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July 9, 2020

Via Electronic Filing

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

In re: Docket No. A-2019-3015173
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

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, with this letter via electronic filing, its Answer to the Petition of the County of Delaware for Reconsideration of Staff Action by Secretarial Letter Dated June 11, 2020 Conditionally Accepting Section 1329 Application. A copy of the Answer is 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.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. TO PETITION OF THE
COUNTY OF DELAWARE FOR RECONSIDERATION OF STAFF ACTION**

AND NOW COMES Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), by its attorneys, and, pursuant to 52 Pa. Code 5.44, answers the Petition of the County of Delaware (“County”) for Reconsideration of Staff Action by Secretarial Letter Dated June 11, 2020 Conditionally Accepting Section 1329 Application. In opposition to the Petition, Aqua submits as follows:

I. BACKGROUND

1. This proceeding concerns the Application of Aqua filed March 3, 2020, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”).

2. The Application asks the Commission to, *inter alia*, issue an order and certificates of public convenience approving Aqua’s acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”) and ratemaking rate base pursuant to Section 1329(c)(2) of the Code.

3. On May 18, 2020, the County filed a petition to intervene in the Application proceeding.

4. By Secretarial letter dated June 11, 2020, the Commission advised that it had conditionally accepted the Application for filing. The Commission directed Aqua to proceed to provide notice of the filing of the Application and certain supplemental materials.

5. On June 23, 2020, the County filed a Petition for Reconsideration of Staff Action asking the Commission to rescind the Secretarial letter of June 11, 2020, amend it and, thereafter, reissue the Secretarial letter with the following additional condition:

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 statements) prior to filing a verification letter with the Commission.

6. Aqua is not proposing a Rate Stabilization Plan. There is no Rate Stabilization Plan referenced in Paragraph 36 of the Application or in various direct testimony statements. The County's Petition for Reconsideration, accordingly, should be denied. The County's Petition, moreover, as a threshold matter, is not ripe for review.

II. THE COUNTY'S PETITION FOR RECONSIDERATION OF STAFF ACTION IS NOT RIPE FOR REVIEW

7. The County's Petition is not yet ripe for review. The County Petition was made during the Conditional Acceptance period of Aqua's Application.

8. The Commission has clearly stated in its Final Supplemental Implementation Order that "a docket will remain inactive until a Section 1329 application under that docket number has been formally accepted by the Commission. Filings in an inactive docket will not be considered until the time at which the docket becomes active."¹

9. In Pennsylvania-American Water Company's application under Sections 1102, 1329 and 507 for the acquisition of the Borough of Steelton's water system, the Secretary of the

¹ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order at 42 (Feb. 28, 2019).

Commission issued a Secretarial Letter in response to the Office of Consumer Advocate's Petition for Appeal of Staff Action and/or a Determination of Finality stating:

That docket, however, is currently inactive pending the Applicant's satisfaction of conditions established by the Commission. If Docket No. A-2019-3006880 becomes active upon satisfaction of the conditions, the filing of the OCA will be accepted into the docket and assigned for proper disposition, and the responsive filings of the Applicant and Steelton will also be accepted for formal action and disposition.²

10. Accordingly, the County's Petition should not be considered until the Application is fully accepted by the Commission and becomes an *active* docket.

III. AQUA IS NOT PROPOSING A RATE STABILIZATION PLAN

11. A Rate Stabilization Plan is defined with specificity in the Code. Section 1329 states that a "rate stabilization plan" is a "plan that will hold rates constant or phase rates in over a period of time after the next base rate case."

12. Aqua included proposed schedule of rates tariff pages as Exhibit G to its Application. Those tariff pages, as explained in Paragraph 36 of the Application, implement the DELCORA rates for DELCORA customers post-closing.

13. Aqua is not proposing to hold the Exhibit G rates constant or phase-in new rates over a period of time after its next base rate case. Aqua, accordingly, as also stated in Paragraph 36 of the Application, is not proposing a Rate Stabilization Plan and the County's Petition for Reconsideration should be denied.

14. To be clear, and, as addressed further in Section IV below, the application of payments to DELCORA customers from the DELCORA Customer Trust Fund ("Trust") (referred

² *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880, Secretarial Letter at 1 (Feb. 15, 2019).

to by the County as “DELCORA’s rate stabilization proposal”) is not a tariff matter and not part of Aqua’s jurisdictional rates. Aqua will have no control over the Trust.

IV. DELCORA’S USE OF SALE PROCEEDS IS NOT A “RATE STABILIZATION PLAN” AND NOT A JURISDICTIONAL MATTER

15. In support of its Petition for Reconsideration, the County contends that DELCORA’s plan to apply payments from the Trust to stabilize DELCORA customer bills for a period of time post-closing amounts to a Rate Stabilization Plan under Section 1329.

16. DELCORA’s intention to create a fund from a portion of the sale proceeds and, thereafter, use the fund to “stabilize” rates for DELCORA customers is not a matter of jurisdictional interest to the Commission. As recognized by the Commission in the recently concluded Cheltenham Township Section 1329 proceeding, “Section 1329 does not permit the Commission to undertake review of the selling utility’s use of the sale proceeds.”³

17. Equally significant, DELCORA’s use of sale proceeds to apply payments to customer bills will have no impact on Aqua’s jurisdictional tariff rates. Aqua’s rates are as proposed in Exhibit G to the Application. There, moreover, is no limiting language in the Asset Purchase Agreement between Aqua and DELCORA or language in the Application that would purport to limit the Commission’s ratemaking authority.

18. The DELCORA “customer assistance payment” is not a tariff matter and will not be part of Aqua’s tariff. The use of the word “stabilized” by DELCORA Executive Director Willert in his direct testimony does not warrant a conclusion that DELCORA’s “customer assistance payment” is a Rate Stabilization Plan applicable to the transaction.

³ *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491, Opinion and Order entered October 24, 2019, mimeo at 48.

19. The DELCORA customer assistance payment is certainly a significant aspect of the transaction from the perspective of DELCORA customers as explained by DELCORA in its Press Release. The Press Release acknowledges DELCORA's intention to create an offset to customer bills. Those bills, however, would be based on Aqua's jurisdictional tariff rates going forward. The offset, on the other hand, is not a jurisdictional matter and not a Rate Stabilization Plan under Section 1329.

20. Aqua fully explained its jurisdictional rate proposal and the non-jurisdictional DELCORA "customer assistance payment" in the Application and testimony and schedules of Mr. Packer. Aqua intends to charge DELCORA's existing rates at the time of closing and charge rates based upon a Commission approved tariff in Aqua's first base rate case following closing that includes DELCORA customers based on cost of service. The jurisdictional rate will be presented in Aqua's tariff.

21. DELCORA (not Aqua) is proposing to take a portion of the sale proceeds and place them in a non-jurisdictional Trust for the benefit of DELCORA customers. DELCORA has asked to apply payments to DELCORA customers from the Trust through Aqua's billing process.

22. To address DELCORA's request, Aqua is proposing to include a payment line item on its bills to DELCORA customers, similar, for example, to how it already applies customer assistance payments from other third-party organizations to customer bills. Inclusion of the customer assistance payment on the bill does not make that payment or its calculation a jurisdictional matter.

23. Under Section 1329 and, by the County's own admission, a rate stabilization plan is defined as "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case."

24. Aqua is not proposing to hold jurisdictional rates charged to DELCORA customers constant or phase rates in over a period of time after the Company's next base rate case. Aqua's proposal is, rather, to charge the Commission approved rates to DELCORA customers.⁴ The formation, governance, and payment of "customer assistance payments" from the Trust are outside of the Commission's jurisdiction.

25. Accordingly, as Aqua's proposal is to charge Commission approved tariffed rates, and payments from the Trust applied to customer bills are not limitations on the rates set by the Commission and charged to customers by Aqua, there is no Rate Stabilization Plan for the Commission to approve and the County's petition should be denied.

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. requests that the Public Utility Commission deny the Petition of the County of Delaware for Reconsideration of Staff Action.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

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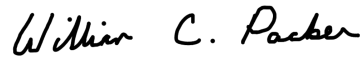
Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: July 9, 2020

⁴ The Memorandum of Understanding, included as Appendix B to Mr. Packer's testimony and cited on page 2 of the County's Petition, expressly states that "Aqua Wastewater shall issue a bill to each DELCORA customer for each billing period using the full cost of service rates authorized by the PUC."

VERIFICATION

I, William C. Packer, Vice President - Controller of Aqua Pennsylvania, Inc., hereby state that the facts set forth in the foregoing Answer of Aqua Pennsylvania Wastewater, Inc., to Petition of the County of Delaware for Reconsideration of Staff Action in the matter at PaPUC Docket No. A-2019-3015173, 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).



William C. Packer
Vice President – Controller
Aqua Pennsylvania, Inc.

Dated: July 9, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of July, 2020, served a true and correct copy of the Answer of Aqua Pennsylvania Wastewater, Inc. to the Petition of the County of Delaware for Reconsideration of Staff Action by Secretarial Letter Dated June 11, 2020 Conditionally Accepting Section 1329 Application, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

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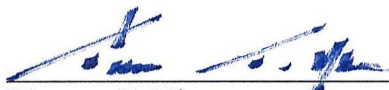
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