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August 17, 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 Trainer  
Borough.

This document is being served on 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	:	

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PROTEST OF  
TRAINER BOROUGH

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Pursuant to 52 Pa. Code §§ 5.51, *et seq.*, Trainer Borough (“Trainer”) 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, Trainer states as follows:

1. Trainer is a borough in Delaware County, Pennsylvania, with its principal place of business at 824 Main Street, Trainer, PA 19061.
2. Trainer is a retail customer of DELCORA at the above service address.
3. Trainer and the residents and businesses located in Trainer are served under a rate schedule that is only for customers located within the Borough limits. Aqua Exhibit H, page 3.

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

Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815  
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e-mail: scott.j.rubin@gmail.com

5. On August 9, 2005, Trainer entered into an Agreement of Sale and Service which, inter alia, provided for the sale of its wastewater distribution system to DELCORA, subject to a reversionary interest in favor of Trainer ("the Contract"). The Contract is appended to the Application as Exhibit F137.

6. The Contract states that all "agreements, representations and warranties contained in this Agreement will survive completion of Closing hereunder indefinitely." Id., section 10.

7. The Contract requires DELCORA to operate the wastewater system. The failure of DELCORA to operate the system results in the reversion of the Trainer collection system to Trainer. The Contract specifically states that if, "at any time in the future, during the term of this Section 12 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the Sewer Properties, such as they may exist at such time, shall revert to the Seller's ownership, unless Seller declines to accept such reversion, in which case they shall revert to the County of Delaware or any other agency, as may be dictated by operation of law." Id., section 12.4 (emphasis added).

8. The Contract prohibits either party from assigning its interest in the Contract. Exhibit F137, section 13.3.

9. Trainer and DELCORA have not amended the Contract since 2005; nor have Trainer and DELCORA entered into any separate contract or agreement permitting the assignment of either party's interest in the Contract.

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

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 Trainer. Indeed, there is no agreement between Aqua and Trainer.

12. Under the terms of the Contract and DELCORA's rate schedules, Trainer and other DELCORA customers in the Borough 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, Trainer avers that a substantial amount of the capital contributed by Trainer 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 Trainer's knowledge) any other agreement makes any provisions to refund customers' capital contributions.

16. To the best of Trainer'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 Trainer or other DELCORA customers. See Application ¶ 22.

17. Section 12.2 of the Contract provides the basis for imposing rates on customers within the Borough. Among other provisions, this section of the Contract requires that customers in the Borough "shall bear none of the costs of collection of sewage outside" the Borough.

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

19. Based on information and belief, Aqua would propose to set rates to Trainer and Trainer residents and businesses that would include costs not permitted to be charged to customers in Trainer under the Contract.

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

21. Based on information and belief, Trainer avers that there would be little or no need for a rate increase under Aqua ownership if Aqua gave Trainer full credit for the contributions Trainer 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.

22. Trainer 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 Trainer 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 Trainer and Aqua; therefore Aqua's request to file and have the Commission approve the agreement between Trainer and DELCORA in Exhibit F137 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.*;
- 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 Trainer 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); and

F. It appears that Aqua would charge rates to Trainer and Trainer residents and businesses that would include costs not permitted to be charged to Trainer customers under the Contract.

23. 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, Trainer respectfully requests the Commission to deny the Application, prevent DELCORA from transferring to Aqua the collection system located in Trainer; prevent DELCORA from transferring its obligations under the Contract to Aqua; find that there is no contract between Trainer 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 Trainer collection system to Trainer; if the transaction is approved, require Aqua to give to Trainer and customers located within the borough credit for the value of property contributed by Trainer and customers located within the borough to DELCORA;

if the transaction is approved, require Aqua to abide by the ratesetting provisions in the Contract; 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". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

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(570) 387-1893

Counsel for:  
Trainer Borough

Dated: August 17, 2020



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VERIFICATION

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I, Gregory M. May, the President of  
Trainer 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 17, 2020

Gregory M. May

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CERTIFICATE OF SERVICE

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I hereby certify that I have this day served a true copy of the foregoing document 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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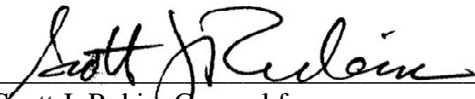
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August 17, 2020  
Date

  
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Scott J. Rubin, Counsel for  
Southwest Delaware County Municipal Authority