



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

Kevin J. McKeon
(717) 703-0801
kjmckeon@hmslegal.com

Melissa A. Chapaska
(717) 703-0815
machapaska@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

August 28, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: 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; **SUNOCO PARTNERS MARKETING & TERMINALS, L.P./ENERGY TRANSFER PROTEST**

Dear Secretary Chiavetta:

Attached for filing with the Commission is Sunoco Partners Marketing & Terminals, L.P./Energy Transfer's Protest in the above-referenced proceedings.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Melissa A. Chapaska

*Counsel for Sunoco Partners Marketing
& Terminals, L.P./Energy Transfer*

WES/das
Enclosure

cc: Honorable Angela T. Jones (Email angeljones@pa.gov)
Honorable Charles E. Rainey, Jr. (Email crainey@pa.gov)
Per Certificate of Service

**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	:	Docket No. A-2019-3015173
wastewater system assets of the Delaware	:	
County Regional Water Quality Control	:	
Authority	:	

**PROTEST OF
SUNOCO PARTNERS MARKETING & TERMINALS, L.P./ENERGY TRANSFER**

Pursuant to 52 Pa. Code § 5.51, Sunoco Partners Marketing & Terminals, L.P./Energy Transfer (SPMT) files this Protest to the Application of Aqua Pennsylvania Wastewater, Inc. (Aqua), filed on March 3, 2020, seeking Commission approval of (1) Aqua's acquisition of the Wastewater System Assets (System) of the Delaware County Regional Water Quality Control Authority (DELCORA), and the right of Aqua to provide wastewater service to the areas served by DELCORA in the requested territory; (2) the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code; and (3) the Asset Purchase Agreement (APA) with DELCORA and assignment of contracts to Aqua pursuant to Section 507 of the Public Utility Code. Application at ¶¶ 3-5. SPMT files this Protest to request the Public Utility Commission hold full public input and evidentiary hearings on the Application and not approve the Application unless the record supports and the Applicant proves that the Application is in the public interest, provides substantial, affirmative benefits to the public, and is in accordance with the Public Utility Code and applicable Commission rules and regulations.

INTRODUCTION AND PROCEDURAL HISTORY

1. The name and contact information for SPMT are:

Edward G. Human, Sr. Director
Marcus Hook Terminal Operations
Energy Transfer/ SPMT

2. The names and contact information for SPMT's attorneys for receiving service of all documents in this proceeding are:

Thomas J. Sniscak, Esquire
Kevin J. McKeon, Esquire
Whitney E. Snyder, Esquire
Melissa A. Chapaska, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Phone: 717-236-1300
Fax: 717-236-4841
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com
machapaska@hmslegal.com

3. SPMT is a Pennsylvania limited partnership with an address of 3807 West Chester Pike, Newtown Square, PA 19073. SPMT operates the Marcus Hook Industrial Complex (MHIC), which is a DELCORA customer. In 2019, SPMT incurred approximately \$ 2,794,561.00 in costs related to DELCORA's provision of wastewater services to MHIC.

4. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102(a)(1)-(3). A certificate can only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a).

5. On March 26, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention in the proceeding.

6. On April 2, 2020, the Commission's Bureau of Investigation & Enforcement (I&E) filed a notice of appearance in the proceeding.

7. On April 2, 2020, the Office of Consumer Advocate (OCA) filed a protest to the Application, seeking to protect the interests of Aqua's existing and acquired customers. OCA indicated it would investigate whether the proposed rates are just and reasonable and would evaluate the impact on future rates by virtue of the proposed acquisition. *See* OCA Protest at p. 5.

8. On May 18, 2020, Delaware County filed a petition to intervene in this proceeding.

9. On June 15, 2020, Edgmont Township filed a petition to intervene in this proceeding.

10. On July 17, 2020, Southwest Delaware County Municipal Authority files a protest in this proceeding.

11. On June 11, 2020, the Commission issued a Secretarial Letter conditionally accepting the Application as amended and requiring notice and publication of the Application and setting a protest and intervention deadline of August 31, 2020.

12. On June 23, 2020, the County of Delaware filed a petition for reconsideration of Commission staff action of the June 11, 2020 Secretarial Letter conditionally accepting the Application.

13. On July 27, 2020, the Commission issued a Secretarial Letter accepting the Application for filing and providing that notice of the Application will be published in the August 15, 2020 Pennsylvania Bulletin.

14. On July 27, 2020, Administrative Law Judge Angela Jones issued a Prehearing Conference Notice scheduling a telephonic prehearing conference for Wednesday, September 2, 2020 at 10:00 A.M.

15. On July 30, 2020 the Treasure Lake Property Owners Association filed a protest in this proceeding.

16. On July 31, 2020, Ross F. Schmucki filed a protest in this proceeding.

17. On August 7, 2020, Upland Borough filed a protest in this proceeding.

18. On August 7, 2020, Lower Chichester Township filed a protest in this proceeding.

19. On August 7, 2020 the County of Delaware filed a Petition for Stay and Request for Commission Review and Answer to a Material Question in this proceeding.

20. On August 12, 2020 C&L Rental Properties filed a protest in this proceeding.

21. On August 13, 2020, BI&E filed a letter in support of Delaware County's Petition for Stay.

22. On August 14, 2020, the OCA filed a Brief In Support of Delaware County's Petition for Stay.

23. On August 14, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Suspension Period.

24. On August 17, 2020, Administrative Law Judge Angela T. Jones issues a prehearing order setting a litigation schedule and modifying discovery procedures.

25. On August 20, 2020, Edgmont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, Trainer Borough, and Upland Borough filed a Joint Answer in Support of OCA's Motion for Extension of the Statutory Suspension Period.

26. On August 21, 2020, Edgmont Township filed for leave to withdraw its petition to intervene and simultaneously filed a protest in this proceeding.

27. On August 24, 2020, Aqua filed an Answer Opposing OCA's Expedited Motion to Extend Statutory Deadline.

28. On August 24, 2020 the County of Delaware filed a reply to Aqua's Brief.

29. On August 24, 2020 DELCORA filed a Response in Opposition to the OCA's Motion for an Extension of the Statutory Suspension period.

30. On August 24, 2020, the County of Delaware filed an Answer in Support of the OCA's Motion for an Extension of the Statutory Suspension period.

31. On August 24, 2020, the OSBA filed an Answer to OCA's Motion for Extension of the Statutory Suspension period.

32. On August 27, 2020, the Commission issued an opinion and order denying the County of Delaware's petition for reconsideration of staff action.

33. On August 27, 2020, Aqua and DELCORA each filed an answer in opposition to the petition for stay.

PROTEST

34. As operator of a large customer of DELCORA, SPMT has a substantial interest in the outcome of this proceeding. Specifically, SPMT is concerned that the Application is not in the public interest and is particularly concerned with the impact on rates paid by SPMT. Preliminarily, SPMT has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code:

- a. In the customer notices attached to its Application, Aqua estimates the potential, incremental impact of the DELCORA acquisition on the rates established after its next base rate case, if the acquisition is approved. DELCORA's notice to the DELCORA customers provides an estimate of the potential impact on DELCORA customers' rates if the allocated cost of the acquisition, including the ratemaking rate base, is charged to DELOCRA customers at the time of the next base rate case. DELCORA estimates an across the board increase of 12.55% to the acquired DELCORA customers, including large industrial customers like SPMT. Aqua has issued similar notices to its existing customers indicating that wastewater rates could increase by 14.32% and that water rates will increase by 4.58%. In addition, the Asset Purchase Agreement indicates that Aqua will seek to impose "PaPUC permitted or required surcharges or pass-through costs (e.g., Distribution System Improvement Charge and/or State Tax Adjustment Surcharge)" on bills rendered to DELCORA customers like SPMT prior to Aqua's next base rate case.

In order to assess the proposed transaction, the impact of this rate increase on DELCORA's existing large industrial customers must be determined.

- b. Aqua has provided information regarding the estimated costs of planned investment in the system. The impact that these costs will have on the rates of existing DELCORA customers like SPMT must be determined to assess the benefits and detriments of the acquisition and to determine whether Aqua's request for an approved ratemaking rate base of \$276,500,000 for DELCORA's system is reasonable. In addition to the ratemaking rate base amount which Aqua is seeking to recover in prospective rates, Aqua and DELCORA have indicated that

prospective capital improvements to the DELCORA system could amount to \$1.2 Billion. A full and complete analysis of this proposal must consider Aqua's cost of capital and the effect of taxes compared to the cost of capital that would be incurred by DELCORA issuing revenue bonds for the very same improvements.

- c. Aqua states that it is not proposing a rate stabilization plan, however it indicates that a "portion of the proceeds of the Proposed Transaction" are to be placed into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the trust through Aqua's billing process. Application ¶ 36. Aqua's proposal must be assessed to determine whether it is a rate stabilization plan and whether it is adequately supported and reasonable or, alternatively, whether the rate commitments are reasonable. Furthermore, the rate at which the rate stabilization trust will be depleted and customers like SPMT will see the full impact of Aqua rates must be determined.

35. SPMT requests that the Public Utility Commission hold full public input and evidentiary hearings on the Application. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates. U.S. Const. amend. XIV, § 1; 52 Pa. Code § 53.45(b)(1-4); *McCloskey v. Pa. P.U.C.*, 1624 CD 2017 (Oct. 11, 2018). SPMT submits that public input hearings are necessary for a full and fair opportunity for the public to voice their concerns to the Commission regarding the impact of Aqua's acquisition on existing and acquired DELCORA customers.

WHEREFORE, SPMT respectfully requests the Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional

consideration. SPMT further requests that, after the Commission issues a Secretarial Letter indicating final acceptance of the Application, the Commission investigate and hold full public input hearings on the Application.

Respectfully submitted,

/s/ Thomas J. Sniscak

Thomas J. Sniscak, Esquire

Kevin J. McKeon, Esquire

Whitney E. Snyder, Esquire

Melissa A. Chapaska, Esquire

Hawke McKeon & Sniscak LLP

100 North Tenth Street

Harrisburg, PA 17101

717-236-1300

tjsniscak@hmslegal.com

kjmckeon@hmslegal.com

wesnyder@hmslegal.com

machapaska@hmslegal.com

*Counsel for Sunoco Partners Marketing &
Terminals, L.P./Energy Transfer*

Date: August 28, 2020

VERIFICATION

I, Edward G. Human, on behalf of Sunoco Partners Marketing & Terminals, L.P./Energy Transfer, hereby state that the facts set forth in the foregoing documents 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 in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Edward G. Human
Sr. Director
Marcus Hook Terminal Operations
Energy Transfer/SPMT

Dated: August 28, 2020

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).

VIA ELECTRONIC MAIL ONLY

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

Counsel for Aqua Pennsylvania Wastewater, Inc.

Alexander R. Stahl, Esquire
Aqua Pennsylvania
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Counsel for Aqua Pennsylvania Wastewater, Inc.

Christine Maloni Hoover, Esquire
Erin L. Gannon, Esquire
Harrison G. Breitman, Esquire
Santo G. Spataro, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
choover@paoca.org
egannon@paoca.org
hbreitman@paoca.org
sspataro@paoca.org

Gina L. Miller, Esquire
Erika L. McLain, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
ginmiller@pa.gov
ermclain@pa.gov

Erin L. Fure, Esquire
Daniel A. Asmus, Esquire
Steven C. Gray, Esquire
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
efure@pa.gov
dasmus@pa.gov
sgray@pa.gov

Kenneth D. Kynett, Esquire
Charles G. Miller, Esquire
Petrikin, Wellman, Damico, Brown & Petrosa
109 Chesley Drive
Media, PA 19063
kdk@petrikin.com
cgm@petrikin.com

Counsel for Edgmont Township

Thomas Wyatt, Esquire
Matthew S. Olesh, Esquire
Obermayer Rebmann Maxwell & Hippel, LLP
1500 Market Street, Suite 3400
Philadelphia, PA 19102
Thomas.Wyatt@obermayer.com
Mattew.Olesh@obermayer.com

Counsel for DELCORA

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815
Scott.j.rubin@gmail.com

*Counsel for Edgmont Township, Lower
Chichester Township, Southwest Delaware
County Municipal Authority, Trainer
Borough, and Upland Borough*

Cynthia Pantages
C&L Rental Properties, LLC
P. O. Box 516
Lake Harmony, PA 18624
cyndipantages@gmail.com

Adeolu A. Bakare, Esquire
Robert F. Young, Esquire
Kenneth R. Stark, Esquire
McNees Wallace & Nurick LLC
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com

Counsel for Delaware County

Edward Clark, Jr.
Treasure Lake Property Owners Assoc.
13 Treasure Lake
Dubois, PA 15801
gm@treasurelake.us

Ross Schmucki
218 Rutgers Avenue
Swarthmore, PA 19081
rschmucki@gmail.com

/s/ Thomas J. Sniscak
Thomas J. Sniscak, Esquire
Kevin J. McKeon, Esquire
Whitney E. Snyder, Esquire
Melissa A. Chapaska, Esquire

Dated: August 28, 2020