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August 7, 2020

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Re: Application of Aqua Pennsylvania Wastewater,
Inc. pursuant to Sections 507, 1102, and 1329 of
the Public Utility Code for, inter alia, approval of
the 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 in the above-referenced proceeding please find the Protest of Upland Borough.

This document is being served on the Administrative Law Judge and all parties of record. The document was filed electronically with the Commission on this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

Enclosure

cc: Angela Jones, Administrative Law Judge
All parties of record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PROTEST OF
UPLAND BOROUGH

Pursuant to 52 Pa. Code §§ 5.51, *et seq.*, Upland Borough (“Upland”) hereby files a Protest to the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) to acquire the assets of Delaware County Regional Water Quality Control Authority (“DELCORA”) and to begin providing service to DELCORA’s customers. In support of this Protest, Upland states as follows:

1. Upland is a borough in Delaware County, Pennsylvania, with its principal place of business at 224 Castle Avenue, Upland, PA 19015.
2. Upland is a retail customer of DELCORA at the above service address.
3. Upland and the residents and businesses located in Upland are served under a rate schedule that is only for customers located within the borough limits. Aqua Exhibit H, page 6.

4. Upland will be represented in this case by, and all documents should be served upon its attorney:

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5. On July 22, 1975, Upland entered into a contract to sell its wastewater distribution system to DELCORA, subject to a reversionary interest in favor of Upland. The contract is appended to the Application as Exhibit F139. The agreement was subsequently amended on January 18, 1983, December 21, 1983, and February 12, 1985. The amendments are appended to the Application as Exhibits F140, F141, and F142, respectively. The agreement as amended will be referred to as "the Contract."

6. The Contract has a term that ends November 17, 2022, renewing automatically until DELCORA ceases to exist or unless either party provides a one-year notice of cancellation. Exhibit F139, section 13.5.

7. The Contract requires DELCORA to operate the wastewater system. The failure of DELCORA to operate the system results in the reversion of the Upland collection system to Upland. The Contract specifically states that if, "at any time in the future, during the term of this Section 13 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real Property, other than the Treatment Plant and those facilities in the Collection System described in Section 2(d) shall revert to the Seller's ownership rather than to the County of Delaware or any other agency." Exhibit F139, section 13.6 (emphasis added).

8. The Contract makes the intention of the parties clear when it states: "It is the intent of the parties that DELCORA will acquire, own, maintain, and operate the property of the Seller, and supply sewage treatment and collection service in accordance with the provisions of this Agreement ..." Exhibit F139, section 14.5.

9. Upland and DELCORA have not amended the Contract since 1985.

10. DELCORA, therefore, has no right to sell the wastewater collection system within Upland. If DELCORA desires to stop operating the wastewater system, then the collection system within Upland automatically reverts to the ownership of Upland.

11. Aqua has no right to file the Contract with the Commission under Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, as if it were a contract between Aqua and Upland. Indeed, there is no agreement between Aqua and Upland.

12. Under the terms of the Contract and DELCORA's rate schedules, Upland and the residents and businesses located in Upland have made significant capital contributions to DELCORA, some of which paid for existing DELCORA facilities and some of which are being held by DELCORA to pay for the construction of facilities in the future.

13. On information and belief, Upland avers that a substantial amount of the capital contributed by Upland to DELCORA to fund future capital improvements is being held by DELCORA in cash or cash equivalents. Specifically, according to DELCORA's audited financial statement for the year end December 31, 2019, DELCORA had cash and cash equivalents at year-end 2019 totaling more than \$103 million.

14. The Asset Purchase Agreement between Aqua and DELCORA (Exhibit B1 to the Application) states that Aqua will not receive any of the cash or cash equivalents held by DELCORA. Exhibit B1, section 2.02.

15. Neither the Asset Purchase Agreement nor (to the best of Upland's knowledge) any other agreement makes any provisions to refund customers' capital contributions.

16. To the best of Upland's knowledge, the calculation of the net original cost of DELCORA's plant is based on the original cost of the plant less accumulated depreciation, without considering contributions from Upland or other DELCORA customers. See Application ¶ 22.

17. Aqua estimates that the first rate increase to Upland, as a Western region retail customer, would be 12.55%.

18. Based on Aqua's history in other acquisitions, Upland would expect that projected increase to be just the first of many rate increases that would adversely affect Upland and the residents and businesses within the borough.

19. Based on information and belief, Upland avers that there would be little or no need for a rate increase under Aqua ownership if Aqua gave Upland full credit for the contributions Upland has made to DELCORA and with which DELCORA has purchased the property, plant, and equipment included in Aqua's purported rate base for the Western retail service area.

20. Upland submits this Protest to oppose the proposed transaction for the following reasons:

- A. DELCORA does not have the legal right to transfer the property used to serve Upland under the Contract;
- B. DELCORA does not have the legal right to transfer the Contract to Aqua;
- C. There is no contract or agreement between Upland and Aqua; therefore Aqua's request to file and have the Commission approve the agreements between Upland and DELCORA in Exhibits F139, F140, F141, and F142 is a nullity and cannot be approved under 66 Pa. C.S. § 507;
- D. It is not consistent with the public convenience and necessity for Aqua to acquire the assets and contracts of DELCORA, in violation of 66 Pa. C.S. §§ 1101, *et seq.*; and
- E. The acquisition of DELCORA's assets and contracts by Aqua would not provide an affirmative benefit to the public, but rather it would be detrimental to the public including Upland and the residents and businesses located within the borough, in violation of the standards enunciated by the courts in *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (the Public Utility Code "requires that the proponents of a merger demonstrate that the merger will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way") and *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Commw. Ct. 2018), appeal denied, 207 A.3d 290 (Pa. 2019).

21. Counsel consents to the service of documents by electronic mail at the email address listed above, as provided in 52 Pa. Code § 1.54(b)(3).

WHEREFORE, Upland respectfully requests the Commission to deny the Application, prevent DELCORA from transferring to Aqua the collection system located in Upland; prevent DELCORA from transferring its obligations under the Contract to Aqua; find that there is no contract between Upland and Aqua; find that the proposed transaction does not promote the service, accommodation, convenience, or safety of the public in some substantial way; if the transaction is approved, require DELCORA to transfer the Upland collection system to Upland; if the transaction is approved, require Aqua to give to Upland and customers located within the borough credit for the value of property contributed by Upland and customers located within the borough to DELCORA; and grant such other relief as is warranted under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin".

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Counsel for:
Upland Borough

Dated: August 7, 2020

VERIFICATION

I, Michael J. Ciach, the Borough Manager/Secretary/Treasurer of Upland Borough, Delaware County, 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).

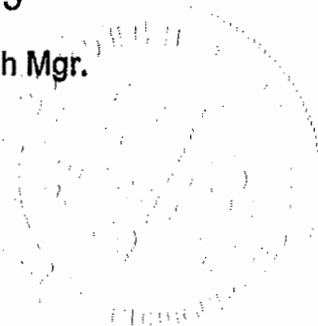
Date: August 06, 2020



Borough of Upland
224 Castle Avenue
Upland, PA 19015

Michael J. Ciach, Borough Mgr.

Sec. / Treas.



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Protest of Upland Borough, upon the following parties by electronic mail. Service by first-class mail will be provided to any party that requests such service.

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Representing Edgmont Township

August 7, 2020

Date



Scott J. Rubin, Counsel for
Upland Borough