

COMMONWEALTH OF PENNSYLVANIA



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May 31, 2024

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission  
v.  
Aqua Pennsylvania, Inc. and  
Aqua Pennsylvania Wastewater, Inc.  
Docket Nos. R-2024-3047822(Water)  
R-2024-3047824(Wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Formal Complaint and Public Statement in this matter.

Copies have been served as shown on the attached Certificate of Service.

Respectfully submitted,

/s/Gina L. Miller  
Gina L. Miller  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 313863  
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Enclosures:

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Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :  
v. : Docket Nos. R-2024-3047822(Water)  
Aqua Pennsylvania, Inc. and : R-2024-3047824(Wastewater)  
Aqua Pennsylvania Wastewater, Inc. :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Formal Complaint and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 31<sup>st</sup> day of May 2024.

SERVICE BY E-MAIL ONLY

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Consumer Advocate

/s/Gina L. Miller  
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Assistant Consumer Advocates

Date: May 31, 2024

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

## FORMAL COMPLAINT

### 1. COMPLAINANT INFORMATION

Patrick M. Cicero, Consumer Advocate

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Dauphin County

Phone: 717-783-5048

### 2. FULL NAME OF UTILITY COMPANY:

Aqua Pennsylvania, Inc.  
Aqua Pennsylvania Wastewater, Inc.  
Docket No. R-2024-3047822 (Water)  
Docket No. R-2024-3047824 (Wastewater)

### 3. TYPE OF UTILITY:

Water and Wastewater

### 4. COMPLAINT:

- A.** On May 23, 2023, Aqua Pennsylvania, Inc. (AP) filed Original Tariff Water - PA P.U.C. No. 4 and Aqua Pennsylvania Wastewater, Inc. (APW) filed Original Tariff Sewer – PA P.U.C No. 4 to become effective July 22, 2024. A full suspension by the Public Utility Commission (Commission) would delay the increase until February 21, 2025. Through these filings, AP and APW, (collectively, Aqua) request that the Commission approve general rate increases to its water and wastewater rates pursuant to sections 1308, 1311(c), and 1330 of the Public Utility Code, 66 Pa. C.S. §§ 1308, 1311(c), and 1330. Aqua’s proposed tariffs would increase the Company’s total annual operating revenues by approximately \$126.7 million (pre-Act 11 shift, \$90.2 million for water and \$36.5 million for wastewater and post-Act 11 shift, \$112.1 million for water and \$14.6 million for wastewater), or 18.9% overall, based on a fully projected future test year (FPFTY) ending December 31, 2025.
- B.** As of May 23, 2023 Aqua serves approximately 445,000 water customers located in 31 counties and 56,000 wastewater customers located in 17 counties across Pennsylvania.

- C. The Company provides water service in portions of Adams, Berks, Bradford, Bucks, Carbon, Chester, Clarion, Clearfield, Columbia, Crawford, Cumberland, Delaware, Forest, Juniata, Lackawanna, Lawrence, Lehigh, Luzerne, McKean, Mercer, Monroe, Montgomery, Northampton, Northumberland, Pike Schuylkill Snyder, Susquehanna, Venango, Warren, and Wyoming Counties.
- D. The Company also provides wastewater service in portions of Chester, Clinton, Luzerne, Schuylkill, Bucks, Delaware, Berks, Clearfield, Wyoming, Montgomery, Clarion, Venango, Carbon, Adams, Lackawanna, Pike, and Monroe Counties.
- E. According to the customer notices included in Aqua’s filing, a residential water customer using 3,870 gallons per month would see the following changes to their monthly bill as provided below:

Noticed Area	Current	Projected	Percent Increase/(Decrease)	Amount Increase/ (Decrease)
Main Division	\$78.21	\$97.01	24.04%	\$18.80
Eagle Rock	\$80.63	\$97.01	20.32%	\$16.38
Bensalem	\$78.21	\$97.01	24.04%	\$18.80
Chalfont	\$78.21	\$97.01	24.04%	\$18.80
Oakland	\$80.63	\$97.01	20.32%	\$16.38
Masthope	\$80.63	\$97.01	20.32%	\$16.38
CC Gardens	\$78.21	\$97.01	24.04%	\$18.80
Honesdale	\$78.21	\$97.01	24.04%	\$18.80
Sand Springs	\$78.21	\$97.01	24.04%	\$18.80
Mifflin	\$78.21	\$97.01	24.04%	\$18.80
Beech Mountain	\$45.93	\$66.80	45.44%	\$20.87
Treasure Lake	\$58.14	\$88.01	51.38%	\$29.87
Concord Park	\$63.6	\$91.04	43.14%	\$27.44
Bristol Twp	\$55.62	\$83.63	50.36%	\$28.01
Mt. Jewett	\$78.21	\$97.01	24.04%	\$18.80
Bunker Hill	\$38.92	\$65.75	68.94%	\$26.83
Sun Valley	\$38.69	\$65.36	68.93%	\$26.67
Superior	\$78.21	\$97.01	24.04%	\$18.80
Phoenixville	\$22.87	\$38.65	69.00%	\$15.78
Shenandoah	\$56.14	\$77.36	37.80%	\$21.22
Bell Aire Acres	\$50	\$75.07	50.14%	\$25.07

A residential wastewater customer using 3,870 gallons per month would see the following estimated changes to their monthly bill as provided by Zone:

Rate Zone	Current	Proposed	Percent Increase/(Decrease)	Amount Increase/(Decrease)
1-WW	\$94.62	\$92.85	(1.87%)	\$(1.77)
1-WW Unmetered	\$96.17	\$92.85	(3.45%)	\$(3.32)
1A-WW	\$94.62	\$92.85	(1.87%)	\$(1.77)
1A-WW Unmetered	\$96.17	\$92.85	(3.45%)	\$(3.32)
2-WW	\$105.4	\$104.63	(0.73%)	\$(0.77)
2-WW Unmetered	\$102.54	\$101.8	(0.72%)	\$(0.74)
3-WW	\$114.66	\$113.83	(0.72%)	\$(0.83)
3-WW Unmetered	\$115.87	\$115.00	(0.75%)	\$(0.87)
4-WW	\$136.18	\$135.2	(0.72%)	\$(0.98)
4-WW Unmetered	\$134.32	\$135.2	0.66%	\$0.88
5-WW	\$149.71	\$148.63	(0.72%)	\$(1.08)
5-WW Unmetered	\$152.5	\$148.63	(2.54%)	\$(3.87)
6-WW	\$93.32	\$91.58	(1.86%)	\$(1.74)
7-WW	\$77.92	\$92.85	19.16%	\$14.93
8-WW	\$103.78	\$104.63	0.82%	\$0.85
9-WW	\$61.31	\$92.85	51.44%	\$31.54
10-WW	\$65.95	\$92.85	40.79%	\$26.9
11-WW	\$136.46	\$104.63	(23.33%)	\$(31.83)
12-WW	\$70.51	\$92.85	31.68%	\$22.34
12-WW Unmetered	\$89.74	\$92.85	3.47%	\$3.11
13-WW A&B	\$45.17	\$73.90	63.60%	\$28.73
13-WW C	\$45.17	\$73.90	63.60%	\$28.73
13-WW D	\$50	\$73.90	47.80%	\$23.9
13-WW E	\$40	\$73.90	84.75%	\$33.9
14-WW	\$65.96	\$92.69	40.52%	\$26.73
14-WW Unmetered	\$79.14	\$92.53	16.92%	\$13.39

The OCA is investigating the basis for and calculation of estimated bill increases and decreases to ensure that they are consistent with applicable standards and will produce just and reasonable rates.

- F. The proposed water and wastewater rate changes noted above do not reflect the changes that will be experienced by all customers; rather they only reflect changes for customers using what Aqua has asserted the “typical” usage for residential customers. In the OCA’s experience, the increases reflected above (and on the

notices sent to customers) often underestimate the impact of the rate increase for many customers and may potentially overestimate the decrease for some wastewater customers.

- G.** The Company proposes to consolidate certain rate zones for water and wastewater. The Company proposes to consolidate wastewater rates for Rate Zones 1, 1A, 7, 9, 10, and 12. The Company is also proposing to consolidate wastewater Rate Zones 8 and 11 to Rate Zone 2 rates.
- H.** The Company is proposing to increase the water customer charge, which is a charge a customer pays no matter how little or how much water they consume, based on the Company's filing customers may see between 11% to 75%, depending on the Rate Zone. Based on the Company's filing for the wastewater customer charge by equivalent dwelling unit (EDU), the Company is proposing varying decreases for some Rate Zones and varying increases between 12% up to 121.7%, depending on the Rate Zone.
- I.** Of the total proposed water revenue increase, the Company is proposing to allocate the costs inclusive of the proposed Act 11 shift among customer classes as follows: 66.5% residential customers, 24.3% commercial customers, 3.5% industrial customers, and 1.6% public customers. Based on the Company's proposed allocation of revenue, the Company is proposing a total revenue increase of 19.9% for residential customers, 18.2% for commercial customers, 20.6% for industrial customers, and 19.2% for public customers. Exhibit 5-A, Schedule A, Page 1 of 1.
- J.** Of the total proposed wastewater revenue increase, the Company is proposing an increase of 31.1% for residential customers, a 25.3% decrease for commercial customers, no change in rates for industrial customers, and a 46.2% decrease for public customers. Exhibit 5-B, Schedule 1-LM, Page 1 of 1.
- K.** The Company is proposing to shift approximately \$21.85 million dollars of wastewater revenue requirement onto water customers pursuant to 66 Pa C.S. 1311(c). Significantly, Aqua proposes to assign \$13.1 million of the shifted wastewater revenue requirement, or approximately 60% of it, to residential water customers. Such a shift must be examined closely to ensure that water customers, who may or may not be wastewater customers, are not unjustly burdened by wastewater revenues requirements. The OCA submits that the Company's proposed Act 11 shift must be closely scrutinized to determine whether it is in the public interest and will result in rates that are just, reasonable, and non-discriminatory. 66 Pa.C.S. §§ 1301, 1304, 1311(c).
- L.** For ratemaking purposes, Aqua proposes a return on equity of 10.95% resulting in overall rates of return of 7.90%. The request for a 10.95% return on equity includes

the Company's request for recognition of its claimed exemplary managerial performance. The Company also proposes to utilize an equity rich capital ratio of 53.95% common equity and 46.05% debt for ratemaking purposes.

The proposed rates of return appear to be excessive and, if accepted would result in rates that are unjust and unreasonable in violation of chapter 13 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1301, *et seq.*, sound ratemaking principles, and public policy. The proposed capital structure is also likely to be found to be excessive and, if adopted, would result in rates that are unjust and unreasonable in violation of Chapter 13 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1301, *et seq.*, sound ratemaking principles, and public policy.

- M.** In this filing, the Company proposes to include revenues and expenses related to the East Whiteland Wastewater System. The Consumer Advocate avers that inclusion of this system is likely unlawful and, if not unlawful, it is certainly premature and uncertain. As of the date of this Complaint, the Commonwealth Court of Pennsylvania has reversed the Commission's decision approving Aqua's acquisition of the East Whiteland Wastewater System. The inclusion of this system in rate base for ratemaking purposes is inappropriate and would lead to unjust and unreasonable rates.
- N.** As part of its requests in this case, Aqua is seeking the Commission's authorization to defer costs that it anticipates that it may incur beyond the FPFTY levels established in this case, during the calendar years 2026 and thereafter, related to costs Aqua expects to incur to comply with mandatory treatment requirements for per-and polyfluoroalkyl substances (PFAS). Aqua anticipates that such deferred costs will include depreciation expense on new assets placed in service beyond FPFTY levels, incremental operations and maintenance expenses incurred over FPFTY levels, and a carrying cost of capital. Aqua currently estimates that it will spend approximately \$300 million in PFAS treatment-related capital costs alone between 2024 and 2029. The OCA will thoroughly review Aqua's request to defer such costs, which are likely inappropriate as they are largely outside the scope of the test year period for this case, to assess whether it is just and reasonable, consistent with sound ratemaking principles and public policy, and otherwise consistent with applicable law.
- O.** In reaching a decision on whether to grant Aqua's rate increase as well as its various rule and tariff changes, the Public Utility Commission must give "due consideration to the interests of consumers." 71 Pa. Stat. Ann. §309-5(2).
- P.** A preliminary examination of Aqua's general rate increase request indicates that the rates requested, including specific elements of its request, for example, but not limited to, the inclusion of the East Whiteland Wastewater System, rate of return, proposed Act 11 shift, revenue allocation, proposed customer charges and rate

design, may not be just and reasonable and otherwise may be in violation of the law.

## **5. RELIEF**

The Consumer Advocate respectfully requests that the Commission take the following actions:

- A.** Suspend and investigate the operation of the proposed tariff supplements, Aqua Pennsylvania, Inc. Original Tariff Water- PA P.U.C. No. 4 and Aqua Pennsylvania Wastewater, Inc. Original Tariff Sewer-PA P.U.C. No. 4 pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. §1308(d);
- B.** Enter a suspension order at the next scheduled Public Meeting following the date of this Complaint, which is June 13, 2024, in order to expedite this matter being assigned to the Office of Administrative Law Judge, which would allow the commencement of necessary procedural steps for purposes of developing a reasonable procedural schedule in which the parties may litigate;
- C.** Direct the Office of Administrative Law Judge to use the February 20, 2025 Public Meeting as the deadline for a final Commission determination in this matter and for purposes of setting a deadline for a Recommended Decision and developing a litigation schedule in this matter;
- D.** Consolidate all complaints filed against the proposed increases for water and wastewater service;
- E.** Ensure that the Aqua has provided appropriate and adequate notice in accordance with the Public Utility Code and the Commission's Regulations;
- F.** Hold full evidentiary hearings examining the reasonableness of Aqua's current rates and its proposed increases;
- G.** After providing the public with adequate notice, and as early in the proceeding as possible, hold in-person public input hearings in Aqua's service territory, as well as by telephone or virtually, in order to provide Aqua customers with an opportunity to be heard on the record;
- H.** Deny any the inclusion into rate base of any plant that is not reasonably projected to be used and useful within the FPFTY, deny any charges or changes contained in the proposal which would result in unjust and unreasonable rates, or cannot be fully justified by Aqua, or otherwise are contrary to the Public Utility Code, sound ratemaking principles, and public policy; and
- I.** Grant such other relief that the Commission may deem appropriate.



**6. VERIFICATION AND SIGNATURE**

*I, Patrick M. Cicero, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).*

/s/ Patrick M. Cicero

May 31, 2024

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**7. Legal Representation**

Melanie J. El Atieh, Deputy Consumer Advocate, PA Bar No. 209323  
Gina L. Miller, Senior Assistant Consumer Advocate, PA Bar No. 313863  
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**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE**  
**PURSUSANT TO 71 P.S. SECTION 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 Pa. C.S. §309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Formal Complaint and participate in the proceedings before the Commission involving the proposed water and wastewater rate increase by Aqua Pennsylvania, Inc. (Aqua or the Company).

On May 23, 2024, Aqua filed a general rate increase request seeking the Commission's approval to increase its overall operating revenue by approximately \$126.7 million per year, or 18.9%, over the amount of annual revenues at present rates. Under the Company's proposal, a residential water customer using 3,870 gallons of water a month would see an estimated monthly increase in their water bill ranging from 20.32% to 69%. A Residential wastewater customer, due to the Company's proposed Act 11 shift, could see an estimated 23.33% decrease to an estimated 84.75% increase in their monthly wastewater bill.

The objective of the Consumer Advocate in filing this complaint is to protect the interests of Aqua's customers. The Consumer Advocate will seek to ensure that Aqua is permitted to implement only rates that are fully justified, just and reasonable, not unduly discriminatory, and otherwise consistent with sound ratemaking principles and the Public Utility Code, Commission regulations and orders, and case law. The Consumer Advocate submits that Aqua's current rates and its proposed rates may be unjustifiable and unlawful based upon information filed by Aqua in support of its claim.