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July 15, 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 Answer and Reply to the July 9, 2020 Answer of Aqua Pennsylvania Wastewater, Inc. to 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.

The County acknowledges the Secretarial Letter issued on July 14, 2020 indicating this docket was inactive. Nonetheless, the County requests that the Commission take any actions necessary to immediately proceed with review of the Petition for Reconsideration and the responsive pleadings and direct Aqua to file with the Commission all relevant documents related to the Rate Stabilization Plan and DELCORA Trust Agreement in order to comply with the Public Utility Code's filing requirements for a Section 1329 application that involves a rate stabilization plan.

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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HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • FREDERICK, MD • WASHINGTON, DC

## 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 15<sup>th</sup> day of July, 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	:	

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**ANSWER AND REPLY OF THE COUNTY OF DELAWARE TO 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, OR IN THE ALTERNATIVE, AMENDED PETITION**

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NOW COMES the County of Delaware, Pennsylvania (the "County"), by and through counsel, pursuant to 52 Pa. Code §§ 5.63, who files this Answer and Reply to 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 ("County Answer and Reply"), or in the alternative, an Amended Petition to the County's June 23, 2020 Petition for Reconsideration of Staff Action ("Amended Petition").

Aqua's assertion that the Commission does not have jurisdiction over DELCORA's rate stabilization plan constitutes a preliminary objection under Section 5.101(a)(1) (lack of Commission jurisdiction) of the Commission's regulations. 52 Pa. Code § 5.101(a)(1). Aqua's assertion that the Petition is not ripe is either a preliminary objection under Section 5.101(a)(4) (lack of legal sufficiency) or new matter. 52 Pa. Code § 5.101(a)(4). Accordingly, the County can file an Answer to preliminary objections or a Reply to New Matter. *See* 52 Pa. Code §§ 5.101(f), 5.63(a). Alternatively, the Commission may consider this filing to be an Amended Petition as of right, for which no motion is necessary. 52 Pa. Code § 5.91(b); *see also Application of the*

*Department of Transportation of the Commonwealth of Pennsylvania*, 2011 Pa. PUC Lexis 1171, Docket No. A-00121502, Public Meeting held August 25, 2011 (Order entered August 26, 2011).

As more fully described herein, Paragraphs 1-10 are in reply to Sections III and IV of the Aqua Answer. Paragraphs 2-10 provide the Commission with new and additional information concerning developments in a civil court proceeding that arose after the County filed its Petition. Specifically, Aqua's recent admissions in the civil court proceeding, accepted and relied upon by the Court of Common Pleas of Delaware County in its Order issued July 2, 2020, confirm that the proposed transaction between Aqua and DECLORA includes a rate stabilization plan, as defined in Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329a. Paragraphs 11 and 12 are the County's response on the issue of ripeness.

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 the County's June 23, 2020 Petition for Reconsideration of Staff Action ("June 23 Petition") and this County Answer and Reply 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 statements) prior to filing a verification letter with the Commission.

In support thereof, the County states as follows:

1. The County incorporates all averments in its June 23, 2020 Petition as if set forth herein in full.
2. As referenced in the County's Petition to Intervene, the County filed a Complaint against DELCORA in the Court of Common Pleas of Delaware County at Docket No. CV-2020-

003185 (the “Common Pleas Action”). *See* County Petition to Intervene, n. 2. On June 15, 2020 the County filed an Amended Complaint against DELCORA in the Common Pleas Action.

3. On July 2, 2020, the Delaware County Court of Common Pleas entered an Order granting Aqua’s petition to intervene in the Common Pleas Action. This Order is relevant to the Commission’s disposition of the County’s Petition for Reconsideration of Staff Action and provides the Commission with more complete information upon which to render a decision. A copy of the Order by the Honorable Barry C. Dozer is attached as Appendix No. 1.

4. Aqua claims that the Application does not propose a rate stabilization plan and further argues that DELCORA’s plan to create to “stabilize” rates is not a PUC-jurisdictional rate stabilization plan within the context of Section 1329. Aqua Answer at 4. However, the ultimate question of whether the PUC has jurisdiction to adjudicate the rate stabilization proposal applicable to the transaction has no bearing on whether Section 1329 requires Aqua to furnish all rate stabilization plan documents with its filing. After furnishing the documents as required by the statute, Aqua can avail itself of the Commission’s regulations to argue against admission of the rate stabilization plan documents to the record in any adjudication of its Application. However, the only question before the Commission at this time is whether Aqua has complied with the Section 1329 filing requirements.

5. On this critical question, recent admissions from Aqua in the Common Pleas Action confirm that the proposed transaction includes a rate stabilization plan, as that term is defined in Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329.

6. In Aqua’s Petition to Intervene in the Common Pleas Action, Aqua made the following verified averment:

5. The APA is structured in such a way as to protect Delcora’s customers by capping all rate increases for customers at 3%

per year, by placing the proceeds of the sale (after paying down Delcora's obligations) into an independently managed irrevocable trust for the benefit of these customers, with Univest Bank and Trust Co. serving as trustee ("Univest").

7. Judge Dozer's Order of July 2, 2020 states "this Court determines that Aqua has a real financial interest, [is] referred to as a third party beneficiary of the DELCORA Trust Agreement ..." Appendix No. 1, page 2.

8. In attempting to evade the implications of admitting that its APA is structured to protect DELCORA customers from rate increases, Aqua's Answer improperly assumes that the word "rate" in Section 1329 is limited to "Aqua's jurisdictional tariff rates." *See Aqua Answer* ¶ 14 at page 4. This is incorrect.

9. The term "rate" in Section 1329 is not limited to jurisdictional tariff rates. The Public Utility Code defines the term "rate" much more broadly:

**Every individual, or joint fare, toll, charge, rental, or other compensation** whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or **received for any service within this part**, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, **whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation,** charge, fare, toll, or rental.

66 Pa.C.S. § 102 (emphasis added). *See also McCloskey v. Pa. Pub. Util. Comm.*, 219 A.3d 1216 (Commw. Ct. 2019) (holding the term "rate" in Section 1301.1 is not limited to base rates).

10. Accordingly, the plan to limit post-acquisition rates for DELCORA's customers to 3% falls squarely within the statutory definition of a 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) (emphasis added). Aqua's contention that "the DELCORA customer assistance payment

... is not a jurisdictional matter”<sup>1</sup> contradicts the Public Utility Code and prejudices the parties to the Application proceeding. Aqua’s arguments seeking to distinguish rate stabilization by the Applicant versus rate stabilization by the seller are legal arguments appropriate for the adjudication of its Application and should not be permitted to place the burden on parties to pursue discovery of documents already clearly identified for filing with the Application. This is particularly relevant here, where the filing requirement to provide a rate stabilization plan “applicable” to the Application *is directly addressed in the statute*. See 66 Pa. C.S. § 1329(d)(1)(v) (emphasis added).

11. Lastly, the County rejects Aqua’s assertion that the County’s Petition is not yet ripe. While the Commission determined that the Office of Consumer Advocate’s (OCA) Petition for Appeal of Staff Action in the Application of Pennsylvania-American Water Company ("PAWC") proceeding at Docket No. A-2019-3006880 (“PAWC Application”) would be reviewed only after issuance of a Secretarial Letter confirming final acceptance of that Application, the same result is not appropriate here. In the PAWC Application docket, the OCA sought to contest the conditional acceptance of PAWC’s Application based not on a wholesale omission of a statutory filing requirement, but on the substance of the customer notices filed with the Application. In this case, the relief requested in the County’s Petition for Reconsideration concerns solely administrative compliance with Section 1329’s filing requirements rather than any substantive arguments concerning the legal sufficiency of claims or representations within such documents.

12. Even in the event the Commission determines that both the FISO and the decision in the PAWC Application Docket establish that petitions seeking reconsideration of staff actions

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<sup>1</sup> Aqua Answer ¶ 19; *see also* Aqua Answer ¶ 24 (“The formation, governance, and payment of ‘customer assistance payments’ from the Trust are outside of the Commission’s jurisdiction”). The County disagrees. Section 1306 requires “adherence to tariffs” and prohibits public utilities from “directly or indirectly, by any device whatsoever, or in anywise, demand[ing] or receiv[ing] from any person, corporation or municipal corporation a greater or less rate for any service rendered....” 66 Pa.C.S. § 1306.

should generally be considered after an Application is formally accepted, the public interest favors waiver of this rule pursuant to Section 5.43 of the Commission's Regulations and immediate consideration of the County's Petition. 52 Pa. Code § 5.43. As stated above, the County's Petition for Reconsideration concerns a very narrow documentary filing requirement explicitly stated in the statute. The Commission should not allow Aqua to sidestep its filing obligations and force other parties to expend time and resources litigating production of documents required to be filed with the initial Application. Accordingly, the Commission should grant the County's June 23 Petition based on the arguments set forth in that filing and further advanced or amended herein.

13. Aqua's Application is deficient on its face and cannot be accepted by the Commission unless Aqua amends its Application to include all documents, workpapers, analyses and agreements relating to the device known as the DELCORA Rate Stabilization Trust. Whether DELCORA and Aqua call that device an "offset"<sup>2</sup>, "customer trust fund"<sup>3</sup>, "customer assistance payment"<sup>4</sup>, or something else, it is rate stabilization plan under the Public Utility Code and the Commission's orders implementing Section 1329, and therefore, is a required component of Aqua's Application.

14. The County notes that on July 14, 2020, the Commission issued a Secretarial Letter explaining that the docket in this proceeding remains inactive due to Aqua's outstanding compliance with filing requirements to perfect its Section 1329 application. In the July 14 Secretarial Letter, the Commission acknowledged the receipt of the County's June 23 Petition and indicated that the Petition and associated pleadings would become part of the record in this proceeding when the Commission accepts Aqua's application and the proceeding becomes

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<sup>2</sup> Aqua Answer ¶ 19

<sup>3</sup> *Id.* ¶ 14.

<sup>4</sup> *Id.* ¶ 18.



“active.” For the reasons set forth above, the County requests that the Commission immediately proceed with review of the Petition for Reconsideration and the responsive pleadings and direct Aqua to file with the Commission all relevant documents related to the rate stabilization plan and DELCORA Trust Agreement in order to comply with the Public Utility Code’s filing requirements for a Section 1329 application that involves a rate stabilization plan.<sup>5</sup>

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<sup>5</sup> If the Commission defers consideration of the County’s Petition until after the Commission has determined whether or not Aqua has met the staff’s conditions, such action would violate the County’s right to procedural due process over its challenge to the staff determination. *See* 52 Pa. Code § 5.44.

**WHEREFORE**, the County of Delaware, Pennsylvania respectfully requests the Pennsylvania Public Utility Commission grant the Petition for Reconsideration of Staff Action and order the following:

- (1) That the County of Delaware's Petition for Reconsideration of Staff Action is granted and 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 and DELCORA Trust Agreement 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,  
Pennsylvania


Dated: July 15, 2020

## VERIFICATION

I, Adeolu A. Bakare, Counsel to the County of Delaware, Pennsylvania, hereby state that the facts above set forth 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).

July 15, 2020

Date

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Signature

## **Appendix No. 1**

**PPIN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION**

COUNTY OF DELAWARE, PENNSYLVANIA	:	
Plaintiff	:	
v.	:	NO: CV- 2020-003185
	:	
DELAWARE COUNTY REGIONAL	:	
WATER QUALITY CONTROL AUTHORITY,	:	
et al.	:	
Defendants	:	

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Carol Steinour Young, Esquire, Dana Chilson, Esquire, Thomas Markey, Esquire, William F. Martin, Esquire, Carl Ewald, Esquire,  
for the Plaintiff

Nicholas Poduslenko, Esquire, Matthew S. Olesh, Esquire, Thomas S. Wyatt, Esquire,  
for Defendant, DELCORA

Joel Frank, Esquire, Michael Puppio, Esquire,  
for Intervenor/Defendant, Aqua Pennsylvania Wastewater

Andrew Reilly, Esquire, Jacquelyn Goffney, Esquire,  
for Intervenor/Defendant, Southern Delaware County Authority

William Malone, Esquire,  
for Intervenor/Defendant, Darby Creek Joint Authority

**ORDER GRANTING PETITION TO INTERVENE BY AQUA**

**AND NOW**, this 2 day of July 2020, upon consideration of the Petition to Intervene filed by Aqua on June 15, 2020, the Answer and New Matter filed by Delaware County on June 25, 2020 and as Amended<sup>1</sup> on June 30, 2020, and Aqua's Reply to the New Matter filed on June 30, 2020, as well as the Oral Argument heard on June 30, 2020, it is hereby **ORDERED AND DECREED** that the Petition to Intervene is

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<sup>1</sup> This Court notes that the docket also reflects an Answer filed by the County on June 29, 2020; however, a review of this document reveals that is nearly identical to the Amended Answer filed on June 30, 2020 with the exception the a date of June 29, 2020 by the signature of Plaintiff's Counsel and the later's caption reads "Amended" and the former does not.

**GRANTED** as this Court determines that Aqua has a real financial interest, referred to as a third party beneficiary of the DELCORA Trust Agreement and that Aqua is integral to this case as DELCORA and Aqua entered into an Asset Purchase Agreement on September 17, 2019 (amended on February 24, 2020). This Court also notes that there is a plethora of references to Aqua by the County in both their Complaint and their Amended Complaint against DELCORA. The Court finds that impact of this case on the agreement between Aqua and DELCORA will be direct, significant and real. This Court interprets 231 Pa Code Section/ Pa.R.C.P. 2327(4) to find that the rule permits that interventions *shall* be permitted where a party requesting said intervention *may* be affected; therefore, this Court determines that the intervention by Aqua is necessary and required. Aqua shall therefore timely comply with the Rules of Civil Procedure and respond to the Amended Complaint filed by Plaintiffs in this case.

BY THE COURT:

Barry C. Dörz, J.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, is written over the printed name and extends to the left.