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August 24, 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, pursuant to the Procedural Order Re: Expedited Motion to Extend Statutory Deadline, dated August 18, 2020, are submitting, with this letter via electronic filing, its Answer to the Office of Consumer Advocate's Expedited Motion for an Extension of the Statutory Suspension Period. 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 (w/encl.)
The Honorable Angela T. Jones, Administrative Law Judge (via email, w/encl.)
The Honorable Charles E. Rainey, Jr., Chief Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Angela T. Jones, Presiding

Application of Aqua Pennsylvania 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	:	Docket No. A-2019-3015173
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**ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. TO EXPEDITED
MOTION OF THE OFFICE OF CONSUMER ADVOCATE FOR AN
EXTENSION OF THE STATUTORY SUSPENSION PERIOD**

AND NOW COMES Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), by its attorneys, and, pursuant to the Procedural Order Re: Expedited Motion to Extend Statutory Deadline, dated August 18, 2020, answers the Expedited Motion of the Office of Consumer Advocate (“OCA”) for an Extension of the Statutory Suspension Period. In opposition to the Motion, Aqua submits as follows:

I. BACKGROUND

1. This proceeding concerns the Application of Aqua filed March 3, 2020, pursuant to Sections 1329, 1102 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. Coincident with the filing of the Application, Aqua, on March 3, 2020, hand carried electronic and paper copies of the Application, Exhibits and Work Paper Files in Excel Format to the OCA.¹ The OCA filed a Protest to the Application and Public Statement on April 2, 2020.

4. Following its filing, the Application was considered “inactive” as the Commission’s Bureau of Technical Utility Services (“TUS”) conducted a completeness review. In response to TUS information requests, Aqua filed supplemental information with the Commission on May 6, 7, 8, 13, 22 and 28 and June 8, 2020. Copies of the supplemental information were served on the OCA.

5. Thereafter, upon consideration of the Application and supplemental information, the Commission, by Secretarial letter dated June 11, 2020, 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.

6. Aqua (and DELCORA) provided the requisite customer notice. By letter dated July 23, 2020, Aqua confirmed completion and satisfaction of the notice requirements and the conditions set forth in the Secretarial letter of June 11, 2020, and asked the Commission to finally accept the Application.

7. 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.

8. Upon final acceptance on July 27, 2020, the Application proceeding became “active.” Having finally accepted the Application on July 27, 2020, Section 1329(d)(2) of the

¹ Upon agreement with the OCA, the paper copy did not include DEP related Exhibits (E series, L, M series, N series, O series and P series exhibits, which were provided in electronic format.)

Code requires the Commission to issue a Final Order on the Application within six months (180 days) or by January 23, 2021.

9. The matter was assigned to Administrative Law Judge Angela T. Jones and a telephonic prehearing conference is scheduled for September 2, 2020. Judge Jones issued a Further Corrected Prehearing Conference Order on August 17, 2020, with a litigation schedule that would conclude the proceeding within the required six months.²

10. On August 17, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Suspension Period contending that COVID-19 has placed its “ability to conduct an adequate investigation of Aqua’s application at issue”³ and that the “global pandemic is the type of extraordinary event that, despite the OCA’s best efforts, warrants an extension of the statutory period in the interest of due process.”⁴

11. Herein, Aqua answers the OCA’s Motion. Aqua opposes the Motion as set forth below.

II. THE OCA HAS FAILED TO JUSTIFY AN EXTENSION TO THE STATUTORY REVIEW PERIOD

A. Legal Authority

12. Section 1329(d)(2) of the Code provides that the Commission “shall issue a final order on an application submitted under ... section [1329] within six months of the filing date ... The Commission addressed the six month deadline in *Application of Aqua Pennsylvania Wastewater, Inc. – New Garden Township*, Docket No. A-2016-2580061, Opinion and Order entered February 15, 2017, mimeo at 23, holding that the clear and unambiguous, express language

² The Further Corrected Prehearing Conference Order, dated August 17, 2020, followed the issuance of an initial Prehearing Conference Order dated August 3, 2020.

³ OCA Motion at 1-2.

⁴ OCA Motion at 2.

of the statute “*requires* that once a utility applicant invokes Section 1329 and provides the information required under Section 1329(d), the Commission *must issue an order within six months*” (*emphasis added*).

13. The OCA contends that Section 331(d) of the Code provides legal authority to extend the six month review period. The OCA states that the Section gives presiding officers authority, subject to Commission regulations, to regulate the course of a hearing, dispose of procedural requests or similar matters and take other action authorized by Commission rule.⁵ The Section, however, does not, in any way, provide the Commission or a presiding officer with the authority to extend a statutory review period. Extension of the statutory review period is not a procedural matter; nor is it authorized by Commission rule.

14. The OCA also contends that the Commission has authority under its COVID Emergency Order dated March 20, 2020 and Governor Wolf’s Disaster Proclamation to extend the statutory six month review period.⁶ While we acknowledge the authority of the Commission to extend statutory deadlines during the extraordinary circumstances of the COVID pandemic, we submit that the OCA has failed to justify application of that authority here.

B. Extension of the Statutory Six Month Review Period Is Not Justified

15. In support of its Motion, the OCA argues that, “given the current, extraordinary circumstances, the statutory suspension period will limit ability of the OCA, and the other parties, to adequately investigate and analyze the Company’s filings ...”⁷ stating further that the litigation schedule presented in Judge Jones’ Prehearing Conference Order “provides the parties with a month and a half to schedule and hold public input hearings, develop and respond to testimony,

⁵ OCA Motion at 5.

⁶ OCA Motion at 5-6.

⁷ OCA Motion at 6.

engage in settlement discussions, hold evidentiary hearings, and litigate issues in main and responsive briefs.”⁸

16. The Prehearing Conference Order explains, however, that the litigation schedule presented in it “was developed using the model litigation schedule set [forth] in the Commission’s July 21, 2016, Tentative Implementation Order at Docket No. M-2016-2543193 as a guide.”⁹ There is, thus, nothing extraordinary about the proposed schedule. It is, in fact, the typical schedule for Section 1329 proceedings – the “model” schedule. Although perhaps compressed, at least in comparison with the schedules in other Commission application proceedings, it is in no way atypical and, in and of itself, provides no basis for extending the six month review period.

17. In a further attempt to support its Motion, the OCA also notes that it served its Set I and Set II Interrogatories on May 5, 2020, but that it did not receive responses until July 10, 24 and 27, 2020. The OCA’s Set I and Set II Interrogatories were, however, served while the Application was “inactive.” The Commission, in its Final Supplemental Implementation Order (“FSIO”), explained, for all Section 1329 participants, that “a docket will remain inactive until a Section 1329 application under that docket number has been formally accepted by the Commission. Filings in an inactive docket will not be considered until the time at which the docket becomes active.”¹⁰

18. Aqua, consequently, was under no obligation to respond to the OCA’s discovery while the Application was being reviewed by TUS, prior to the proceeding becoming “active.” Once the proceeding was near to becoming “active” and, thereafter, became “active,” Aqua responded quickly to the OCA Interrogatories on July 10, July 24 and July 27, 2020.

⁸ OCA Motion at 6-7.

⁹ Prehearing Conference Order at 2-3.

¹⁰ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order at 42 (Feb. 28, 2019).

19. In short, there are no discovery issues in this case that are preventing the OCA from developing its position, including consideration of affirmative public benefits or the UVE appraisals.¹¹ Notably, although Aqua did not answer formal discovery while the proceeding was “inactive,” it did participate in informal discovery with the OCA during that time. At the request of the OCA, Dylan D’Ascendis, the Utility Valuation Expert, for the seller’s Fair Market Value Report was made available to the OCA and its expert by conference call on April 27, 2020. Aqua, moreover, provided the information required by the Commission’s Section 1329 “Checklist.” “Providing the information required by the Checklist reduces the need for substantial discovery and related disputes and supports the development of a full and complete record”¹²

20. As a final matter, the OCA cites its request for public input hearings as a justification for extending the review period. The Commission began conducting public input hearings telephonically before the COVID emergency and has continued to conduct public input hearings telephonically during the emergency. We would expect public input hearings to be conducted telephonically in this proceeding as well. If there is a challenge to scheduling public input hearings it would seem that that challenge is no different now than it was before the COVID pandemic restrictions.

III. CONCLUSION

21. Section 1329(d)(2) of the Code requires the Commission to issue a Final Order in this Application proceeding by January 23, 2021. While we acknowledge the authority of the Commission to extend statutory deadlines during the extraordinary circumstances of the COVID pandemic, we submit that the OCA has failed to justify application of that authority here.

¹¹ See OCA Motion at 7. The civil court action in the Delaware County Court of Common Pleas, also cited by the OCA, is not a matter of Commission jurisdiction and provides not basis for continuing this proceeding.

¹² *FSIO* at 7.

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. requests that the Public Utility Commission deny the Expedited Motion of the Office of Consumer Advocate for an Extension of the Statutory Suspension Period.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 
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Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: August 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of August 2020 served a true and correct copy of the foregoing Answer of Aqua Pennsylvania Wastewater, Inc. to the Expedited Motion of the Office of Consumer Advocate for an Extension of the Statutory Suspension Period, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

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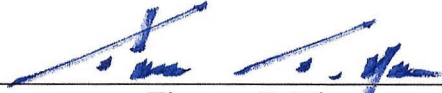
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