

**IN THE
COMMONWEALTH COURT OF PENNSYLVANIA**

<p>WILLIAM FERGUSON</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>PENNSYLVANIA PUBLIC UTILITY COMMISSION,</p> <p>Respondent.</p>

No. _____ CD 2025

Petition for Review of the
Order of the Pennsylvania
Public Utility Commission,
at Docket No. C-2023-
3043109

PETITION FOR REVIEW

TO THE HONORABLE PRESIDING JUDGE AND JUDGES OF THE
COMMONWEALTH COURT OF PENNSYLVANIA:

Pursuant to Pennsylvania Rule of Appellate Procedure 1501, *et seq.*, petitioner William Ferguson (“Petitioner” or “Ferguson”) hereby petitions for review of a final order of the Pennsylvania Public Utility Commission (“Commission”), adopted June 18, 2025, and entered the same day in the matter captioned *William Ferguson v. Aqua Pennsylvania Wastewater, Inc.*, consolidated Docket Nos. C-2023-3043108 and C-2023-3043109 (“Order”), specifically as the Order pertains to Docket No. C-2023-3043109, and in support asserts as follows:

1. This Court has jurisdiction over this matter by reason of Section 763(a) of the Judicial Code. 42 Pa.C.S. § 763(a)(1).

2. The name and address of the party seeking review are:

William Ferguson
313 Hyde Park Road
Landenberg, PA 19350

3. The name and address of the government unit that entered the order that is the subject of the Petition for Review are:

Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

4. A copy of the final order for which review is sought is attached to this petition for review as Exhibit A pursuant to Pa.R.A.P. Rule 151.

5. **Nature of case.** As noted, this petition concerns only one of two consolidated Public Utility Code Section 701, 66 Pa.C.S. § 701, formal complaints, both filed on September 19, 2023, by William Ferguson (“Ferguson”), acting *pro se*, who is a customer of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) in its New Garden Township (Chester County) division. Ferguson’s two formal complaints concerned Aqua’s 2021 base rate case (at Docket Nos. R-2021-3027385 and R-2021-3027386) filed on August 20, 2021, for increases in water and wastewater rates based on a Fully Projected Future Test Year (“FPFTY”) ending March 31, 2023. The

Commission's Opinion and Order entered on May 16, 2022,¹ authorized Aqua to collect \$4.4 million of revenue from Aqua's New Garden wastewater operations.

6. **Complaint.** Aqua's initial rate case filing² included Aqua Exhibit 1-G, Schedules C-1, page 1 and C-7.1 at PDF pages 662 and 682, respectively, which claimed a \$1.2 million "Purchased Wastewater Expense" each year through the end of the Fully Projected Future Test Year on March 31, 2023. With considerable specificity, Ferguson's Trucking Expense Complaint (later supported by Ferguson's hearing Exhibits A through E) alleged that the \$1.2 million annual expense claim ceased to be incurred at or about the time of Aqua's initial rate case filing and that Aqua deliberately did not eliminate the expense from its FPFTY as it was required to do before the record in the case closed on January 24, 2022. The expense ceased when Aqua completed the refurbishment of a pipeline and began pumping instead of trucking treated wastewater to another location for disposal.

7. **Ferguson as a pro se complainant and the relief he sought.**

Ferguson holds undergraduate and graduate degrees in Chemical Engineering. He retired after 37 years of experience as a chemical plant

¹ Available at <https://www.puc.pa.gov/pcdocs/1744354.pdf>.

² Available at <https://www.puc.pa.gov/pcdocs/1716839.pdf>.

engineer and a business analyst with DuPont. He has extensive knowledge of business, accounting, and chemical operations, including pumping projects relevant to this case. Importantly, he does not possess a law degree, nor has he ever received any legal training, although he was opposed by two partners of the preeminent public utility law firm that represents most, if not all, of Pennsylvania's publicly-traded electric and natural gas distribution companies, in addition to Aqua and its water, wastewater, and natural gas subsidiaries. As a nonlawyer, Ferguson did not, nor was he required to, state in his complaint the exact Public Utility Code provision under which he complained or the exact authority for the remedy he sought. He generally requested that the Commission investigate and validate his findings about Aqua's failure to eliminate its trucking expense after it ceased during the rate case and that the Commission grant appropriate relief to Aqua's New Garden Township customers if overcharges were found to have occurred. He specifically requested refunds under 66 Pa.C.S. § 1312(a)³ and prospective relief under 66 Pa.C.S. § 1309(a).

³ "As relief, the Complainant requested that: (1) the Commission investigate Aqua's 'Purchased Wastewater' expense; (2) if the excess expense is verified, the expense be removed from the revenue Aqua is allowed to collect from New Garden ratepayers; and (3) all trucking funds collected 'so far' should be refunded to customers." Order at 4 (citing Ferguson's Complaint at 9).

8. **The ALJ's summary dismissal of the complaints.** After repeated filings by Aqua (including a motion to consolidate Ferguson's complaints with Aqua's 2024 base rate case filed on May 23, 2024, which had nothing to do with Aqua's alleged misconduct in its 2021 rate case) that delayed resolution of the case for over a year and a half, a telephonic evidentiary hearing was finally held on November 25, 2024, before Administrative Law Judge Eranda Vero ("ALJ"). The Commission issued her Initial Decision ("ID") on March 31, 2025, which did not address the merits of Ferguson's allegations. Instead, ALJ Vero found that Ferguson failed to prove that Aqua had violated a statute, regulation, Commission order, or tariff, and that his claims could not be granted because they were barred by three judicially-created principles (emphasis added):

- (1) "the Complainant has failed to carry his burden of proving by a preponderance of the evidence that the Respondent, th[r]ough its actions or omissions, has violated a Commission statute, regulation, order, or Aqua's wastewater tariff" **because tariff provisions previously approved by the Commission are *prima facie* reasonable** and Ferguson failed to prove "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." (ID 15-16);
- (2) **"What Mr. Ferguson is seeking from the Commission is tantamount to retroactive ratemaking** on two single issues—the trucking expense and the rate design—which were fully

considered in Aqua’s 2021 Rate Case” and must “be dismissed in their entirety because their claims are barred by the law and no relief can be granted.” ID 17;

- (3) **“Single-issue” ratemaking is prohibited** (“an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery”). ID 17.

9. On April 21, 2025, Ferguson (*with, for the first time, the assistance of competent legal counsel*) filed Exceptions to the ID’s conclusions, to which Aqua filed Reply Exceptions on May 1, 2025. Based on the prospective relief provided in Code Section 1309(a) and refunds provided in Code Section 1312(a), Ferguson, on May 9, 2025, moved to strike those portions of Aqua’s Reply Exceptions that objected to refunds and that agreed with the ID’s dismissal of his complaints as a matter of law.

10. On May 9, 2025, Ferguson also filed a Petition to Reopen the Record pursuant to 52 Pa. Code § 5.571(a), which allows a party to petition to reopen a proceeding to take additional evidence any time after the record is closed but before a final decision is issued.

11. The Commission’s Order entered on June 18, 2025, (1) denied Ferguson’s Exceptions; (2) adopted the ALJ’s ID; (3) dismissed both of Ferguson’s Complaints; (4) denied his Petition to Reopen the Record; and (5) denied his Motion to Strike. Petitioner seeks review and reversal of the Commission’s Order for the following reasons:

a. The Commission committed an error of law and abused its discretion by imposing the burden of proof on Petitioner under 66 Pa.C.S. § 332(a) (“Except as may be otherwise provided in section 315 ... the proponent of a rule or order has the burden of proof.”) rather than imposing that burden on Aqua under 66 Pa.C.S. § 315(b) (“In any case involving any alleged violation by a public utility ... of any lawful determination or order of the commission, the burden of proof shall be upon the public utility ... to show that the determination or order of the commission has been complied with.”).

b. Assuming *arguendo* that Petitioner was required to bear the burden of proof under 66 Pa.C.S. § 332(a), he carried that burden by establishing a *prima facie* case that the Trucking Expense ended shortly after Aqua’s initial filing and, in any event, no later than the end of 2021. Yet, perhaps because no active rate case party challenged it, Aqua did not rescind that claim during the rate case before the record closed on January 24, 2022, even though it moved for the admission of an unrelated late-filed exhibit as late as January 20, 2022. Petitioner established the transition from trucking to pipeline pumping by his testimony at the hearing held on November 25, 2024; the undisputed timeline of the case; Aqua’s exhibits; the testimony of Aqua’s only witness, its Manager of Rates, Erin Feeney; the video and transcript of a presentation made by Aqua’s Director of Operations, Todd Duerr, at a public

meeting of the Supervisors of New Garden Township on November 21, 2022; a letter sent by Aqua's President, Marc A. Lucca, on December 9, 2022, to Aqua's New Garden Township customers as a follow-up to the Township Supervisors' public meeting; and by Aqua's 2021 Annual Report to the Commission regarding Construction Work in Progress – Account No. 105.0 for the year ended December 31, 2021.

c. The Commission committed an error of law and abused its discretion by finding that Petitioner failed to carry his burden of proof because his claims were barred by the closely related rules against retroactive ratemaking and single-issue ratemaking and the presumption that Commission-approved rates are *prima facie* reasonable. The Commission erred by failing to recognize the symmetry between those rules, that presumption, and claims like Petitioner's that are brought pursuant to 66 Pa.C.S. § 1309(a) (with its "thereafter" language)—all of which require that all ratemaking be *prospective* in effect, whether the proposed rate change is initiated under 66 Pa.C.S. § 1308 *by the utility* or under Section 1309(a) *by the Commission or a complainant, unless a judicially-recognized exception applies, which is the case here.*

(1) The Commission and Pennsylvania's courts have often adopted an exception to these rules that significantly benefits the utility's

investors by permitting retroactive recovery of unanticipated expenses that are extraordinary and nonrecurring, *e.g.*, substantial expenses caused by severe weather. *See Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994) (collecting cases) (holding that any unanticipated, non-recurring, substantial expense that would be normalized out if occurring in a test year is “extraordinary;” it cannot be merely unanticipated but must be “a substantial, one-time expense or a substantial item that will not appear as a continuing expense and could otherwise never be recovered in rates because, like the weather-related expenses, it would be normalized out of the test year as abnormal”). The Commission wrongly denied Ferguson’s claim that this exception applied.

(2) A second exception applies to this case but was not applied by the Commission. It benefits a utility customer rather than the utility, which is proper because the rule against retroactive ratemaking also protects utility customers by ensuring that they are not required to pay for past deficits of the company in their future payments, and by preventing utilities from employing future rates as a means of ensuring the investments of its stockholders. Ferguson argued in his Exceptions that his complaints “[f]irst and foremost, ... involve the integrity of the ratemaking process and the vital need for the Commission to ensure that it can trust the truthfulness and completeness of

public utility filings, which are made subject to the penalties for perjury and unsworn falsification to authorities under Pennsylvania's Crimes Code. The Commission's jurisdiction is so broad and its duties so numerous that it must rely on the trustworthiness of every public utility communication with it and all affected parties. To ignore misbehavior would only encourage more misbehavior. Violations should be punished, and harmed customers should be made whole." (Citation omitted.) The gravamen of his complaints was that Aqua's deliberate failure to update its rate case expense claim constituted serious misconduct that prevented the Commission from setting just and reasonable rates, especially those imposed explicitly on Aqua's New Garden Township customers (as opposed to broadly on all of Aqua's wastewater customers). State and federal courts have ruled that, because the rule against retroactive ratemaking is governed by equity, courts will not apply it when utilities have engaged in misconduct. *See, e.g., MCI Telecommunications Corp. v. Pub. Serv. Comm'n of Utah*, 840 P.2d 765, 775 (Utah 1992); *Salt Lake Citizens Congress v. Mountain States Telephone and Telegraph Co.*, 846 P.2d 1245, 1254-55 (Utah 1992); *California ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1015-16 (9th Cir. 2004).

d. Because both of these exceptions to the general rule prohibiting retroactive ratemaking apply to this case, the Commission erred as a matter of

law by finding that refunds under 66 Pa.C.S. § 1312(a) could not be granted to those who solely bore the Commission's approval of Aqua's nonexistent expense—Aqua's New Garden Township wastewater customers.

e. The Commission committed an error of law and abused its discretion by finding that Ferguson failed to prove that Aqua violated a statute, regulation, Commission order, or tariff. Aqua was required to rescind the Trucking Expense claim when the refurbished pipeline began transporting treated wastewater in place of trucking it. Ferguson "alleged [a] violation by a public utility ... of any lawful determination or order of the commission" (66 Pa.C.S. § 315(b)) which prevented the Commission from setting just and reasonable rates in Aqua's 2021 rate case. Rate case filings are made subject to the penalties for perjury and unsworn falsification to authorities under Pennsylvania's Crimes Code. 18 Pa.C.S. §§ 4902 (relating to perjury) & 4904 (relating to unsworn falsification to authorities), which requires or at least implies that a document or the substance of it be timely rescinded or updated if the information in the document subsequently becomes untrue. *See also* 52 Pa. Code § 1.36(e) ("An individual who executes a pleading, submittal or other document knowing that it contains a false statement and who causes it to be filed in the Commission shall be subject to prosecution for the [c]ommission of a misdemeanor of the second degree in violation of 18

Pa.C.S. § 4904(a).”) Secondly, the Commission’s ratemaking regulations require the submission and maintenance of complete and accurate data. 52 Pa. Code §§ 53.51 – 53.53. Lastly, utility witnesses are subject to the requirements of 52 Pa. Code § 5.411, which provides in part: “Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.”

f. The Commission erred as a matter of law and committed an abuse of discretion by strictly applying the formal rules of evidence, which is not required by the Public Utility Code or in state administrative law generally, especially to the detriment of a *pro se* complainant with no legal education or training, including:

(1) By excluding Ferguson’s proofs permitted by 66 Pa.C.S. § 332(b) (relating to procedures in general; submission of evidence) which allows the introduction of any oral or documentary evidence except irrelevant, immaterial, or unduly repetitious evidence, and which provides that the whole record upon which the Commission’s decision rests include any portions of the record “cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence” in the case.

(2) By strictly or wrongly applying the Commission’s regulation at 52 Pa. Code § 5.431 (see Order at 20) to disregard any extra-

record materials submitted or new arguments it perceived as having been made by Ferguson. At the least, given Ferguson's nonlawyer, *per se* status, the Commission abused its discretion by not taking official or judicial notice of any such materials or stated facts under 66 Pa.C.S. § 332(e) and 52 Pa. Code § 5.408, especially documents cited by Ferguson that were public documents filed by Aqua in its 2021 rate case and publicly available on its website.

g. The Commission's decision is not supported by substantial evidence. The Commission wrongly relied on Aqua's testimony about its reasons for including the trucking expense claim in its initial rate case filing and post-rate case financial results in its New Garden Township division (all of which was irrelevant), while never explaining its lack of action during the rate case, i.e., why it did not update its expense claim, even when it made other updates right up to the ALJ's closing of the record.

(1) The Commission also erred by accepting Aqua's claim that its \$1.2 million annual trucking expense would continue through the end of the FPPTY two years hence, while admitting that, at the time of the rate case filing, it was actively looking for an alternative to trucking the wastewater and plainly found one which it implemented. Aqua's Manager of Rates, Ms. Feeney, testified about the large construction costs of the pipeline

project. In that senior management position, she had the responsibility to be aware of the important milestones in the project, including the start date of the transition to pipeline pumping.

(2) Also, the Commission erred by accepting Aqua's contradictory excuse that the \$1.2 million annual trucking expense was not updated because the company was incurring large construction costs on the pipeline refurbishment during the case that offset that expense. This argument not only contradicts Ms. Feeney's testimony that she did not know when the pipeline went operational because the company's Operations staff did not communicate with her on the subject, but, as a matter of universally accepted ratemaking principles, such a claimed offset of an expense by an unclaimed/future rate case claim is highly improper. Aqua made no claims for the pipeline project in its 2021 rate case.

h. The Commission further abused its discretion by denying Ferguson's petition to reopen the record for the limited purpose of allowing discovery and testimony to establish the date of transition from trucking to piping the treated wastewater (Order pages 15-17). It found that Ferguson had not shown good cause for reopening and that the public interest did not require it, because he was not seeking anything new that he could not have obtained in discovery in advance of the evidentiary hearing. Further, he could have

elicited the date in his cross-examination of Ms. Feeney, he had mentioned the issue during his testimony, he had participated in re-cross examination of Ms. Feeney, he was provided a full and fair opportunity to pursue his claims, and he had failed to prove that Aqua had violated a state, regulation, Commission Order or tariff.

(1) Again, this reasoning ignores Ferguson's *pro se*, nonlawyer status and it rings especially hollow when Aqua could so easily have doomed Ferguson's Trucking Expense complaint by providing the transition date in New Matter in its Answer to Ferguson's complaint or by filing preliminary objections for failure to state a claim. It did neither.

(2) More to the point, the Commission, in furtherance of its duty to do justice and to balance the interests of utilities and customers, abused its discretion by its *complete* rejection of Ferguson's very serious claim of rate case misconduct, even to the point of denying Ferguson's pleas that the Commission open an investigation or refer the matter to its Bureau of Investigation and Enforcement for action it deemed appropriate. The integrity of the Commission's ratemaking process was at stake, as was the message sent to would-be *pro se* complainants—they needn't bother.

WHEREFORE, Petitioner respectfully requests that this Court review the June 18, 2025 Order of the Pennsylvania Public Utility Commission,

reverse the Commission's determination in the respects specified above as the Order pertains to Docket No. C-2023-3043109, remand the proceeding to the Commission for further limited discovery and testimony and for other action consistent with the Court's order, and grant such other relief as the Court deems just and reasonable.

Respectfully submitted,

A handwritten signature in cursive script that reads "James H. Cawley". The signature is written in black ink and is positioned above a horizontal line.

James H. Cawley
1020 Kent Drive
Mechanicsburg, PA 17050
PA Attorney I.D. No. 6896
E-Mail: JHCesquire@gmail.com
Phone: (717) 439-8776

Date: July 17, 2025

**IN THE
COMMONWEALTH COURT OF PENNSYLVANIA**

WILLIAM FERGUSON

Petitioner,

v.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

Respondent.

No. _____ CD 2025

Petition for Review of the Order of
the Pennsylvania Public Utility
Commission, at Docket No.
C-2023-3043109

CERTIFICATION OF COMPLIANCE PURSUANT TO Pa.R.A.P. 127

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 nonconfidential information and documents.



James H. Cawley
1020 Kent Drive
Mechanicsburg, PA 17050
PA Attorney I.D. No. 6896
E-Mail: JHCesquire@gmail.com
Phone: (717) 439-8776

Date: July 17, 2025

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons named and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

VIA E-MAIL:

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor North
400 North Street
Harrisburg, PA 17120
E-mail:
<http://www.puc.state.pa.us/efiling/default.aspx>

David E. Screven, Esquire
Chief Counsel
Pennsylvania Public Utility
Commission
Commonwealth Keystone Building
3rd Floor West
400 North Street
Harrisburg, PA 17120
E-mail: dscreven@pa.gov

Michael W. Hassell, Esquire
Garrett P. Lent, Esquire
17 North Second Street, 12th Floor
Harrisburg, PA 17101
E-mail: mhassell@postschell.com
E-mail: glent@postschell.com



James H. Cawley

Date: July 17, 2025

Exhibit A

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

Public Meeting held June 18, 2025

Commissioners Present:

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

William Ferguson

C-2023-3043108

C-2023-3043109

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Exceptions filed by William Ferguson (Mr. Ferguson or the Complainant) on April 21, 2025, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Eranda Vero, which was served on the Parties on March 31, 2025, in the above-captioned proceeding; (2) the Petition to Reopen the Record (Petition), filed by the Complainant on May 9, 2025; and (3) the Motion to Strike Certain Portions of the Reply Exceptions (Motion), filed by the Complainant on May 9, 2025. Replies to Exceptions were filed by Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company) on May 1, 2025. Aqua filed an Answer to the

Petition to Reopen the Record (Answer to Petition) on May 19, 2025. Aqua filed an Answer to the Motion to Strike (Answer to Motion) on May 29, 2025. In the Initial Decision, the ALJ dismissed two Formal Complaints (Complaints) filed by Mr. Ferguson on September 19, 2023. For the reasons discussed below, we shall: (1) deny the Complainant's Exceptions; (2) adopt the Initial Decision of ALJ Vero; (3) dismiss the Complaints; (4) deny the Petition; and (5) deny the Motion, consistent with this Opinion and Order.

I. Background

This case involves two Complaints concerning rates approved by the Commission in its Opinion and Order entered May 16, 2022 (*2021 Rate Case Order*) for the New Garden Township (New Garden) wastewater customers in Aqua's 2021 base rate case at Docket Nos. R-2021-3027385 and R-2021-3027386 (*2021 Rate Case*).

In the first Complaint, Mr. Ferguson alleged that there are irregularities in how Aqua set its tariff in the *2021 Rate Case*, with respect to the rates it charges to wastewater customers in New Garden. This Complaint was docketed at C-2023-3043108 (Revenue Complaint). In the second Complaint, the Complainant averred that Aqua was collecting revenue for a cost characterized as "Purchased Wastewater Expense" that it was no longer incurring from the hauling of wastewater. This Complaint was docketed at C-2023-3043109 (Expense Complaint). The Complaints were consolidated by Order dated November 21, 2023.

II. History of the Proceeding¹

On September 19, 2023, the Complainant filed a Formal Complaint with the Commission against Aqua alleging that there were irregularities in Aqua's calculations used to establish the rates in its wastewater tariff for New Garden customers in the *2021 Rate Case*. As relief, the Complainant requested that the Commission require Aqua to: (1) provide actual usage data for its compliance calculations; (2) revise its tariff with respect to its rates for New Garden customers based on the actual data; (3) recalculate all bills since the rate increase granted by the Commission in the *2021 Rate Case* went into effect; and (4) refund all overcharges paid thus far. Revenue Complaint at 7.

On October 10, 2023, Aqua filed an Answer and New Matter in response to the Revenue Complaint. In its Answer, Aqua denied the material allegations of the Revenue Complaint. In its New Matter, Aqua averred that the Complainant participated in the public hearings for Aqua during the *2021 Rate Case* by offering sworn testimony on November 12, 2021. Aqua contended that the Company addressed Mr. Ferguson's testimony in its own testimony and its briefs in that proceeding. Additionally, Aqua averred that the Complainant provided testimony regarding the proposed rate increase and its applicability to New Garden customers. Aqua stressed that the Complainant did not provide testimony challenging the *pro forma* usage data for New Garden customers. I.D. at 2 (citing New Matter at ¶ 8). In its New Matter, Aqua also requested that the Revenue Complaint be denied in its entirety because the issues raised by the Complaint are barred by the application of 66 Pa.C.S. § 316, as well as by the legal doctrine of *collateral estoppel* or issue preclusion. I.D. at 3.

¹ The History of the Proceeding is summarized here. A more extensive History of the Proceeding can be found in the Initial Decision at 1-7.

On September 19, 2023, the Complainant filed the Expense Complaint, alleging that although Aqua had estimated the Purchased Water Expense (for hauling of wastewater from one facility to another for treatment) to continue through the fully projected future test year (FPFTY), the expense ended by the end of 2021.² Expense Complaint at 8. As relief, the Complainant requested that: (1) the Commission investigate Aqua’s “Purchased Wastewater” expense; (2) if the excess expense is verified, the expense be removed from the revenue Aqua is allowed to collect from New Garden ratepayers; and (3) all trucking funds collected “so far” should be refunded to customers. I.D. at 3, Complaint at 9.

On October 10, 2023, Aqua filed an Answer and New Matter in response to the Expense Complaint (Expense Answer). In its Answer, Aqua admitted, in part, and denied, in part, the material allegations. Aqua denied that it was collecting revenue that it is not incurring. Aqua provided that individual cost components of a base rate proceeding may change, but that this is not a basis to change rates or order refunds after a base rate proceeding. Expense Answer at 2. In its New Matter, Aqua noted that Mr. Ferguson participated in the public input hearing held in the *2021 Rate Case* and provided testimony under oath regarding the proposed rate increase and its applicability to New Garden customers. Expense Answer at 7-8. Aqua provided that no party challenged the *pro forma* wastewater treatment and disposal costs of the New Garden rate division as part of the *2021 Rate Case*. Expense Answer at 8.

On July 10, 2024, Aqua filed a Motion seeking to consolidate Mr. Ferguson’s Complaints with the pending base rate proceeding of *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, at Docket Nos. R-2024-3047822 and R-2024-3047824 (*2024 Rate Case*), pursuant to 52 Pa. Code § 5.81,

² In the *2021 Rate Case*, Aqua utilized a FPFTY ending March 31, 2023. *2021 Rate Case Order* at 1.

for purposes of adjudication because they raise common issues of fact and law (Motion to Consolidate). I.D. at 5.

On July 24, 2024, Mr. Ferguson filed an Answer in opposition to Aqua's Motion to Consolidate. I.D. at 5.

On August 8, 2024, Mr. Ferguson testified at a Public Input Hearing for Aqua's *2024 Rate Case*. Mr. Ferguson's testimony did not relate directly to the claims raised in the Complaints.³ I.D. at 6.

On October 22, 2024, ALJ Vero issued an Order denying Aqua's Motion to Consolidate Mr. Ferguson's Complaints with Aqua's *2024 Rate Case* and set the cases for a hearing. I.D. at 6.

The hearing convened as scheduled on November 25, 2024. Mr. Ferguson appeared *pro se* and testified in support of his Complaints. Mr. Ferguson sponsored fourteen exhibits (Complainant's Exhibits A through N), which were admitted into the record. Garrett P. Lent, Esq. represented Aqua and presented the testimony of Aqua employee, Ms. Erin Feeney, Manager of Rates. Aqua sponsored seven exhibits (Aqua Exhibits A through E, 1-G, and 5-B), which were admitted into the record. I.D. at 6-7.

The record closed on December 30, 2024.

On March 31, 2025, the Commission issued the Initial Decision of ALJ Vero, wherein she recommended that the Commission dismiss the Complaints of Mr. Ferguson against Aqua, finding that the Complainant failed to prove that

³ See *2024 Rate Case*, Tr. at 542-52.

Aqua violated a statute, regulation, Commission Order, or tariff and because the claims he raised are barred by law and no relief can be granted. I.D. at 1.

As noted above, on April 21, 2025, the Complainant filed Exceptions to the Initial Decision. On May 1, 2025, Aqua filed Replies to Exceptions.

On May 9, 2025, the Complainant filed the Petition. Aqua filed an Answer to the Petition on May 19, 2025.

Also on May 9, 2025, the Complainant filed the Motion, seeking to have certain portions of Aqua's Reply Exceptions stricken. Aqua filed an Answer to the Motion on May 29, 2025.

III. Discussion

A. Legal Standards

1. Burden of Proof

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional

evidence favorable to the complainant's claim. *See Milkie*, 768 A.2d at 1220; *see also Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on the complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁴ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*)).

⁴ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

2. Petitions to Reopen the Record

Commission Regulations allow a party to petition to reopen a proceeding any time after the record is closed, but before a final decision is issued, for the purpose of taking additional evidence. 52 Pa. Code § 5.571(a); *see e.g., Application of Kris Eckerl t/b/a Michael's Moving and Storage*, Docket No. A-2014-2429336 (Order entered November 19, 2015). The burden is on the petitioner to show grounds for reopening the proceeding, including changes of fact or law that have occurred since the conclusion of the hearing. 52 Pa. Code § 5.571(b). The Commission may reopen the record after the presiding officer has issued a decision if there is reason to believe: (1) that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding; and (2) that the party seeking to reopen the proceeding has demonstrated “good cause” for the admittance of this evidence. 52 Pa. Code §§ 5.571(d), 5.431(b).

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Vero made twenty-one Findings of Fact (FOF) and reached ten Conclusions of Law (COL). *See* I.D. at 7-10, 18-19. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

1. Revenue Complaint – Docket No. C-2023-3043108

The ALJ noted Mr. Ferguson’s testimony that the outcome of the *2021 Rate Case* allowed Aqua to collect \$4,428,399 per year from New Garden customers. Aqua calculated tariffs that would deliver this result. The ALJ provided that Mr. Ferguson’s Revenue Complaint focused on two issues regarding the consumption data Aqua used to calculate these tariffs. I.D. at 12 (citing Tr. at 40). The ALJ also noted Mr. Ferguson’s testimony that the consumption data in question does not reflect the actual use by customers. Additionally, Mr. Ferguson testified that Aqua’s total volume forecast was less than actual consumption at the time of filing, which would have the effect of increasing rates, and therefore revenue, above the allowed number. *Id.* According to Mr. Ferguson, it is not possible to arrive at fair and reasonable tariffed rates using invalid data. I.D. at 12 (citing Tr. at 65).

2. Expense Complaint – Docket No. C-2023-3043109

The ALJ stated that Mr. Ferguson provided testimony that towards the end of its operations, New Garden Township Sewer Authority was required to truck wastewater from its South End facility to its East End facility at a cost of \$1.2 million per year. New Garden’s wastewater operation was sold to Aqua in December 2020.⁵ Aqua continued to haul wastewater for eight to ten months after the purchase. Aqua activated an existing pipeline between the facilities at a cost of \$600,000. When the pipeline was activated, the transport of wastewater by truck was discontinued. I.D. at 11 (citing Tr. at 31). Mr. Ferguson testified that Aqua included a \$1.2 million per year cost for “Purchased Wastewater” in its *2021 Rate Case*. The Complainant highlighted that the

⁵ See *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code For approval of its Acquisition of the Wastewater System Assets of New Garden Township*, Docket No. A-2016-2580061 (Final Order entered December 3, 2020) (*Acquisition Proceeding*).

cost ended two months after the *2021 Rate Case* was filed. Mr. Ferguson claimed that Aqua had the opportunity to correct its filing before the rate increase became effective on May 19, 2022, but failed to do so. Therefore, Mr. Ferguson claimed that Aqua was able to improperly increase its revenue and profitability. I.D. at 11-12 (citing Tr. at 11, 34, 42).

3. Aqua's Testimony

The ALJ noted that Aqua presented the testimony of Ms. Erin Feeney, Manager of Rates for Aqua. Ms. Feeney testified that in a typical rate case, the Company's historic test year usually ends about four months before the initial filing. Ms. Feeney also asserted that the Company's initial filing for the *2021 Rate Case* contained the best information the Company had at the time, using rate-making estimates. I.D. at 13 (citing Tr. at 143).

The ALJ acknowledged Ms. Feeney's testimony regarding Mr. Ferguson's Revenue Complaint. Ms. Feeney explained that the Company used the best information available at the time of the filing – *i.e.*, the actual data provided by New Garden in the prior *Acquisition Proceeding*. I.D. at 14 (citing Tr. at 145-46). Ms. Feeney further explained that at the heart of Mr. Ferguson's Revenue Complaint is a rate design problem, and that if Aqua were to reset the rate bands using more recent data but keep the 106 million gallons in order to collect and design rates equal to the \$4.4 million of authorized revenue, the current rate for the first two bands, where most of the residential customers are located, would be higher and not lower. I.D. at 14 (citing Tr. at 153). Additionally, Ms. Feeney testified that the rate design ordered by the Commission in the *2021 Rate Case Order* was proposed by the Commission's Bureau of Investigation and Enforcement (I&E), and not Aqua. I.D. at 14 (citing Tr. at 124-25).

Regarding Mr. Ferguson's Expense Complaint for hauling wastewater, the ALJ noted Ms. Feeney's explanation that at the time of the filing of the *2021 Rate Case* on August 20, 2021, the Company was aware that there was a large expense it was incurring for hauling wastewater between two facilities in the New Garden division. According to Ms. Feeney, the Company was actively searching for a solution to eliminate the trucking expense, but no solution had been found at the time of the filing. Therefore, Ms. Feeney explained, the Company's filing reflected its belief that it would continue to incur this expense until the end of the FPFTY. I.D. at 13-14 (citing Tr. at 143).

The ALJ provided that Ms. Feeney emphasized that the *2021 Rate Case* was fully litigated. Ms. Feeney stated that no active parties challenged the *pro forma* usage data or wastewater treatment and disposal costs with respect to the New Garden rate division. Ms. Feeney testified that the Company addressed Mr. Ferguson's public input testimony in the briefs filed by Aqua. I.D. at 14-15 (citing Tr. at 122-23). In addition, Ms. Feeney noted that the Recommended Decision in the *2021 Rate Case* addressed the issues raised by Mr. Ferguson in his sworn public input hearing testimony. I.D. at 15 (citing Tr. at 123; Aqua Exh. A).

The ALJ also noted Ms. Feeney testimony that on May 23, 2022, Aqua submitted its Compliance Tariff, which was filed in accordance with both the Commission's *2021 Rate Case Order* and the Commission's regulations. The usage data used in the Compliance Tariff filing was the same as the usage data presented in the initial rate case filing. I.D. at 15 (citing Aqua Exh. 5-B). Ms. Feeney stressed that Aqua's Compliance Tariff filing was subject to a review process before it was permitted by the Commission to become effective by operation of law. I.D. at 15 (citing Tr. at 139-41; Aqua Exhs. C, D).

4. The ALJ's Disposition

The ALJ provided that the Order issued in this proceeding on October 22, 2024, advised the Complainant that tariff provisions previously approved by the Commission are *prima facie* reasonable. I.D. at 15 (citing *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered July 28, 2011); *Zucker v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). The ALJ further provided that Mr. Ferguson was advised that a complainant seeking to evade the effect of an existing tariff provision carries 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. I.D. at 16 (citing October 22, 2024 Order at 8 (additional citations omitted)).

The ALJ stated that at the November 25, 2024 evidentiary hearing, Mr. Ferguson clarified that he was challenging Aqua's existing tariff provisions not because the facts and circumstances leading to the creation of the tariff had changed so drastically as to render the application of the tariff provision unreasonable, but because he believed that Aqua did not meet its obligation to provide factual and correct data for its New Garden sewer operation in its *2021 Rate Case*. I.D. at 16 (citing Tr. at 11). Mr. Ferguson requested that the Commission: (1) investigate Aqua's revenues based on usage compliance data and the wastewater hauling expense as reported in the Company's filings, (2) determine new tariffs, and (3) order refunds to customers in Aqua's New Garden division if overcharges are found. I.D. at 16 (citing Tr. at 90).

The ALJ reasoned that ratemaking, by its nature, is prospective. I.D. at 16 (citing *Columbia Gas of Pa., Inc. v. Pa. PUC*, 613 A.2d 74, 76 (Pa. Cmwlth. 1992))

(*Columbia Gas*)). The ALJ explained the use of a future test year and the prohibition against retroactive ratemaking, as follows:

Typically, a utility files a general rate case with a record of revenues and expenses for the past year and a projection of anticipated expenses and revenues for a future test year. See 66 Pa.C.S. § 315(e). The future test year is a projection of a future 12-month period reflecting anticipated or projected results of operations. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76. The use of a test year allows the prudently managed utility to recover all expenses and a reasonable return and, therefore, requires normalization or removal of all abnormal, non-recurring events from the test year. 52 Pa. Code § 53.56; *Columbia Gas*, 613 A.2d at 76; see also Cawley & Kennard, *Rate Case Handbook*, 1983, pp. 54, 150-51. Based on the information provided, the Commission determines whether the utility has proved that its requested rates are just and reasonable. 66 Pa.C.S. § 315(a).

Because of the prospective nature of rates, a rule against retroactive ratemaking has developed. 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. *Cheltenham & Abington Sewerage Co. v. Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942); see also 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. The policy reasons behind this rule are that if retroactive ratemaking is allowed, it makes the “test year” method of ratemaking meaningless and the general principle that those customers who use power should pay for its production rather than requiring future ratepayers to pay for past use. The Commonwealth Court has stated this rule as “[t]he Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations.” *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n*, 487 A.2d 118 (Pa. Cmwlth. 1985); *Popowsky v. Pa. Pub. Util. Comm'n*, 642 A.2d 648 (Pa. Cmwlth. 1994).

Also, in *Philadelphia Electric Co. v. Pennsylvania Public Utility Commission*, 502 A.2d 722 (Pa. Cmwlth. 1985), the Commonwealth Court held that there should be no line-by-line examination of items in a rate case and an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery. Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. *Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

I.D. at 16-17.

The ALJ concluded that what Mr. Ferguson is seeking from the Commission is equivalent to retroactive ratemaking on two single issues – the revenue rate design and the wastewater hauling expense – which were fully considered in the *2021 Rate Case*. The ALJ dismissed the consolidated Complaints in their entirety, finding that the claims therein are barred by law and no relief can be granted.

I.D. at 17.

C. Petition to Reopen the Record

1. Petition and Answer

In his Petition, the Complainant states that the purpose of his Petition is to: (1) reemphasize the need for a Commission investigation into Aqua's rate case behavior; and (2) request a limited reopening of the record to address Aqua's wastewater usage projections, as detailed in the Revenue Complaint, and the wastewater hauling expense, as detailed in the Expense Complaint. Petition at 3. The Complainant provides that:

[T]he facts and law have not changed since the record was closed, but the public interest requires reopening because the essential facts have not been adequately elucidated which has

allowed Aqua to make evasive and disingenuous arguments that, if not countered with the complete facts, will produce an unjust result and a disincentive for honest rate case behavior.

Petition at 2.

The Petition also includes four pages of improper replies to Aqua's Reply Exceptions filed on May 1, 2025 in this proceeding, and discussed, *infra*. Petition at 4-8. We note that these replies to Aqua's Reply Exceptions do not constitute permissible pleadings before the Commission and will not be considered because they are improper filings under the Commission's Regulations. Specifically, Section 5.535 of the Commission's Regulations, 52 Pa. Code § 5.535, does not permit a party to file a reply to Reply Exceptions. 52 Pa. Code § 5.535(a).

In its Answer to the Petition, Aqua maintains that the Complainant is seeking a second attempt to meet his burden of proof by having the record reopened to serve discovery and gather evidence related to the timing of wastewater trucking expenses and alleged adjustments to the Company's Compliance Tariff. Answer to Petition at 4 (citing Petition at 2). Aqua contends that the Complainant offers no explanation as to how re-opening the record to allow additional discovery on facts he concedes were known and discoverable throughout this proceeding would serve the public interest. Aqua submits that the Complainant was afforded ample opportunity to conduct discovery regarding these matters in advance of the evidentiary hearing to gather the materials he now requests. Additionally, the Company reasons, the Complainant was given the opportunity to cross-examine Aqua's witness on these points in lieu of discovery. Aqua argues that the Complainant was provided a full and fair opportunity to pursue his claims, and the public interest does not require any additional discovery or hearing in this case. Answer to Petition at 5.

2. Disposition

On review, we shall deny the Complainant's Petition. The Complainant, in his Petition, repeats the arguments he articulated in his two Complaints and his Exceptions, *infra*. In our view, the Complainant has not presented any material changes of fact or law, nor has he shown good cause such that the record developed in this proceeding should be re-opened. The Complainant could have asked the Company at the evidentiary hearing for the information he is seeking. In fact, he mentioned these issues at the hearing during his testimony. Tr. at 23, 45. At the hearing, the ALJ explained repeatedly that the Aqua witnesses were available to answer his questions regarding the matters for which he is now seeking to reopen the record. Tr. at 8, 14-15, 23-24, 46, 81. Furthermore, the Complainant participated in cross-examination of the Aqua witness and was free to ask his questions at that time. Tr. at 142-50. Additionally, the Complainant participated in the re-cross-examination of the Aqua witness. Tr. at 156-60.

The information the Complainant is seeking was discoverable, and thus available, prior to the closing of the record. Consequently, this information constitutes neither new nor persuasive evidence sufficient to warrant reopening the record. In addition, we are not persuaded by the Complainant's assertion that reopening the record is in the public interest. The Complainant had the opportunity to present his case at the evidentiary hearing and through his Exceptions. He has not met his burden of proof that Aqua has violated a statute, regulation, Commission Order or tariff. Accordingly, as we find no good cause shown to reopen the record, the Complainant's Petition is, therefore, denied.

D. Motion to Strike Aqua’s Replies to Exceptions

1. Motion and Answer

In his Motion, the Complainant requests that the Commission strike and exclude from consideration the portions of Aqua’s Reply Exceptions, *infra*, appearing in Parts II(A), (B), (C), and (D) on pages 2-13 that reply to the Complainant’s Exception Nos. 1-3, *infra*. Motion at 4.

The Complainant maintains that Section 1309(a) of the Code, 66 Pa.C.S. § 1309(a), provides prospective rate relief, and Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), provides refund relief, and both sections apply to the Complaints. According to the Complainant, Aqua’s argument invoking the *prima facie* reasonableness of Commission-approved rates, the rule against retroactive ratemaking, the prohibition against single-issue ratemaking, and Aqua’s objections to refunds are “inapt and irrelevant to this case.” Motion at 3.

In its Answer to the Motion, Aqua contends that the Complainant provides no specific facts in support of the Motion. According to Aqua, the Complainant merely restates the basis for his Complaint and repeats the same arguments found in the Complainant’s Exceptions. Answer to Motion at 3. Aqua puts forth that the Commission has previously rejected a similar motion to strike replies to exceptions where the complainant argued without basis that the replies contain misrepresentations of fact and the motion provides no factual or legal support to strike the replies. Answer to Motion at 3 (citing *Koger v. Duquesne Light Company*, Docket No. C-2023-3038703, 2025 Pa. PUC LEXIS 11 (Order entered January 8, 2025)).

According to Aqua, the Complainant admits that he is not offering any new basis for his Motion but relies on the same arguments found in the Complainant’s

Exceptions, *infra*. In this regard, Aqua highlights the Complainant's statement that "Consequently, for these reasons and the reasons further explained in Ferguson's Exceptions, portions of Aqua's Reply Exceptions should be stricken and excluded from consideration of the merits of Ferguson's complaints." Answer to Motion at 4 (citing Motion at 3). Therefore, in Aqua's view, the Motion is an "impermissible collateral attack on Aqua's Replies to Exceptions" as the Motion provides no factual or legal basis to strike Aqua's Replies to Exceptions, but is merely a restatement of the Complainant's arguments in his Exceptions. Aqua notes that the Commission's Regulation at 52 Pa. Code § 5.535 provides a party with the right to file replies to exceptions, but that there is no provision in the Commission's Regulations that provides a party with the right to file an answer or reply to replies to Exceptions. Answer to Motion at 4-5.

2. Disposition

Upon review, we find that the Motion is an attempt by the Complainant to reply to Aqua's Replies to Exceptions, which is an improper and procedurally defective filing. As Aqua observes in its Answer to Motion, our Regulations provide no opportunity to file replies to reply exceptions. *See* 52 Pa. Code § 5.535. Moreover, the Complainant provides no new facts in his Motion. Rather, his Motion is merely a reiteration of his arguments from his Complaints and his Exceptions, *infra*. As discussed more fully below, the ALJ correctly found that the Complainant was seeking unlawful retroactive ratemaking and single-issue ratemaking and properly dismissed the Complaints. The ALJ also found that the claims raised by the Complainant are barred by law and no relief can be granted. I.D. at 19. We agree. The *2021 Rate Case* was a fully litigated proceeding. The rates in the Compliance Tariff were set in accordance with the *2021 Rate Case Order*. Mr. Ferguson has not provided a credible, factual or legal basis for striking portions of Aqua's Replies to Exceptions. Therefore, we will deny the Complainant's Motion.

E. Exceptions, Replies, and Dispositions

We note at the outset that to the extent the Complainant used extra-record materials in his Exceptions, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). Accordingly, any extra-record information the Complainant has proffered in his Exceptions will not be considered. *Apollo Gas*. Also, where the Complainant has offered new arguments in his Exceptions not previously addressed in the record, we note that these arguments cannot be considered after the record has been closed. *See* 52 Pa. Code § 5.431.

1. Complainant's Exception No. 1, Aqua's Replies, and Disposition

a. Exception No. 1 and Replies

In his Exception No. 1, the Complainant contends that the ALJ erred by concluding that the Complainant did not meet his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a), because he did not overcome the *prima facie* reasonableness of Aqua's commission-approved tariff. Exc. at 8 (citing I.D. at 19, COL Nos. 9 and 10). In addition, the Complainant avers that the ALJ erred by not imposing the burden of proof found in Section 315(b) of the Code, 66 Pa.C.S. § 315(b), on Aqua and overlooked the Complainant's right to complain under Section 1309(a) of the Code, 66 Pa.C.S. § 1309(a). The Complainant acknowledges that the ALJ described Mr. Ferguson's burden of proof under Section 332(a). Exc. at 8 (citing I.D. at 10-11). Additionally, Mr. Ferguson provides that the ALJ found that the Complainant did not meet his burden of proof "because tariff provisions approved by the Commission are *prima facie* reasonable and Mr. Ferguson did not overcome that *prima facie* reasonableness." Exc. at 9 (citing I.D. at 15, 16). However, Mr. Ferguson insists that he

does not have to prove, as the ALJ stated, “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.” Exc. at 9 (citing I.D. at 16).

According to Mr. Ferguson, he complained that “Aqua had committed improprieties in its *2021 Rate Case*, and he requested that the Commission institute an investigation into Aqua’s conduct.” As relief, the Complainant argues, he requested various possible remedies to make the New Garden wastewater customers whole. The Complainant contends that he “did not challenge the finality of the Commission’s rate order.” He argues that he was not seeking that the rate case be revisited and the tariff revised, but that if the Commission’s investigation of his allegations merits it – customers should receive an immediate payment by check or bill credit. Exc. at 9-10.

The Complainant argues that his Complaints were authorized by Section 1309(a) of the Code, 66 Pa.C.S. § 1309(a), with refunds authorized by Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), if such rates were found to be unreasonable or the tariffed rates were found to be incorrectly charging customers. Exc. at 10 (citing *Michael Christian v. Audubon Water Co.*, Interim Order Denying Respondent’s Preliminary Objections issued September 4, 2024, Docket No. C-2024-3049476 (*Audubon*)). The Complainant argues further that he met his burden of proof as found in his Exception No. 4, *infra*. He provides that “Aqua’s excuses were astoundingly weak, especially because Section 315(b) required Aqua to do more than merely present co-equal evidence.” The Complainant avers that he established a *prima facie* case that Aqua did not meet the requirements of Section 315(e) regarding the fully projected test year data. Exc. at 11. The Complainant contends that the testimony of Aqua’s witness, Ms. Feeney, did not prove that Aqua complied with Section 315(e). Exc. at 12.

In Reply to the Complainant’s Exception No. 1, Aqua argues that the Complainant is challenging Commission-approved base rates. R. Exc. at 5. Aqua contends that under Section 1303 of the Code, 66 Pa.C.S. § 1303, the rates specified in a utility’s tariff have the force and effect of law and are binding until changed. Aqua explains that it is well established law that, as a general rule, any adjustment to the “commission-made rate” of a Pennsylvania public utility can only be effective prospectively. Aqua explains further that the Pennsylvania Supreme Court held that a utility is permitted to charge rates approved by the Commission until the Commission subsequently issues an order setting new rates. R. Exc. at 6 (citing *Cheltenham & Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334, 337 (Pa. 1942)).

According to Aqua, the Complainant has provided no evidence that the facts and circumstances leading to the creation of the tariff provisions have changed so drastically as to render the application of the tariff provision unreasonable. R. Exc. at 7. Aqua contends that the evidence presented by Ms. Feeney demonstrated that: (1) Aqua collected less revenues from New Garden operations than it was authorized for calendar year 2023; and (2) the rates charged by Aqua for New Garden operations do not actually reflect the full cost of service for those operations. *Id.* at 7 (citing Tr. at 130-33; Aqua Exh. E at 22). Aqua avers that the Complainant cannot demonstrate that the application of the tariff is unreasonable under these circumstances. R. Exc. at 7.

Aqua maintains that regardless of whether the Complainant sought an “investigation” or any other relief, he is challenging a Commission-approved rate. Additionally, Aqua provides that this argument ignores the fact that the disputed rates were already investigated by the Commission as part of the fully litigated *2021 Rate Case* and were set by the Commission in the *2021 Rate Case Order*. R. Exc. at 7.

Aqua submits that the Complainant’s reliance on *Audubon* is misplaced for two reasons: (1) *Audubon* did not dispose of the merits of a complaint against existing,

Commission-approved rates, but denied certain preliminary objections; and (2) *Audubon* demonstrates that the ALJ correctly applied the law in this matter. The presiding officer in *Audubon* concluded that the complainant “bears the burden of proof in this matter and is cautioned that challenging the reasonableness of a Commission-approved tariff carries a heavy burden.” R. Exc. at 8 (citing *Audubon* at 7 (emphasis in original)).

Finally, Aqua provides that while the Complainant cites to his Exception No. 4 to claim he demonstrated a *prima facie* case for his claims, he did not carry his “very heavy burden.” Aqua explains that the Company set its rate in its Compliance Tariff in accordance with the *2021 Rate Case Order*, it collected less than it was authorized from the New Garden operations in 2023, and the rates for New Garden do not actually reflect the full cost of service for New Garden wastewater customers. R. Exc. at 8 (citing Tr. at 130-33).

b. Disposition

On consideration of the record evidence, we find that the Complainant did not meet his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a). Namely, the Complainant did not “establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission.” *See* 66 Pa.C.S. § 701; I.D. at 10. In his Revenue Complaint, the Complainant generally argued that Aqua miscalculated the amount of wastewater New Garden customers would generate, resulting in rates that are too high. In his Expense Complaint, the Complainant submitted that Aqua did not continue to incur an expense that it estimated would continue through the FPFTY, and thereby overcharged New Garden wastewater customers. *See* Revenue Complaint at 7-42; Expense Complaint at 7-12. We disagree with both of the Complainant’s claims.

Regarding the Revenue Complaint, Aqua testified that the Company used the wastewater data available from New Garden Township, as provided in the *Acquisition Proceeding*. Tr. at 136. Aqua also testified that if the relief Mr. Ferguson sought was granted, Aqua would be justified in charging higher rates to New Garden customers, rather than lower rates. *Id.* at 152-53. Aqua provided in its testimony that the rates for New Garden wastewater customers were recovering less than the actual cost of service. The full cost of service would have been approximately \$5.4 million in the *2021 Rate Case*. *Id.* at 133.

Turning to the Expense Complaint, 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. 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.

While the Complainant cites to his Exception No. 4, *infra*, arguing that he established a *prima facie* case, we disagree with this assertion. ALJ Vero advised the Complainant that he had “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.” I.D. at 15-16 (citing *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996)). We agree with ALJ Vero that the Complainant has not met his burden of proof to show that the tariff is unreasonable. Aqua testified that the Company used the information available at the time of the filing. Aqua incurred additional expenses not included in the *2021 Rate Case*. Aqua received less than its allowed revenues in 2023 for the New Garden costs. The New Garden wastewater customers paid less than the cost of service. If Mr. Ferguson were granted the relief he has sought, Aqua may be justified in charging higher rates to New Garden customers, instead of lower rates. Tr. at 152-53. All of this evidence, when considered together, supports the finding that the Complainant has failed to show that the ALJ erred by concluding that the Complainant has failed to carry his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a). Furthermore, we find no error in Conclusion of Law Nos. 9 and 10. Accordingly, we shall deny the Complainant’s Exception No. 1.

2. Complainant’s Exception No. 2, Aqua’s Replies, and Disposition

a. Exception No. 2 and Replies

In his Exception No. 2, Mr. Ferguson contends that the ALJ erred by concluding that the Complainant did not meet his burden of proof under Section 332(a) of

the Code, 66 Pa.C.S. § 332(a), because his “claims are barred by the law and no relief can be granted under the rule against retroactive ratemaking.” Exc. at 8 (citing I.D. at 18, COL Nos. 5 and 6). The Complainant contends that the rule against retroactive ratemaking does not apply here because it only applies to the setting of future rates. Mr. Ferguson avers that “because of Aqua’s misconduct during its 2021 rate case, the resulting rates...were unreasonable under Section 1309(a) and that he and other New Garden Township customers were being incorrectly charged under Aqua’s tariff.” Exc. at 13.

In Reply to the Complainant’s Exception No. 2, Aqua argues that the ALJ correctly addressed the general prohibition against retroactive ratemaking. R. Exc. at 9 (citing I.D. at 16-17, 18-19, COL Nos. 4-6). Aqua alleges that the Complainant contradicts himself by stating that his Complaints “do not seek a recovery of surpluses or refunds of deficits, but then also asserts that his “complaints were expressly authorized by Section 1309(a), with refunds authorized by Section 1312(a).” R. Exc. at 10 (citing Exc. at 10, 13). Aqua provides that the Complainant states he is seeking “restitution to harmed customers.” R. Exc. at 10 (citing Exc. at 12).

Aqua submits that the Complainant’s statement that “he seeks an investigation to determine whether intentional overcharges occurred by Aqua’s misconduct” falsely claims that Aqua somehow violated the Code, a Commission regulation, or Commission Order by establishing wastewater rates in its tariff pursuant to the *2021 Rate Case Order* and charging Mr. Ferguson consistent with those Commission-approved rates. R. Exc. at 10 (citing Exc. at 13). Aqua avers that the Complainant’s statement that “he and other New Garden Township customers were being incorrectly charged under Aqua’s tariff” should be rejected. R. Exc. at 10 (citing Exc. at 13). Aqua explains that this is the first time the Complainant has raised this claim, and it contradicts Mr. Ferguson’s sworn statements on cross-examination. R. Exc. at 10.

b. Disposition

We find that the Complainant is seeking unlawful retroactive ratemaking with this claim. Mr. Ferguson’s argument that the prohibition against retroactive ratemaking does not apply here is incorrect. He is asking for a revised tariff and refunds to affected customers, which is tantamount to retroactive ratemaking. Furthermore, his claim that he and other New Garden customers were being charged incorrectly is a new argument, which is procedurally improper at this stage of the proceeding. It is not appropriate to include a new argument at the Exceptions stage of a case because new arguments cannot be considered after the record has been closed. 52 Pa Code § 5.431. Moreover, we note that the Complainant testified at the evidentiary hearing that he was being charged in accordance with the Commission-approved tariff. Tr. at 108-09. For these reasons, we shall deny the Complainant’s Exception No. 2.

3. Complainant’s Exception No. 3, Aqua’s Replies, and Disposition

a. Exception No. 3 and Replies

In his Exception No. 3, the Complainant argues that the ALJ erred by concluding that he failed to carry his burden of proof under Section 332(a) of the Code, 66 Pa.C.S. § 332(a), because of the prohibition against single-issue ratemaking. Exc. at 14.

According to the Complainant, the general rule under Pennsylvania law is that “there may be no line by line examination” of items of expense or revenue and variations in “an isolated item of revenue or expense” may not, “**without more,**” support “a Commission order of refund or recovery.” Exc. at 14 (citing *Phila. Elec. Co. v. Pa. PUC*, 502 A2.d 722, 727-728 (Pa. Cmwith 1985) (emphasis in original)). Additionally, the Complainant submits that single issue ratemaking occurs “when only

one element of the general ratemaking equation is examined *between rate cases*...” Exc. at 14 (citing *Petition of UGI Utilities, Inc. – Elec. Div. for Approval of Its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, 2011 Pa. PUC LEXIS 1690 at *28 (Recommended Decision issued July 13, 2011) (emphasis in original)). The Complainant argues that his Complaints provide “more” to support a refund and occurred during a rate case, not between rate cases. Exc. at 14-15.

In its Replies, Aqua notes the Complainant’s assertion that his “complaints did not involve occurrences between rate cases” but involved “actions that occurred during Aqua’s rate case.” Aqua further notes the Complainant’s argument that Aqua engaged in “extraordinary misconduct” that satisfies the “extraordinary and non-recurring” event exception to the general prohibition. R. Exc. at 11 (citing Exc. at 15). Aqua explains that in each Complaint, Mr. Ferguson has clearly challenged singular elements of the rates established in the *2021 Rate Case*. R. Exc. at 11.

b. Disposition

We find that the Complainant is improperly seeking single-issue ratemaking in his claims in both the Revenue Complaint, based on wastewater usage calculations, and the Expense Complaint, based on the wastewater hauling expense. However, we find no error in Conclusion of Law Nos. 7 and 8. We disagree with the Complainant that something “more” exists here allowing for the re-examination of two rate items in the *2021 Rate Case*. Aqua has testified that it used the information available at the time to complete its rate case estimations. Aqua collected less than the allowed revenues in 2023, and the New Garden wastewater customers paid less than the cost of service. Therefore, we shall deny the Complainant’s Exception No. 3.

4. Complainant's Exception No. 4, Aqua's Replies, and Disposition

a. Exception No. 4 and Replies

In his Exception No. 4, the Complainant argues that the ALJ erred by failing to address and decide the substantive merits raised in his Complaints, which he submits established a *prima facie* case. The Complainant reiterates his arguments from the Revenue Complaint, the Expense Complaint, and the evidentiary hearing. Exc. at 15-24.

In its Reply to Exception No. 4, Aqua provides that the ALJ correctly recognized the applicable ratemaking principles and acknowledged that the rates set forth in the Compliance Tariff were reviewed and vetted by the Commission. R. Exc. at 13 (citing I.D. at 10, 15-16). Aqua submits that the result of this review process was that Aqua was authorized to implement a rate increase that was substantially less than what the Company requested in the *2021 Rate Case*. According to Aqua, the ALJ and the Commission are not required to reach a decision on the merits because the instant Complaints are properly barred by the general prohibition against retroactive and single-issue ratemaking. R. Exc. at 13-14.

Aqua maintains that the Complainant did not carry his burden of proof with respect to the Revenue Complaint. Aqua notes that the ALJ correctly cited to and discussed the testimony provided by Aqua's witness, Ms. Feeney, at the hearing. R. Exc. at 17 (citing I.D. at 14-15). Aqua highlights Ms. Feeney's testimony that the Company used the best data available to Aqua at the time it filed the *2021 Rate Case*. Aqua used actual consumption data from New Garden that had been provided to Aqua during the proceeding to acquire the New Garden system. Aqua stresses that the usage data utilized by Aqua was not challenged by any active party in the case. R. Exc. at 17 (citing Tr. at 121-23).

Aqua avers that when the Commission issued the *2021 Rate Case Order*, it authorized a lower revenue requirement increase than what Aqua sought, and authorized Aqua to collect \$4.4 million in revenue using a rate design proposed by I&E for the New Garden operations. R. Exc. at 17 (citing Tr. at 124-25). Additionally, Aqua notes that the Compliance Tariff was submitted consistent with the *2021 Rate Case Order* and was reviewed and approved by the Commission. R. Exc. at 17 (citing Tr. at 139-41; Aqua Exhs. C and D).

Aqua states that the Complainant remains of the opinion that while the Compliance Tariff “did demonstrate compliance,” it only did so because “the Commission was unaware of the data issues.” R. Exc. at 18 (citing Exc. at 24). However, according to Aqua, the Complainant provides no basis for this claim. Aqua contends that the Complainant’s claim ignores the fact that the *2021 Rate Case* was fully litigated and the usage data used by Aqua was not challenged by any party. R. Exc. at 18 (citing I.D. at 14-15).

In addition, Aqua maintains that the Complainant did not meet his burden of proof with respect to the Expense Complaint. According to Aqua, the Complainant provided no evidence that the Company’s projections with regard to the Purchased Wastewater Expense were unreasonable at the time the *2021 Rate Case* was filed. Aqua submits that the Complainant argues for the first time in his Exceptions that Aqua stopped incurring this expense between August and October 2021 after a pipeline was activated. R. Exc. at 16 (citing Exc. at 18). Aqua avers that the Complainant provides no citation to any evidence of record in this matter to support this claim, which clearly demonstrates that an alternative solution was put into place during this time frame after Aqua developed its projections, and after the record in the *2021 Rate Case* closed. R. Exc. at 16.

Aqua insists that the Complainant failed to carry his heavy burden with respect to the Revenue Complaint and the Expense Complaint. Aqua further maintains that both the Revenue Complaint and Expense Complaint are properly barred by law. R. Exc. at 17, 18.

b. Disposition

As provided, *supra*, in our disposition of Exception No. 1, we find that the Complainant has failed to carry his burden of proof. Aqua used data from New Garden, obtained during the *Acquisition Proceeding*, to determine usage by the New Garden wastewater customers. Aqua expected the wastewater hauling to continue through the FPFTY. Aqua incurred additional costs that were not part of the rate case when the costs for wastewater hauling ended. The Complainant acknowledges that the ALJ addressed the Complainant's arguments. Exc. at 15, 20 (citing I.D. at 11-13). We find no error in the ALJ's evaluation of the Complainant's evidence and testimony. We agree with the ALJ that the Complainant failed to prove that Aqua has violated a statute, regulation, Commission Order, or tariff. *See* I.D. at 19, COL No. 10. Therefore, we shall deny Exception No. 4.

5. Complainant's Exception No. 5, Aqua's Replies, and Disposition

a. Exception No. 5 and Replies

In his Exception No. 5, the Complainant argues that Finding of Fact Nos. 8, 12, and 13 are incomplete, misleading, and unfair. The Complainant submits that the doctrine of collateral estoppel does not apply to this proceeding because the sworn testimony he provided at the November 21, 2021 public input hearing in the *2021 Rate Case* did not address "issues of law, fact, or ultimate fact adjudicated in the rates case." The Complainant argues that "adjudication of Ferguson's complaints was

not *relitigation* of the issues presented by Ferguson’s complaints.” In Mr. Ferguson’s view, such “issues were raised and decided for the first time and not redundantly so.” Exc. at 24-26 (emphasis in original).

In its Reply, Aqua notes that the ALJ did not render a ruling on the issue of collateral estoppel. Aqua avers that each of the ALJ’s Findings of Fact establish that the rates for New Garden’s wastewater operations, challenged by the Complainant, were considered and disposed of via a fully litigated base rate proceeding in order to establish the presumption that these rates are just and reasonable. R. Exc. at 19 (citing I.D. at 15-16). According to Aqua, if the ALJ had applied the doctrine of collateral estoppel and barred the Complaints on these grounds, it would have been correct to bar the Complaints on this and other related grounds. R. Exc. at 19.

b. Disposition

Upon review, we find that the ALJ did not address or apply the doctrine of collateral estoppel in the Initial Decision. The ALJ stated at the evidentiary hearing that “collateral estoppel did not apply or does not apply, as far as I’m concerned.” Tr. at 180. Consequently, we find that the Complainant’s claims regarding the application of the doctrine of collateral estoppel is, therefore, moot. The Complaints were dismissed on the basis that the claims therein would violate the prohibition of retroactive ratemaking and single-issue ratemaking. Moreover, the ALJ found that the Complainant failed to meet his burden of proof that Aqua violated a statute, regulation, Commission Order, or tariff. I.D. at 19. Upon review of the record, along with the Initial Decision and the Complainant’s Exceptions, we do not find that Finding of Fact Nos. 8, 12, and 13 are incomplete, misleading or unfair. Accordingly, the Complainant’s Exception No. 5 is denied.

IV. Conclusion

In light of the above discussion, we shall: (1) deny the Complainant's Exceptions; (2) adopt the ALJ's Initial Decision; (3) dismiss the Complaints; (4) deny the Complainant's Petition to Reopen the Record; and (5) deny the Complainant's Motion to Strike, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by William Ferguson on April 21, 2025, to the Initial Decision of Administrative Law Judge Eranda Vero, issued on March 31, 2025, at Docket Nos. C-2023-3043108 and C-2023-3043109, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Eranda Vero, issued on March 31, 2025, at Docket Nos. C-2023-3043108 and C-2023-3043109, is adopted, consistent with this Opinion and Order.

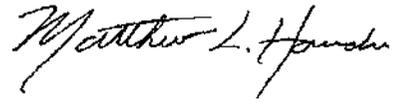
3. That the Formal Complaints filed by William Ferguson, on September 9, 2023, at Docket Nos. C-2023-3043108 and C-2023-3043109, are dismissed.

4. That the Petition to Reopen Proceeding, filed by William Ferguson on May 9, 2025, is denied.

5. That the Motion to Strike Certain Portions of the Reply Exceptions, filed by William Ferguson on May 9, 2025, is denied.

6. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in cursive script that reads "Matthew L. Homsher".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: June 18, 2025

ORDER ENTERED: June 18, 2025