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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 Edgmont Township, Delaware County, Pennsylvania.

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,



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
EDGMONT TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA

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

1. Edgmont is a Second Class Township in Delaware County, Pennsylvania, with its principal place of business at 1000 Gradyville Road, P.O. Box 267, Gradyville, PA 19039..
2. Edgmont filed a Petition to Intervene in this proceeding on June 15, 2020 (“Edgmont Petition”).
3. After further review of the relevant documents, including information provided by Aqua and DELCORA in discovery, Edgmont has decided to withdraw its Petition to Intervene and file this Protest to make clear that it opposes the Joint

Application. A separate Petition for Leave to Withdraw the Edgmont Petition is being filed simultaneously with the Commission.

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

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5. By that certain Agreement dated October 17, 2012 ("Edgmont/DELCORA Agreement"), Edgmont contracted with DELCORA to extend, build, and operate the DELCORA System to provide sanitary sewer services to the Crum Creek District of Edgmont. The contract is appended to the Application as Exhibit F81.¹

6. Edgmont and DELCORA also are parties to an agreement with Ashford Land Company LLP, Newtown Township, and the Newtown Township Municipal Authority, which is appended to the Application as Exhibit F59 ("Multi-Party Agreement").

7. The Edgmont/DELCORA Agreement has an initial term of 25 years, which expires on October 16, 2037. Edgmont also has five options to extend the agreement, each option being for a period of five years. Exhibit F81, section 22.

8. Pursuant to the Edgmont/DELCORA Agreement, DELCORA and Edgmont completed the portion of the DELCORA System and placed the same into service on or about February 1, 2016 ("In Service Date").

¹ The title page to Exhibit F81 incorrectly lists the date as October 17, 2017, instead of October 17, 2012.

9. Since the In Service Date, Edgmont has witnessed the connection of approximately 98% of the users in the Crum Creek District to connect to and use the DELCORA System.

10. Importantly, the Edgmont/DELCORA Agreement provides for, among other things:

a. The process and components which are permitted to be charged by DELCORA to customers in the Crum Creek District, which process does not include PUC rate approval, or costs associated with Aqua's overheads, taxes, investor relations, and other expenditures included in Aqua's revenue requirement. Exhibit F81, section 16.

b. The right of Edgmont to purchase outright, upon proper notice, the portion of the DELCORA System servicing the Crum Creek District. Exhibit F81, section 18.

c. A prohibition against the sale, lease, or conveyance of any other interest in any part or all of the DELCORA System servicing the Crum Creek District, without first having obtained the written approval of Edgmont. Exhibit F81, section 29.

d. A right of first refusal in favor of Edgmont to purchase the portion of the DELCORA System servicing Edgmont should DELCORA sell, lease, or convey any other interest in any part or all of DELCORA System servicing the Crum Creek District. Exhibit F81, section 22(c).

e. If Edgmont consents to an assignment of the Edgmont/DELCORA Agreement, the successors and assigns of DELCORA are bound by the terms of the Edgmont/DELCORA Agreement. Exhibit F81, section 29.

11. The Edgmont/DELCORA Agreement has not been amended and remains in full force and effect.

12. Edgmont has not consented to DELCORA's proposed assignment of the Edgmont/DELCORA Agreement to Aqua.

13. Edgmont has not yet decided if it will exercise its right of first refusal to purchase the Crum Creek District assets from DELCORA.

14. The Application violates Edgmont's rights under the Edgmont/DELCORA Agreement and Edgmont has not waived its rights in connection therewith.

15. DELCORA, therefore, has no right to sell the wastewater collection system in Edgmont without Edgmont's prior approval.

16. Aqua has no right to file the Edgmont/DELCORA Agreement 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 Edgmont.

17. Under the terms of the Edgmont/DELCORA Agreement and the Multi-Party Agreement, Edgmont and its residents and businesses served by the Crum Creek Sewer District System 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.

18. On information and belief, Edgmont avers that a substantial amount of the capital contributed by Edgmont 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.

19. 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.

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

21. To the best of Edgmont'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 Edgmont or any DELCORA customers. See Application ¶ 22.

22. Aqua estimates that the first rate increase to Edgmont and residents and businesses located in the Crum Creek District would be 12.55%.

23. Based on Aqua's history in other acquisitions, and rate projections provided in discovery, Aqua expects to significantly increase the rates paid by residents and businesses in the Crum Creek District in future years.

24. Edgmont 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 a portion of Edgmont Township under the Edgmont/DELCORA Agreement;

B. DELCORA does not have the legal right to transfer the Edgmont/DELCORA Agreement to Aqua without Edgmont's consent, which consent has not been given;

C. There is no contract or agreement between Edgmont and Aqua; therefore Aqua's request to file and have the Commission approve the Edgmont/DELCORA Agreement in Exhibit F81 is a nullity and cannot be approved under 66 Pa. C.S. § 507;

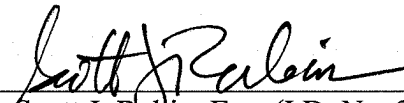
D. It is not consistent with the public convenience and necessity for Aqua to acquire the assets and contracts of DELCORA, in violation of 66 Pa. C.S. §§ 1101, *et seq.*; and

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 Edgmont and the residents and businesses located within Edgmont Township, 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).

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

WHEREFORE, Edgmont respectfully requests the Commission to deny the Application, prevent DELCORA from transferring to Aqua the collection system located in Edgmont; prevent DELCORA from transferring its obligations under the Edgmont/DELCORA Agreement to Aqua; find that there is no contract between Edgmont 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 Aqua to give to Edgmont and customers located within the township credit for the value of property contributed by Edgmont and customers located within the township to DELCORA; and grant such other relief as is warranted under the circumstances.

Respectfully submitted,



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Counsel for:
Edgmont Township

Dated: August 17, 2020

VERIFICATION

I, Ronald Gravina, the Chairman of the Board of Supervisors of Edgmont Township, 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 14, 2020

Ronald Gravina

CERTIFICATE OF SERVICE

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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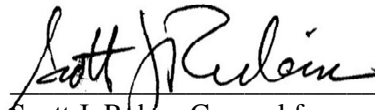
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August 19, 2020
Date



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