



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

August 4, 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 Amended 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
The Honorable Angela T. Jones, Administrative Law Judge (via email, 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 AMENDED
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 5.65, answers the Amended Petition of the County of Delaware (“County”) for Reconsideration of Staff Action by Secretarial Letter Dated June 11, 2020 Conditionally Accepting Section 1329 Application (“Amended Petition”). In opposition to the Amended 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 (“Petition”) 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 filed an Answer to the Petition on July 9, 2020. As there is no Rate Stabilization Plan referenced in Paragraph 36 of the Application or in various direct testimony statements, Aqua opposed the County’s Petition. Aqua also asserted, *inter alia*, that the County’s Petition, as a threshold matter, was not ripe for review.

7. By Secretarial letter dated July 14, 2020, the Commission advised that the docket was inactive but, if Aqua satisfies all of the conditions in the Secretarial letter of June 11, 2020, and the docket becomes active as a result of that satisfaction, the Petition, and any responsive filings, will be accepted into the docket and assigned for formal action and disposition.

8. On July 15, 2020, the County filed an Answer and Reply to Aqua’s Answer to the Petition or, in the alternative, an Amended Petition, averring “new and additional information concerning developments in a civil court proceeding that arose after the County filed its Petition.” The County also incorporated all averments from its initial Petition.

9. By letter dated July 23, 2020, Aqua confirmed completion and satisfaction of the notice requirements and conditions set forth in the Secretarial letter of June 11, 2020, and asked the Commission to finally accept the Application.

10. By Secretarial letter dated July 27, 2020, the Commission acknowledged receipt of Aqua's letter of verification/confirmation and finally accepted Aqua's Application for Commission consideration.

11. Herein, Aqua answers the County's Amended Petition. In opposition to the Amended Petition, Aqua incorporates herein all averments from its initial Answer filed July 9, 2020, and submits further as follows.

II. AQUA IS NOT PROPOSING A RATE STABILIZATION PLAN

12. As presented in the initial Answer, 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."

13. 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. Aqua's proposal is to charge Commission approved tariffed rates. What an unregulated third party does with respect to the proceeds of a sale, whether it be to invest those funds into the community or put them into a trust, is not jurisdictional to the Commission and not a rate stabilization plan under the Code.

14. 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 and Amended Petition should be denied.

15. In support of its Amended Petition, the County now references ongoing litigation in the Delaware County Court of Common Pleas and an Order of that Court allowing Aqua to intervene in the County proceeding. The County then contends that Aqua's Answer to the

County's Petition "improperly assumes that the word 'rate' in Section 1329 is limited to 'Aqua's jurisdictional rates.'"¹

16. Limiting the word "rate" to jurisdictional rates is entirely consistent with the Code, which explains that a "rate" is a charge "made, demanded, or received for any service within [the Code]." Section 102 of the Code defines "rate" as:

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.

17. The DELCORA customer assistance payment is not a charge "made, demanded, or received for any service within [the Code]." It is, rather, a payment to be made from the Trust to offset the "rate" "made, demanded, or received" by Aqua for its wastewater service. Aqua's tariff charges comprise the "rate" for wastewater service as defined by the Code. The DELCORA customer assistance payment is not a "rate."

18. The County's attempt to expand the statutory definition of "rate" to include an offsetting payment or credit from an unregulated third party is unwarranted and contrary to the express language of the Code.

III. AQUA DID NOT ADMIT THAT THE ACQUISITION INCLUDES A RATE STABILIZATION PLAN

19. In further support of its Amended Petition, the County contends that an averment in Aqua's Petition to Intervene in the County Court proceeding creates an implication that the DELCORA customer assistance payment amounts to a rate stabilization plan.²

¹ County Amended Petition, ¶8.

² County Amended Petition, ¶6, ¶7 and ¶8.

20. Aqua's averment, which is reproduced in the Amended Petition,³ does not aver that the DELCORA customer assistance payment is a rate stabilization plan. The interpretation of the averment offered by the County is, moreover, not warranted. The Asset Purchase Agreement ("APA") does not protect DELCORA customers from increases in jurisdictional rates. The APA has no language limiting the Commission's ratemaking authority.

IV. DENIAL OF THE COUNTY'S PETITION AND AMENDED PETITION IS NOT PREJUDICIAL TO THE PARTIES

21. In further support of its Amended Petition, the County also contends that Aqua's arguments "place the burden on parties to pursue discovery"⁴ and that the Commission "should not allow Aqua to sidestep its filing obligations and force other parties to expend time and resources litigating production of documents ..."⁵

22. Discovery, however, is underway. Interrogatories of the Office of Consumer Advocate asked both DELCORA and Aqua to provide information and details concerning the customer assistance payment. Interrogatories of the Bureau of Investigation and Enforcement asked Aqua to provide a sample bill showing the DELCORA customer assistance payment and a schedule showing how the payment will be calculated.

23. DELCORA and Aqua answered the Interrogatories without objection. The County was provided copies of the answers.⁶ No party is burdened or prejudiced by Staff's action conditionally accepting the Application.

³ County Amended Petition, ¶6.

⁴ County Amended Petition, ¶10.

⁵ County Amended Petition, ¶13.

⁶ A copy of the Trust Agreement between DELCORA, as Settlor, and Univest Bank and Trust Co., as Trustee, dated December 27, 2019, was included in the responses to OCA Interrogatories.

V. THE COMMISSION'S DEFERRAL OF ACTION IS NOT A VIOLATION OF PROCEDURAL DUE PROCESS

24. Lastly, the County contends that deferral of action on its Petition and Amended Petition until after the Commission has finally accepted Aqua's Application would violate its right to procedural due process.⁷

25. The County's procedural rights have not been violated. It had notice of the filing of the Application and filed a petition to intervene in the Application proceeding. The County's Petition has, not yet, been denied. The Secretarial letter dated July 14, 2020, explains that, once the docket becomes active, the County's Petition and any responsive filings will be accepted and assigned for formal action and disposition

26. Additionally, by the County's own admission, the relief requested by its Petition/Amended Petition is not a matter of import. The County states in the Amended Petition that its request for relief is "solely administrative compliance with Section 1329's filing requirements rather than any substantive argument concerning the legal sufficiency of claims or representations ..."⁸

VI. CONCLUSION

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

⁷ County Amended Petition, ¶14, footnote 5.

⁸ County Amended Petition, ¶11.

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

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

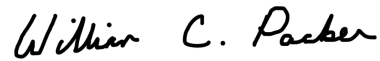
Thomas T. Niesen, Esquire
PA Attorney ID No. 31379
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com
Tel. No. (717) 255-7600
Fax No. (717) 236-8278

Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: August 4, 2020

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 the Amended 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: August 4, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of August 2020 served a true and correct copy of the foregoing Answer of Aqua Pennsylvania Wastewater, Inc. to the Amended 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

Adeolu A. Bakare, Esq.
Robert F. Young, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com

Christine Maloni Hoover
Erin L. Gannon
Senior Assistant Consumer Advocates
Harrison G. Breitman
Santo G. Spataro
Assistant Consumer Advocates
Office of Consumer Advocate
choover@paoca.org
egannon@paoca.org
hbreitman@paoca.org
sspataro@paoca.org

Gina L. Miller, Prosecutor
Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ginmiller@pa.gov
ermclain@pa.gov

Erin L. Fure
Daniel A. Asmus
Assistant Small Business Advocates
Office of Small Business Advocate
efure@pa.gov
dasmus@pa.gov

Kenneth D. Kynett, Esq.
Charles G. Miller, Esq.
Petrikin, Wellman, Damico, Brown & Petrosa
kdk@petrikin.com
cgm@petrikin.com

Thomas Wyatt, Esq.
Matthew S. Olesh, Esq.
Obermayer Rebmann Maxwell & Hoppel, LLP
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com

Scott J. Rubin, Esq.
scott.j.rubin@gmail.com



Thomas T. Niesen
PA Attorney ID No. 31379