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August 24, 2020

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: 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  
Docket No. A-2019-3015173**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Reply of the County of Delaware to the Briefs of Aqua Pennsylvania Wastewater, Inc. and Delaware County Regional Water Quality Control Authority to the County's Petition for Stay and Request for Review of a Material Question, in the above-referenced proceeding.

As shown by the attached Certificate of Service and per the Commission's March 20, 2020, Emergency Order, all parties to this proceeding are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy of this document upon request.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to the County of Delaware, Pennsylvania

c: Administrative Law Judge Angela T. Jones  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Adeolu A. Bakare

Counsel to the County of Delaware,  
Pennsylvania

Dated this 24<sup>th</sup> day of August, 2020, in Harrisburg, Pennsylvania

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY OF THE COUNTY OF DELAWARE TO THE AQUA PENNSYLVANIA  
WASTEWATER, INC. AND DELAWARE COUNTY REGIONAL WATER CONTROL  
AUTHORITY BRIEFS IN OPPOSITION TO THE COUNTY'S PETITION FOR STAY  
AND REQUEST FOR REVIEW OF A MATERIAL QUESTION**

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NOW COMES the County of Delaware, Pennsylvania (the "County"), by and through counsel, pursuant to 52 Pa. Code §§ 5.43, 5.302, who files this Reply to the Briefs of Aqua Pennsylvania Wastewater, Inc. ("Aqua") and Delaware County Regional Water Quality Control Authority ("DELCORA") to the County's Petition for Stay and Request for Review of a Material Question ("Petition for Stay").

**I. INTRODUCTION**

The County requests waiver of the procedural requirements of Section 5.302 of the Commission's Regulations and submits this Reply to address material misstatements regarding the County's litigation against DELCORA before the Delaware County Court of Common Pleas and the timeliness of the County's Petition for Stay. This Reply first clarifies that Aqua and DELCORA included the Trust at issue in the Common Pleas Action<sup>1</sup> among the "substantial public benefits" intended to support the Application. Second, the County clarifies that Aqua and DELCORA failed to recognize that Aqua, not the County, inserted the Asset Purchase Agreement issues into the

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<sup>1</sup> Terms not defined herein have the meaning set forth in the County's Petition for Stay.

Court of Common Pleas Action. Finally, the County addresses DELCORA's incorrect reference to a delay in filing the Petition for Stay.

## **II. Argument**

### **A. Aqua and DELCORA Misrepresent the Application's Characterization of the Trust.**

Aqua's Brief states that "[p]ertinent to matters before this Commission are the substantial public benefits averred by Aqua in support of its Application." Aqua Brief at 4. Aqua's claimed "substantial public benefits" include the allegedly non-PUC jurisdictional Trust, which Aqua's Application identifies as a substantial public benefit of the proposed transaction. See, e.g., Aqua Application, Statement 5 (Direct Testimony of Robert Willert) at page 11, lines 13-17. In its Brief and in other filings, Aqua appears to maintain that all issues related to the Trust are outside of the PUC's jurisdiction. DELCORA's brief even contradicts testimony from DELCORA's Executive Director. In Direct Testimony, DELCORA lauded the Trust a fundamental public benefit to the transaction, but now (in brief) claims use of the Trust for rate stabilization "does not put it before the Commission." DELCORA Brief at 3.

The Trust is a fundamental component supporting the entire transaction. The County's Common Pleas Action challenges the legality of this fundamental component. See County Petition at 10; Aqua Brief at 4, footnote 6. Aqua and DELCORA cannot have it both ways. The Trust cannot be a public benefit offered in support of the Application and somehow irrelevant to the Commission's review of the Application.

### **B. Aqua and DELCORA Fail to Recognize that Aqua (and not the County) Brought PUC-Jurisdictional Issues into the Common Pleas Action.**

The sentence to which footnote 6 applies states "[t]he Commission has no jurisdiction to address the County's Court of Common Pleas issues, in any event." The County agrees. However, Aqua inserted the Asset Purchase Agreement (the key issue within the Commission's exclusive

jurisdiction) into the Common Pleas Action through their Answers, New Matters and Counterclaims. See Aqua Brief at 7-8; DELCORA Brief at 7-8. Aqua filed its Application pursuant to Sections 507, 1102 and 1329 of the Public Utility Code. 66 Pa.C.S. §§ 507, 1102 and 1329. Accordingly, the Asset Purchase Agreement between Aqua and DELCORA is the fundamental document subject to review by the Commission, and, if warranted, approval, modification or denial under the Commission's exclusive authority to administer the Public Utility Code. DELCORA incorrectly asserts that the issues before the Commission "are **distinct and severable** from those at issue in the Common Pleas Action." DELCORA Brief at 7 (emphasis in original). DELCORA also incorrectly suggests that statements cherry-picked from the Court of Common Pleas record and offered without context in any way undercut the impact of the Common Pleas Action upon this PUC proceeding. See DELCORA Brief at 1.<sup>2</sup>

The County intended for the common pleas and Commission proceedings to advance in separate forums. Even Aqua notes that the County's Complaint at the court attempted to limit the issues to matters that fall outside the Commission's jurisdiction. See Aqua Brief at 4. However, Aqua purposefully brought the issues regarding the Asset Purchase Agreement before the Court of Common Pleas by filing a Preliminary Injunction seeking to have the court bar the County from enforcing its ordinance terminating DELCORA prior to closing on the proposed transaction.

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<sup>2</sup> For example, DELCORA references a statement indicating the "County will address outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua." DELCORA Brief at 1. This statement was offered in response to a multi-layered hypothetical scenario and has no bearing on the material question of whether the PUC should proceed to review the Application under the actual present circumstances. The remaining statements all show the County arguing against Aqua's efforts to address APA issues before the Court. However, over the County's objections, Aqua was permitted to intervene in the Common Pleas Action and the parties to that docket are proceeding to hearings through which the Court will issue an Order addressing the County's ability to terminate DELCORA prior to closing on the proposed transaction.

**C. The Petition for Stay was Timely and Should be Reviewed by the Commission.**

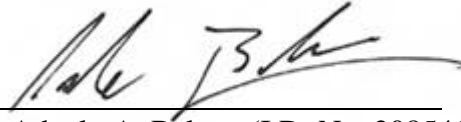
DELCORA references a "delay" in the filing of the County's Petition for Stay. The County avers that the Petition for Stay was filed 11 days after the Commission issued a Secretarial Letter accepting Aqua's Application (thus activating the docket) and 8 days before public notice of the Application in the *Pennsylvania Bulletin*. The County submits that the Petition was timely and respectfully requests that the Commission waive any procedural defects that would preclude consideration of the substantive arguments therein.

**III. CONCLUSION**

For the foregoing reasons, the County of Delaware respectfully requests the Commission grant its Petition for Stay and/or answer the material question in the affirmative.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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