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June 23, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: 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 the Delaware County Regional Water Quality Control Authority Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Petition of the County of Delaware, Pennsylvania for Reconsideration of Commission Staff Action by Secretarial Letter Dated June 11, 2020, to Conditionally Accept the Section 1329 Application of Aqua Pennsylvania Wastewater, Inc. for the Acquisition of Delaware County Regional Water Quality Control Authority's Wastewater System Assets, in the above-referenced proceeding.

As shown by the attached Certificate of Service and per the Commission's March 20, 2020, Emergency Order, all parties to this proceeding are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy of this document upon request.

Sincerely,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to the County of Delaware, Pennsylvania

c: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Adeolu A. Bakare

Counsel to the County of Delaware,
Pennsylvania

Dated this 23rd day of June, 2020, in Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 507, :
1102 and 1329 of the Public Utility Code : Docket No. A-2019-3015173
for, inter alia, approval of the acquisition of :
the wastewater system assets of the :
Delaware County Regional Water Quality
Control Authority

**PETITION OF THE COUNTY OF DELAWARE, PENNSYLVANIA FOR
RECONSIDERATION OF COMMISSION STAFF ACTION BY SECRETARIAL
LETTER DATED JUNE 11, 2020, TO CONDITIONALLY ACCEPT THE SECTION
1329 APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC. FOR THE
ACQUISITION OF DELAWARE COUNTY REGIONAL WATER QUALITY
CONTROL AUTHORITY'S WASTEWATER SYSTEM ASSETS**

NOW COMES the County of Delaware, Pennsylvania (the "County"), by and through counsel, pursuant to 52 Pa. Code § 5.44(a), to petition the Pennsylvania Public Utility Commission ("PUC" or "Commission") to reconsider the Bureau of Technical Utility Services' staff decision to issue the Secretarial Letter dated June 11, 2020, in the above captioned matter. The Secretarial Letter conditionally accepts (subject to certain specified conditions) the above captioned Application filed by Aqua Pennsylvania Wastewater, Inc. ("Aqua" or the "Applicant") on March 3, 2020 (the "Application").

For the reasons set forth below, the County requests that the Commission rescind staff's conditional acceptance of the Application, amend the Secretarial Letter as requested in this Petition for Reconsideration of Staff Action ("Petition") and, thereafter, reissue the Secretarial Letter with an additional condition placed upon Aqua: require Aqua to comply with Section 1329(d)(1)(v) of the Public Utility Code and amend its Application to include all relevant documents related to the

Rate Stabilization Plan (referenced in Paragraph 36 of the Application and in various direct testimony statements¹) prior to filing a verification letter with the Commission.

In support thereof, the County states as follows:

1. Aqua filed the Application on or about March 3, 2020. Paragraph 36 of the Application states as follows:

After Closing, Aqua will implement DELCORA's sanitary wastewater rates in effect at closing as reflected on Schedule 7.04(a) of the Agreement. Aqua also may apply Commission permitted or required surcharges or pass-through costs to DELCORA's base rates after closing. A schedule of rates tariff pages implementing rates for DELCORA customers post-closing is attached hereto as Exhibit G. **Aqua is not presenting a rate stabilization plan.** Aqua is proposing to implement DELCORA's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding. A copy of DELCORA's currently effective Rates and Rules is attached hereto as Exhibit H. DELCORA will take a portion of the proceeds of the Proposed Transaction and place them into a trust for the benefit of the DELCORA customers, and **is requesting to apply payments to DELCORA customers from the Trust through Aqua's billing process. A proforma Memorandum of Understanding is attached as Appendix B to Mr. Packer's testimony, to facilitate payments from the trust to be put on DELCORA customer bills.**

Application, Para 36 (emphasis added).

2. The Memorandum of Understanding ("MOU") identified above describes in general Aqua's responsibilities under DELCORA's rate stabilization proposal.

Aqua Wastewater shall calculate the customer assistance payment amount for each DELCORA customer and the total customer assistance payment amount for each billing period, and shall provide its calculation, along with any and all information necessary to confirm the calculation of both payment amounts to the designated calculation agent.

¹ See, e.g., Aqua Statement No. 2 (Direct Testimony of William C. Packer) and Aqua Statement No. 3 (Testimony of Erin M. Feeney).

Aqua Statement No. 2 (Appendix B to the Direct Testimony of William C. Packer). However, the Application contains absolutely no information how Aqua "shall calculate the customer assistance payment amount for each DELCORA customer..."

3. Aqua describes the purpose of the trust as stabilizing the bills for DELCORA customers. "[T]he transaction with Aqua will create a DELCORA Customer Trust Fund ("Trust") that will provide for customer assistance payments to be applied to the DELCORA customer bills." Aqua Statement No. 5 (Direct Testimony of Robert Willert) at p.10, lines 9-11. "Our goal, through Trust payments to customers, is that the bills for DELCORA customers will be stabilized at an annual increase of 3% for 8-12 years." *Id.*, lines 21-23.

4. Aqua's Application was filed pursuant to the procedures outlined in Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329. Aqua and DELCORA have agreed to use the procedures in Section 1329 in seeking PUC approval of the proposed transaction. See Aqua Statement No. 8 (Direct Testimony of Harold Walker, III) at p. 3, lines 17-19; Aqua Statement No. 9 (Direct Testimony of Dylan D'Ascendis) at p. 2, lines 7-9.

5. Section 1329 prescribes various filing requirements for Applications for acquisition transactions, including the following language from in subsection (d)(1)(v):

(1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), **the acquiring public utility shall include the following as an attachment to its application** for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

...

(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition **and a rate stabilization plan, if applicable to the acquisition.**

66 Pa.C.S. § 1329(d)(1)(v) (emphasis added).

The statute further defines the term "rate stabilization plan" as "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case." 66 Pa.C.S. § 1329(g).²

6. The Application asserts that "[Aqua] is not presenting a rate stabilization plan." Application at Para 36. *See* also Aqua Statement No. 3 (Direct Testimony of Erin M. Feeney) at p. 6, lines 2-3 ("This Application neither includes a request or proposal for a rate stabilization plan nor is one included in the proposed tariff."). Per these assertions, Aqua has not provided a rate stabilization plan with its Application.

7. However, under Section 1329(d)(1)(v) Aqua has a statutory obligation to attach a rate stabilization plan to its application when a rate stabilization plan is "applicable to the application". Aqua's Application and its witnesses' direct testimony conclusively establish that "bills for DELCORA customers will be stabilized at an annual increase of 3% for 8-12 years." *Id.*, lines 21-23. Accordingly, there is a rate stabilization plan applicable to the transaction.

8. The Press Release issued by DELCORA further evidences the important relationship between the rate stabilization plan and the proposed transaction:

The merger is grounded on a rate stabilization plan that would be used to offset customer bill increases. The rate stabilization plan, announced at a public meeting on September 11, is expected to save an average retail customer \$1,400 and will help to offset almost \$1.2 billion in new and ongoing capital costs to meet soon to be enforced U.S. Environmental Protection Agency Long-Term Control Plan (LTCP) regulations as well as DELCORA's ongoing capital program.

"Our number one goal throughout this process was to find a partner who could help us stabilize rates for our ratepayers in the face of large, looming capital costs," said DELCORA Executive Director Robert Willert. "By partnering with Aqua Pennsylvania, DELCORA was able to develop a rate stabilization plan with an experienced operator with knowledge of the local community while also preserving all DELCORA jobs."

² In a February 21, 2020 Settlement Agreement filed with the Commission in Docket No. A-2016-2580061, Aqua stated that Aqua's next base rate "is anticipated to be filed in 2021." Settlement Agreement at page 12 (<http://www.puc.state.pa.us/pdocs/1655518.pdf>).

DELCORA Press Release dated September 17, 2019 (last accessed June 23, 2020 at <https://www.delcora.org/delcora-board-approves-aqua-pennsylvania-wastewater-asset-purchase-agreement/>). (Attached as Exhibit 1 to this Petition).

9. Although the Application states that Aqua is not submitting a rate stabilization proposal, it is clear from the Application and supporting documents that a rate stabilization proposal exists and constitutes an integral part of the transaction.

10. The Commission has noted the importance of having a full and complete application prior to formal acceptance of an application under Section 1329. "Upon review of the Section 1329 application and staff's determination that the filing is perfected and in full compliance with all items on the Application Filing Checklist, the Commission would notify the applicants of the actual accepted filing date, which would then commence the six-month time frame for the proceeding." *Final Implementation Order*, Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193, Public Meeting held October 27, 2016.

11. Item 12 on the Application Filing Checklist directs applicants to: "Provide a proposed tariff containing a rate equal to the existing rates of the seller at the time of the acquisition **and a rate stabilization plan, if applicable to the acquisition.**" See *Final Supplemental Implementation Order*, Implementation of Section 1329 of the Public Utility Code, Appendix A, Docket No. M-2016-2543193, Public Meeting held February 28, 2019 (emphasis added).

12. The Commission's Final Implementation Order also adopted the Office of Consumer Advocate's description of the elements to be included when a rate stabilization plan is applicable to the transaction: "As submitted by OCA, we also conclude that if a rate stabilization [plan] is proposed, the applicant will be required to provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan." *Final Implementation Order* at 27.

13. Aqua's Application contains insufficient information regarding the proposed rate stabilization plan applicable to the transaction. By failing to include a rate stabilization plan, Aqua's Application fails to meet one of the statutory requirements of Section 1329 – the requirements of subsection (d)(1)(v) for the acquiring utility to include a rate stabilization plan applicable to the transaction as part of its application. This straightforward requirement must be met regardless of any belief or representation as to the impacts of the rate stabilization or whether Aqua anticipates that the plan would shift any revenue towards existing customers. Such substantive questions are beyond the scope of this Petition and can be addressed in the underlying proceeding. However, as long as a rate stabilization plan exists that is in any way related to the Application and the acquisition, Aqua must provide it prior to the Commission's acceptance of its Application pursuant to Section 1329(d)(1)(v) of the Public Utility Code.

WHEREFORE, the County of Delaware, Pennsylvania respectfully requests the Pennsylvania Public Utility Commission grant the foregoing Petition and order the following:

- (1) That the staff Secretarial Letter dated June 11, 2020 is rescinded; and
- (2) That the Secretary issue an amended Secretarial Letter by adding an additional requirement which Aqua must meet before the Commission conditionally accepts its application; that condition being that Aqua Pennsylvania Wastewater, Inc. comply with Section 1329(d)(1)(v) of the Public Utility Code by amending its Application to include all relevant documents related to the Rate Stabilization

Plan as outlined in the Commission's Implementation Orders of October 27, 2016
and February 28, 2019 at Docket No. M-2016-2543193.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the County of Delaware,
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Dated: June 23, 2020

Customer Service: 610-876-5526

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DELCORA Board Approves Aqua Pennsylvania Wastewater Asset Purchase Agreement

FOR IMMEDIATE RELEASE

Contact: Andy Stettler/Jay Devine

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DELCORA Board Approves Aqua Pennsylvania Wastewater Asset Purchase Agreement Agreement Offers \$1,400 in Average Savings to Retail Ratepayers

CHESTER, PA (September 17, 2019) – The Delaware County Regional Water Quality Control Authority (DELCORA) announced today that its board of directors voted unanimously to approve the execution of an asset purchase agreement (APA) with Aqua Pennsylvania Wastewater, Inc. and proceed with the proposed merger, pending Pennsylvania Public Utility Commission approval. The purchase price is \$276.5 million which will be used to pay off outstanding debt and reinvested in a

rate stabilization plan. The agreement comes after an exhaustive, consultative process which involved over 20 meetings with employees, municipal officials and the Delaware County Council as well as two public meetings with customers.

The merger is grounded on a rate stabilization plan that would be used to offset customer bill increases. The rate stabilization plan, announced at a public meeting on September 11, is expected to save an average retail customer \$1,400 and will help to offset almost \$1.2 billion in new and ongoing capital costs to meet soon to be enforced U.S. Environmental Protection Agency Long-Term Control Plan (LTCP) regulations as well as DELCORA's ongoing capital program.

"Our number one goal throughout this process was to find a partner who could help us stabilize rates for our ratepayers in the face of large, looming capital costs," said DELCORA Executive Director Robert Willert. "By partnering with Aqua Pennsylvania, DELCORA was able to develop a rate stabilization plan with an experienced operator with knowledge of the local community while also preserving all DELCORA jobs."

At this process' outset, the DELCORA Board set out several key principles in seeking a partner. These principles were: stabilize customer rates; protect all DELCORA jobs; have a partner with knowledge, understanding and appreciation for the local community, as well as a commitment to the same high quality service and environmental standards; and experience in managing major capital pipeline and construction projects.

DELCORA faces significant capital costs to comply with the Environmental Protection Agency's Combined Sewer Long-Term Control Plan in Philadelphia and in Chester. A recent consent decree mandates that municipal wastewater authorities take steps to manage combined sewer systems including building new or replacing existing infrastructure. Because these mandates are unfunded, municipal authorities typically must increase rates to pay for the new capital costs.

"Rather than stay the course and undertake significant projects that are expected to have high costs and dramatically increase customer rates, DELCORA decided to partner with Aqua to address these challenges," said Aqua Pennsylvania President Marc Lucca. "Because of our economies of scale, technical expertise, and long-standing commitment to southeastern Pennsylvania, this partnership will serve to benefit our current and future customers along with the region's environment."

About DELCORA

The Delaware County Water Quality Control Authority (DELCORA) is a municipal authority with an almost 50-year history of successfully treating wastewater for approximately 500,000 customers in 42 municipalities in Delaware and Chester counties. DELCORA is involved in the treatment of approximately 100 million gallons of wastewater every day. It is an independent municipal authority overseen by a board of directors.

6/16/2020

DELCORA Board Approves Aqua Pennsylvania Wastewater Asset Purchase Agreement | DELCORA



Combined Sewer System (<https://www.delcora.org/combined-sewer-systems/>)

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Administration Building

100 East Fifth Street

Chester, PA 19013

Wastewater Treatment Plant

3201 West Front Street

Chester, PA 19016