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December 13, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

In re: Docket No. A-2019-3009052

Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Norriton Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Petition for Protective Order. Copies of the Petition are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable Angela T. Jones
Administrative Law Judge (w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc., : **Docket No. A-2019-3009052**
pursuant to Sections 1102, 1329 and 507 of the Public :
Utility Code for Approval of its Acquisition of the :
Wastewater System Assets of East Norriton Township :

PETITION OF AQUA PENNSYLVANIA WASTEWATER, INC.
FOR PROTECTIVE ORDER

AND NOW comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), by its attorneys, and, pursuant to 52 Pa. Code § 5.365, petitions the Pennsylvania Public Utility Commission (“Commission”) for entry of a Protective Order. In support thereof, Aqua submits as follows:

1. This proceeding concerns the Application of Aqua, filed July 30, 2019, for approval of its acquisition of the wastewater system assets of the Township of East Norriton pursuant to Sections 1102, 1329 and 507 of the Public Utility Code.

2. By Secretarial Letter dated November 26, 2019, the Commission, *inter alia*, acknowledged it accepted for filing the Company’s Application and advised that notice of its filing would be published in the Pennsylvania Bulletin on December 21, 2019. The Application was assigned to Docket No. A-2019-3009052.

3. Materials which Aqua has furnished in this proceeding and materials which Aqua and other parties will be furnishing pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination or as a courtesy to parties contain information and will contain information that the producing party considers confidential or proprietary.

4. The issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to

be confidential or proprietary would serve administrative economy and efficiency by obviating the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

5. The proposed protective order included with this Petition is in the usual accepted form, consistent with due process rights and evidentiary burdens. It allows parties to retain the right to question or challenge the confidential or proprietary nature of information; to challenge the admissibility of confidential or proprietary information; to refuse or object to the production of confidential or proprietary information on any proper ground; to seek disclosure of confidential or proprietary information beyond that allowed in the Protective Order; and to seek additional measures of protection beyond those provided in the Protective Order. The Protective Order also provides that the party claiming that the information is confidential or proprietary retains the burden of demonstrating that such designation is necessary and appropriate.

6. Counsel for Aqua has contacted Counsel for the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate and they advise that they do not object to the entry of the proposed protective order.

WHEREFORE Aqua Pennsylvania Wastewater, Inc. requests that the Pennsylvania Public Utility Commission enter the Protective Order included with this Petition.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: December 13, 2019

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc., : Docket No. A-2019-3009052
**pursuant to Sections 1102, 1329 and 507 of the Public :
Utility Code for Approval of its Acquisition of the :
Wastewater System Assets of East Norriton Township :**

ORDER GRANTING PETITION FOR PROTECTIVE ORDER

On July 30, 2019, the Applicant, Aqua Pennsylvania Wastewater, Inc. (Aqua), filed an application with the Pennsylvania Public Utility Commission (Commission) by which it is seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of the Township of East Norriton, (2) the right of Aqua to begin to offer, render, furnish or supply wastewater service to the public in portions of the Township of East Norriton, Montgomery County, Pennsylvania, and (3) an order approving the acquisition that includes the ratemaking rate base of the Township of East Norriton wastewater system assets pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code. Receipt of the completed application was acknowledged by the Commission by Secretarial Letter dated November 26, 2019.

On December 13, 2019, Aqua filed a Petition for a Protective Order stating that CONFIDENTIAL and PROPRIETARY information was submitted with its Application and would continue to be submitted by the parties during the course of the proceeding. No party objects to the proposed Protective Order and proposed handling of Confidential and Proprietary Information.

The following Order is adopted:

ORDER

THEREFORE,

IT IS ORDERED:

1. That a Protective Order is granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information

identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That materials subject to this Protective Order are all correspondence, documents, data, information, excerpts, summaries, studies, methodologies and other materials (including materials derived therefrom) which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or provided as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “CONFIDENTIAL” or “PROPRIETARY INFORMATION” or “CONFIDENTIAL AND PROPRIETARY” or “PRIVILEGED AND CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”).

3. That, in addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL MATTER” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Protective Order pertaining to such material.

4. That Proprietary Information and Highly Confidential Information produced in this proceeding shall be made available, solely for use in this proceeding, to the Commission and its Staff, the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and additional parties, if any. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

5. That Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures and limitations on “Restricted Persons”:

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel, upon execution of the attached Appendix A, may afford access to Proprietary Information made available by another party (“the producing party”) to the party’s expert(s) and staff. Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding. Any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b. Highly Confidential Information. Where information is asserted to be Highly Confidential Information, it will be made available for inspection and review as provided for in this Protective Order and copying only as specified herein. The producing party shall permit counsel for I&E, OCA and OSBA (individually “public advocate” and collectively the “public advocates”) and other counsel to take custody of a copy of such Highly Confidential Information, provided that it shall not be copied, except for counsel, and the public advocates’ in-house staff, independent consultants, or non-lawyer representatives, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by a public advocate to its eligible in-house staff without the need for execution of Appendix A. Additionally, such Highly Confidential Information may be provided by a public advocate or other counsel to its eligible independent consultants (as defined in 52 Pa. Code § 5.365(d)) or other non-lawyer representatives who are assisting counsel with these proceedings, provided that such consultants and non-lawyer representatives execute and return the attached Appendix A to the producing party pursuant to Paragraph 6 of this Protective Order.

c. A “Restricted Person” shall mean:

(i) (1) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services, or if the employee of such entity's duties involve strategic business decisions and activities in which the use of the Proprietary Information or Highly Confidential Information could be reasonably expected to cause competitive harm to the parties; (2) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (3) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information or Highly Confidential Information concerns a specific, identifiable customer of the parties; and (4) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information or Highly Confidential Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information or Highly Confidential Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(ii) If an expert for a party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (1) identify for the parties each Restricted Person and each expert or consultant; (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the

interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

d. A Restricted Person shall not receive or review Proprietary Information or Highly Confidential Information absent an agreement with Aqua. No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information, shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall, except as specifically exempted under Paragraph 5(b) of this Protective Order, deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as Appendix A. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or type-written designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

8. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information

shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

9. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in Ordering paragraph 8 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to Order of the Administrative Law Judge, the Commission or appellate court. Unresolved challenges arising under paragraph 10 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, *etc.*, to the extent that such guidance is available.

10. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. This Protective Order shall continue to be binding throughout and after the conclusion of this proceeding.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: December , 2019

Angela T. Jones
Administrative Law Judge

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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ACKNOWLEDGMENT

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the receiving party). The undersigned has read the Protective Order dated December _____, 2019, and understands that it deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of paragraph 5 of the Protective Order prior to submitting this Acknowledgement.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____

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**pursuant to Sections 1102, 1329 and 507 of the Public :
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CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of December 2019 served a true and correct copy of the foregoing Petition for Protective Order upon the persons and in the manner indicated below:

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

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