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August 31, 2020

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Fl.  
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 electronic filing in the above-referenced proceeding please find the Protest of Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC.

Copies have been served per the enclosed Certificate of Service.

Respectfully submitted,



Michelle M. Skjoldal

Enclosures

cc: All parties of record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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In 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

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Docket No. A-2019-3015173

**PROTEST OF  
KIMBERLY-CLARK CORPORATION AND  
KIMBERLY-CLARK PENNSYLVANIA, LLC**

Pursuant to 52 Pa. Code §§ 5.51-5.53, Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC (“Kimberly-Clark”) hereby file this Protest to the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”). Aqua is seeking approval to acquire the wastewater system assets of Delaware County Regional Water Quality Control Authority (“DELCORA”) and to operate as a wastewater utility in the areas served by DELCORA. In support of this Protest, Kimberly-Clark avers as follows:

1. Kimberly-Clark owns and operates a manufacturing plant at 1 Avenue of the States, Chester, Pennsylvania, 19013.
2. As part of its manufacturing operations at this plant, Kimberly-Clark produces wastewater and is a wholesale industrial customer of DELCORA in DELCORA’s Western Service Region. Upon information and belief, Kimberly-Clark is the largest single customer on DELCORA’s system.

3. The names and addresses of Kimberly-Clark's attorneys are:

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4. On December 30, 2019, the Pennsylvania Public Utility Commission ("PUC" or "Commission") established Docket No. A-2019-3015173 for document management purposes only when it acknowledged receipt of Aqua's Letter/Notice of Licensed Engineer and Utility Valuation Expert Engagement regarding the proposed acquisition.

5. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite for any entity seeking to provide service as a public utility. 66 Pa. C.S. §1102(a)(1)-(3).

6. On March 3, 2020, Aqua filed the Application seeking Commission approval for its proposed acquisition of DELCORA's assets.

7. The Commission may approve or disapprove the application or may grant approval subject to appropriate conditions. Section 1103 explicitly allows the Commission to

impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.”

8. DELCORA executed a Service Agreement with Scott Paper Company (“Scott Paper”) dated December 1, 1973 (“Service Agreement”) under which Scott Paper and several other industrial customers funded the construction and operations of DELCORA’s Western Wastewater Treatment Plant (“Western Plant”) and a related conveyance system. That conveyance system is used by DELCORA in order to serve several industrial customers.

9. Scott Paper was obligated to pay 26% of the annual debt service charges related to the bonds issued to purchase and construct the Western Plant and 55% of the annual debt service charges for the bonds issued for the purchase and construction of the conveyance system.

10. On December 12, 1995, Kimberly-Clark assumed all of the rights and obligations of Scott Paper under the Service Agreement as part of Kimberly-Clark’s acquisition of Scott Paper’s Chester plant. The 1973 Service Agreement remains in effect.

11. Kimberly-Clark has paid rates and charges to DELCORA in accordance with the Service Agreement since it assumed the Agreement and accepted all of its obligations and rights from Scott Paper.

12. Kimberly-Clark has also continued to fund the capital and operating requirements of the Western Plant in accordance with the terms of the Service Agreement.

13. DELCORA is obligated to accept, treat, and dispose of Kimberly-Clark’s wastewater in accordance with the terms of the Service Agreement.

14. During the calendar year 2019, DELCORA budget documents indicate that the volume of wastewater discharged by Kimberly-Clark was approximately 1,468,438 MGD and Kimberly-Clark paid DELCORA \$4,077,441 for its services.

15. Upon information and belief, and based upon budget documents provided by DELCORA, Kimberly-Clark's discharge volumes and revenue are approximately 18.7% and 16.2%, respectively, of DELCORA's Western Plant total volumes and revenue.

16. Accordingly, Kimberly-Clark has a direct and substantial interest in the outcome of this proceeding and will be substantially impacted by the proposed acquisition.

17. Upon information and belief, as a public authority, DELCORA is able to raise capital on advantageous terms. DELCORA also is eligible for various State grants and loans that are made available to public entities.

18. By contrast, Aqua is a private sector firm that would need to raise capital through the market. Aqua likely would not be eligible for all of the same State grants and loans, and Aqua's rate of return would necessarily include a return on equity. As a result, Aqua's cost of capital and its allowed rate of return would likely be substantially higher than DELCORA's cost of capital and its effective rate of return. This change would inevitably have an adverse impact on all ratepayers, including Kimberly-Clark.

19. Kimberly-Clark's discharge volumes and wastewater treatment costs are significant enough that if it cannot secure certainty with regard to its future rates and its rights under the Service Agreement, it could elect to construct its own wastewater treatment plant. Kimberly-Clark operates its own wastewater treatment facilities at other manufacturing facilities.

20. Upon information and belief, Aqua has indicated that the first rate increase to Kimberly-Clark, as a Western region wholesale customer, would be substantial.

21. Upon information and belief, Kimberly-Clark would not be subject to the same level of rate increase under the terms of the Service Agreement with DELCORA.

22. Upon information and belief, the proposed transaction does not make any provisions to refund or take account of Kimberly-Clark's significant debt service contributions.

23. Upon information and belief, the proposed acquisition does not recognize or ensure Kimberly-Clark's unique status as a high-volume industrial customer that has contributed millions of dollars in capital to DELCORA.

24. Kimberly-Clark submits that, at a minimum, additional information is necessary to determine whether the proposed transaction will serve its interests and will preserve Kimberly-Clark's rights under the Service Agreement.

WHEREFORE, Kimberly-Clark respectfully requests the Commission carefully consider Aqua's Application in accordance with the Public Utility Code and applicable Commission rules and regulations; either deny the Application or impose conditions that require Aqua to give Kimberly-Clark credit or recognition for the value of contributions made to DELCORA; impose conditions that require Aqua to preserve the existing rate structure to the maximum extent allowed by law, and to propose future rates for Kimberly-Clark and any other similarly situated customers that reflect their unique position; and grant such other relief as is warranted under the circumstances.

Respectfully submitted,

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Dated: August 31, 2020

*Attorneys for Kimberly Clark Pennsylvania, LLC  
and Kimberly-Clark Corporation*

**VERIFICATION**

I, Thomas Brooks, Finance and Logistics Manager for the Kimberly-Clark Chester, Pennsylvania manufacturing plant, hereby state that the facts set forth in the above *Protest* 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).

  
Thomas Brooks

Dated: 8/28/2020



## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document, which was filed via the electronic filing system, upon the participants listed below via electronic mail in accordance with the requirements of Section 1.54 (relating to service by a participant):

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Dated: August 31, 2020



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