh the evidence and substitute its judgment for that of the fact-finder.” (citation omitted)).

<sup>99</sup> Opinion and Order at 24.

However, Mr. Ferguson did not acknowledge that there may have been a cost for the hydrostatic testing.

While Mr. Ferguson contends in his Exceptions that Aqua did not incur the \$1.2 million annual cost as long as it originally expected, he does not include, in his calculations, the costs required to upgrade the pipeline or acknowledge that the costs Aqua incurred may have exceeded the monthly rates estimated by New Garden, as costs may have increased, and New Garden left the wastewater storage completely full. Exc. at 19-20. Aqua testified that “there are expenses that the company actually incurred when the trucking costs went away. We had additional power costs, additional labor costs, additional outside contractor services costs. So there were other costs that were not included in the filing that we did incur.” Tr. at 151.<sup>100</sup>

The PUC properly considered the evidence before it and rejected the Petitioner’s arguments. This was a conclusion based on substantial evidence.

While the Petitioner attempts to reframe the evidence presented in the Complaint proceeding, he merely establishes a timeline of some events and speculates as to others.<sup>101</sup> Ultimately, Mr. Ferguson seeks another bite at the apple, by asking this Court to engage the hindsight analysis the PUC correctly declined to perform, based upon his speculation as to when Aqua had confirmed it could have implemented an alternative to trucking wastewater for New Garden Township operations. Notably, in his Brief the Petitioner admits, “the start date of the pipeline

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<sup>100</sup> (R. 67-68a.)

<sup>101</sup> Petitioner’s Brief at 36-38.

project is not known.”<sup>102</sup> Further, many of the statements Petitioner attempted to present as evidence were made after the record in the 2021 Rate Case closed.<sup>103</sup> Thus, the Petitioner’s case consists primarily of speculation and imprecise, out-of-court statements made after the record closed in the 2021 Rate Case. None of these purported “facts” offered in the Complaint proceeding are proper or sufficient to demonstrate the record in the 2021 Rate Case was somehow deficient.

Petitioner also asks the Court to make improper negative inferences about Aqua’s defenses based on things that did not happen in the Complaint proceeding below.<sup>104</sup> Specifically, he asks the Court to make negative inferences based on Aqua not moving for summary judgement, not presenting testimony of certain witnesses, and the witness not challenging certain testimony presented by the Petitioner.<sup>105</sup> This is improper, and the Petitioner’s attempt to support his appeal by making baseless assertions regarding the intent of strategic decisions made by Aqua should be rejected.

Petitioner further claims that in failing to move for summary judgement, Aqua “unnecessarily prolonged the case.”<sup>106</sup> Aqua’s decision to seek summary disposition of the Complaint, or not, has zero bearing on the validity of the PUC’s Opinion and

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<sup>102</sup> *Id* at 36-38.

<sup>103</sup> *Id* at 37.

<sup>104</sup> *Id* at 38.

<sup>105</sup> *Id* at 38-39.

<sup>106</sup> *Id* at 38.

Order. Moreover, the Petitioner’s Brief ignores the fact that Petition consented to, and participated in, mediation with Aqua,<sup>107</sup> and also disregards that Aqua sought to consolidate the Petitioner’s Complaint with Aqua’s then-pending, 2024 Rate Case.<sup>108</sup>

Petitioner’s related attempts to question which witnesses were called (or not) similarly provides no basis for appeal. Again, Aqua’s decisions regarding witnesses have no bearing on the validity of the PUC’s Opinion and Order. Moreover, not only is Petitioner asking this Court to assess credibility of witnesses, which is the role of the PUC as factfinder,<sup>109</sup> but his argument regarding witnesses he believes should have been called ignores the fact that Petitioner had available, but failed to utilize, discovery procedures available in proceedings before the PUC, and failed take the opportunity to conduct discovery or cross-examine the witness on the issues raised.<sup>110</sup> Finally, the Petitioner’s reference to Mr. Duerr’s public meeting “testimony” is inaccurate, as there is no indication that statements delivered at the public meeting were sworn.<sup>111</sup> Because these were merely out-of-court statements

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<sup>107</sup> Motion for Continuance and Mediation ¶¶ 13 and 21.

<sup>108</sup> Opinion and Order at 4. As noted above, while the *Turpen* case relied upon by the Petitioner is not applicable to this matter, it notes that resolution/correction of an asserted erroneous expense would require correction in a subsequent rate case. Aqua attempted to resolve Petitioner’s similar claim in the context of its 2024 Rate Case, but its request to do so was rejected.

<sup>109</sup> *Duncannon*, 713 A.2d at 739.

<sup>110</sup> 52 Pa. Code Ch. 5, Subch. D and E.

<sup>111</sup> Petitioner’s Brief at 39.

and not “testimony” in any meaningful sense, this evidence was properly objected to as hearsay.<sup>112</sup>

Petitioner also asks this Court to reassess the credibility of Ms. Feeney’s sworn testimony.<sup>113</sup> Again, this is not proper and his request should be rejected.

While the Petitioner asserts that he met his burden, his argument boils down to a disagreement with how the PUC analyzed the substantial record evidence presented to it. Indeed, the testimony presented by Aqua at the evidentiary hearing fully rebutted the Petitioner’s claims. His insistence now that this Court reweigh that evidence is improper.<sup>114</sup> The Court should reject his arguments and affirm the PUC’s decision.

**C. SUBSTANTIAL EVIDENCE OF RECORD SHOWS PETITIONER FAILED TO DEMONSTRATE AQUA’S EXISTING RATES WERE UNJUST AND UNREASONABLE**

**1. Substantial record evidence supports the Commission’s decision**

At the outset, Aqua submits that there is no need for the Court to determine whether substantial evidence of record exists to support the PUC’s Opinion and Order, because the PUC properly denied the Complaint based upon the application of well-understood and accepted legal principles. However, even if it were

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<sup>112</sup> (R 61a-62a.) The objection was overruled.

<sup>113</sup> Petitioner’s Brief at 40.

<sup>114</sup> *See Mitchell*, 588 Pa. at 51.

necessary to determine whether the PUC's decision was supported by substantial evidence, and it is not, there is substantial evidence in the record to support the PUC's decision.

As noted by the PUC in its Opinion and Order, the ALJ explained below general rate cases typically include projections of anticipated revenues and expenses for a FPFTY.<sup>115</sup> Aqua witness Ms. Feeney presented testimony regarding the Company's projections, noting that in the 2021 Rate Case the Company answered over 750 discovery questions thoroughly vetting those projections.<sup>116</sup> Ms. Feeney also explained that one of the risks of FPFTY, however, is that sometimes actual expenses may not line up perfectly with what was projected.<sup>117</sup> Indeed, Ms. Feeney testified that sometimes this operates to the detriment of the Company, and in fact did in the 2021 Rate Case, as overall the Company's wastewater expenses for 2023 were higher than what was projected.<sup>118</sup> This is considered regulatory lag.<sup>119</sup>

Further, Ms. Feeney testified that Aqua was not authorized to recover the full cost of service for New Garden Township.<sup>120</sup> Relatedly, Aqua did not recover

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<sup>115</sup> Opinion and Order at 14 (citing Initial Decision at 16-17 (R. 465a-66a.)). The use of the FPFTY is further discussed in Section V.B.1., *supra*.

<sup>116</sup> (R. 179a-180a.)

<sup>117</sup> (R. 180a.)

<sup>118</sup> (R. 180a-181a.)

<sup>119</sup> (R. 181a.)

<sup>120</sup> (R. 176a.)

revenues from New Garden Wastewater Operations in excess of the level of revenues it was authorized to recover.<sup>121</sup>

Critically, the Petitioner did not present evidence to rebut either of these claims. Such a showing would be necessary to show that rates are unjust or unreasonable pursuant to Sections 1301, 1309, or 1312.<sup>122</sup> Therefore, it is clear that substantial evidence of record exists that supports the Commission's decision to dismiss the Complaint.

**2. Petitioner's attempts to distract from the legal standard applicable to assessing whether a complainant has demonstrated an existing Commission-approved rate is unjust and unreasonable should be rejected**

The Complainant has the burden of proof to demonstrate rates are unjust and unreasonable.<sup>123</sup> As correctly noted by the ALJ and Commission, the Complainant has, "a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable."<sup>124</sup> This was recently affirmed by

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<sup>121</sup> (R. 173a.) As discussed by Ms. Feeney, "[t]he actual revenue collected in 2023 for just the New Garden division was 4.3 million, which is less than the 4.4 million that was authorized in this case.").

<sup>122</sup> 66 Pa.C.S. §§ 1301, 1309, and 1312; *National Fuel*, 464 A.2d at 567.

<sup>123</sup> 66 Pa.C.S. § 332(a).

<sup>124</sup> Opinion and Order at 25 (citing Initial Decision at 15-16 (R. 464a-65a.)). The Initial Decision find support for this in *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996). That case states, ". . . a complainant seeking to evade the effect of an existing tariff provision, such as Shenango, 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." *Shenango*, 686 A.2d at 914 (citation omitted).

the Supreme Court of Pennsylvania, which found, “[w]here someone is challenging an existing rate, the default under Section 332 applies, and the **challenger** bears the burden of establishing the existing rate is unjust and unreasonable.”<sup>125</sup> In this case, Petitioner was required to show that the rate Aqua collected was in excess of authorized amounts and in excess of cost to provide service. Petitioner made no such showing and, therefore, the Opinion and Order correctly denied the Complaint.

**D. THE COMMISSION PROPERLY AND CORRECTLY DENIED PETITIONER’S REQUEST TO REOPEN THE RECORD**

**1. The Commission is afforded discretion as to whether or not to reopen the record prior to issuance of a final decision**

The PUC did not abuse its discretion or act capriciously in denying Mr. Ferguson’s Petition to Reopen the Record. Reopening the record is discretionary.<sup>126</sup> Generally, “. . . a petition for a rehearing may be refused where it is not apparent that the evidence which the petition states would be offered was not available at the hearings in the proceeding.”<sup>127</sup> Here, the Petitioner did not allege that any facts had changed, but that it was in the public interest to reopen the record.<sup>128</sup> The PUC

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<sup>125</sup> *FirstEnergy Pa. Elec. Co. v. Pa. PUC*, 2026 Pa. LEXIS 34, \*51-52 (Pa. Jan 8, 2026). The Supreme Court reserved the decision of the Commonwealth Court and the PUC, where the PUC required the respondent utility to bear the burden of proving that its rates were just and reasonable, rather than requiring a complainant to bear the burden of proving that the utility’s rates were unjust and unreasonable, in a complaint proceeding.

<sup>126</sup> 52 Pa. Code § 5.571 indicates when the presiding officer or Commission “may” reopen the record.

<sup>127</sup> *Philadelphia v. Pa. PUC*, 185 Pa. Super. 598, 609 (Pa. Super 1958) (citation omitted).

<sup>128</sup> Opinion and Order at 15-16 (citing Petition to Reopen the Record at 2 (R. 540a)).

properly used its discretion to deny the Petitioner’s request, which did not articulate “material changes of fact or of law alleged to have occurred since the conclusion of the hearing” as specifically required by PUC regulation.<sup>129</sup>

**2. Petitioner was provided a full and fair opportunity to conduct discovery and cross-examine witnesses**

The Petitioner also suggests that the PUC abused its discretion in not allowing the Petitioner an opportunity to conduct further discovery – after the record was closed.<sup>130</sup> Such a claim is absurd on its face. The Complainant had time during the proceeding—which the Petitioner himself asserts was “unnecessarily prolonged”<sup>131</sup>— to conduct such discovery. He did not do so. The Complainant also had an opportunity to cross-examine Aqua’s witness at the hearing. He did not do so.

Finally, Aqua notes that the Petitioner’s attempts to rely upon his pro se status in the proceeding before the PUC provide no basis for his appeal. While the PUC affords leeway to pro se complainants, that does not excuse them from failing to avail themselves of the PUC’s rules and regulations allowing for discovery and cross examination. This Court has found that “. . . any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that

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<sup>129</sup> 52 Pa. Code § 5.571(b).

<sup>130</sup> Petitioner’s Brief at 53.

<sup>131</sup> Petitioner’s Brief at 38.

his lack of expertise and legal training will prove his undoing.”<sup>132</sup> Moreover, the Complainant could have hired counsel during the course of the complaint proceeding and did not. It was not until the Petition to Reopen the Record that the Petitioner was assisted by legal counsel.<sup>133</sup> The Petitioner’s eleventh-hour attempt to relitigate the entire proceeding after hiring legal counsel is not an abuse of discretion by the PUC, it is the outcome of decisions made by the Petitioner. The Petitioner’s arguments should be rejected, his appeal denied, and the well-reasoned Opinion and Order of the PUC affirmed.

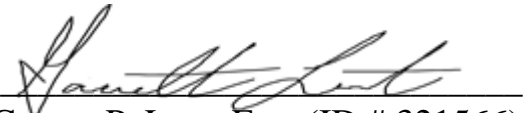
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<sup>132</sup> *Groch v. Commonwealth, Unemployment Compensation Bd. of Review*, 81 Pa. Commw. 26, 30 (1984) (“Claimant was afforded the required opportunity to be heard throughout this proceeding. Her failure to avail herself of that opportunity before the referee is no cause for any remedial action on her behalf . . .”).

<sup>133</sup> Petitioner’s Brief at 53.

**VI. CONCLUSION**

For the reasons set forth above, Aqua Pennsylvania Wastewater, Inc., respectfully requests that this Honorable court affirm the Pennsylvania Public Utility Commission's Opinion and Order should be affirmed.

  
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Date: January 29, 2026

*Aqua Pennsylvania Wastewater, Inc.*

## CERTIFICATE OF COMPLIANCE


Counsel for Intervenor Aqua Pennsylvania Wastewater, Inc. hereby certifies that, pursuant to Pa. R.A.P. No. 2135(d), the preceding Brief of Intervenor Aqua Pennsylvania Wastewater, Inc. is produced using 14-point font in the text and 12-point font in the footnotes and contains 7,322 words. This word count relies on the word count of the computer program used to prepare this brief. The word count is less than the total words permitted under Pa. R.A.P. No. 2135(a)(1).



Garrett P. Lent

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

  
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Garrett P. Lent