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August 31, 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 in the above-referenced proceeding is the Prehearing Memorandum of the County of Delaware.

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 
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).

VIA E-MAIL

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Adeolu A. Bakare
Counsel to the County of Delaware,
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Dated this 31st 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 | : | |
| For, inter alia, approval of the acquisition of | : | Docket No. A-2019-3015173 |
| The wastewater system assets of the | : | |
| Delaware County Regional Water Quality | : | |
| Control Authority | : | |

**PREHEARING MEMORANDUM OF
THE COUNTY OF DELAWARE, PENNSYLVANIA**

As requested by Administrative Law Judge ("ALJ") Angela T. Jones in the Prehearing Conference Order dated August 3, 2020, and in the Further Corrected Prehearing Conference Order dated August 17, 2020, the County of Delaware, Pennsylvania (the "County") hereby submits this Prehearing Memorandum.

I. HISTORY OF THE PROCEEDING

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

On or around March 3, 2020, Aqua filed an Application seeking Commission approval to acquire the Delaware County Regional Water Quality Control Authority ("DELCORA" or "Authority") and to provide wastewater service to areas served by DELCORA ("Application").

Through the Application, Aqua sought PUC approval of the ratemaking rate base of the assets used to serve DELCORA's 16,000 customer connections and numerous wholesale customers pursuant to Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329.

Application at ¶ 8. Aqua also requested Commission approval of the Asset Purchase Agreement ("APA") between Aqua and the Authority pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507. Application at ¶ 3. Aqua also requested approval to apply disbursements from the DELCORA Rate Stabilization Trust Agreement ("Trust") to customers acquired from DELCORA through Aqua's billing process. *See* Application at ¶ 36, Exhibit U2 (Testimony of William C. Packer), Appendix B to Packer Testimony (Draft Memorandum of Understanding regarding the Trust).

On May 18, 2020, the County filed a Petition to Intervene in this proceeding. A description of the County is set forth in Paragraph 1 of the County's Petition to Intervene. The County will additionally file a Protest to the Application contemporaneously with this Prehearing Memorandum on August 31, 2020.

On June 11, 2020, the Commission issued a Secretarial Letter ("June 11 Secretarial Letter") conditionally accepting Aqua's Application, subject to Aqua's completion of the notifications and conditions established in the June 11 Secretarial Letter. The June 11 Secretarial Letter expressly stated it was a staff determination subject to reconsideration by the Commission by a petition made pursuant to Section 5.44 of the Commission's procedural regulations.

On June 23, 2020, the County filed a Petition for Reconsideration of Staff Action requesting that the Commission rescind staff's conditional acceptance of Aqua's Application and reissue the June 11 Secretarial Letter with this additional condition placed upon Aqua: that Aqua comply with Section 1329(d)(1)(v) of the Public Utility Code and amend its Application to include all relevant documents related to the rate stabilization plan.

On July 9, 2020, Aqua filed an Answer ("July 9 Answer") to the County's June 23 Petition.

On July 14, 2020, the Commission issued a Secretarial Letter ("July 14 Secretarial Letter") stating that the instant docket "is currently inactive pending the satisfaction of the conditions established by the Commission in its June 11, 2020 Secretarial Letter..." and "[i]f Aqua satisfies all of these conditions and Docket No. A-2019-3015173 becomes active as a result of the satisfaction of the conditions, the Petition for Reconsideration of Staff Action filed by the County of Delaware, Pennsylvania, and any responsive filings thereto, will be accepted into the docket and assigned for formal action and disposition." (footnote omitted).

On July 23, 2020, Aqua filed a letter with the Commission asserting that Aqua has satisfied the conditions identified in the June 11 Secretarial Letter, and requesting the Commission "finaliz[e] acceptance of the Application by July 27, 2020, at the latest, and publish notice of the filing of the Application in the Pennsylvania Bulletin on August 15, 2020...."

On July 27, 2020, the Commission issued a Secretarial Letter ("July 27 Secretarial Letter") accepting Aqua's Application without requiring Aqua to provide all rate stabilization plan documents applicable to the proposed transaction. The July 27 Secretarial Letter accepted the Application and activated the above-captioned docket.

Also, on July 27, 2020, the Commission issued a hearing notice, which reflected the assignment of the docket to the Commission's Office of Administrative Law Judge before ALJ Angela T. Jones.

On August 7, 2020, the County filed a Petition for a Stay ("Petition for Stay") requesting that the Commission stay all substantive proceedings in the above-referenced docket until there is a final determination in the pending Court of Common Pleas Action resolving disputed issues regarding a Rate Stabilization Trust that directly bears on Aqua's Application and/or the County's termination of DELCORA.

On August 13, 2020, the Bureau of Investigation and Enforcement ("I&E") filed a letter in support of the County's Petition for Stay.

On August 14, 2020, the Office of Consumer Advocate ("OCA") filed a brief in support of the County's Petition for Stay. The OCA asserted that a stay would promote judicial efficiency by reducing the time and expense that the parties litigate in the PUC proceeding in light of the ongoing Court of Common Pleas proceeding. The OCA also filed a motion requesting a 60-day extension of Section 1329's six-month consideration period ("Motion to Extend").

Notice of Aqua's Application was published in the Pennsylvania Bulletin on August 15, 2020. 50 Pa.B. 4220 (Aug. 15, 2020). The Notice established a deadline of August 31, 2020, for the filing of protests and interventions. *Id.*

On August 27, 2020, the Commission entered an Order denying the County's Petition for Reconsideration and confirming the Petition for Stay remains under consideration.

On August 31, 2020, the Commission's Chief Administrative Law Judge issued an Order granting OCA's Motion to Extend.

II. ANTICIPATED ISSUES AND SUB-ISSUES

The County is concerned with issues regarding the rate impacts associated with the proposed acquisition. The County is also concerned with broader public interest issues related to the Trust and associated APA. The County notes that it will detail these concerns in its Protest. Consistent with that Protest, the County anticipates addressing the following issues and sub-issues:

- (1) Whether Aqua has met its burden to demonstrate that approval of the Application is in the public interest.

- (2) Whether Aqua's Application proceeding should be stayed pending the outcome of the Delaware County Court of Common Pleas proceedings concerning the legality of the Trust and Aqua's attempts to enjoin the County from enforcing its Ordinance terminating DELCORA prior to closing on the proposed transaction.¹
- (3) Whether Aqua's Application violates the Municipal Authorities Act, 53 Pa. C.S. §5601 *et seq.*
- (4) Whether the proposed \$276 million purchase price of the DELCORA system in the context of the respective \$308 and \$409 million valuations commissioned by DELCORA and Aqua was conducted at arm's length as required under Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329.
 - a. Whether the lack of a competitive bidding process preceding negotiations between Aqua and DELCORA was in the public interest.
 - b. Whether the lack of a competitive bidding process detrimentally impacted the purchase price.
- (5) Whether the Trust constitutes a rate stabilization agreement under Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329.
- (6) Whether the affirmative benefits cited by Aqua and DELCORA serve the public interest and justify Commission approval of the proposed transaction.
 - a. Whether economies of scale would be realized upon consummation of the acquisition.
 - b. Whether Aqua and DELCORA have demonstrated long-term customer benefits from the transaction.

¹ The County understands that its Petition for Stay is currently before the Commission; however, the County raises this issue in case the presiding ALJ addresses any issues raised by the County's Petition for Stay.

The County reserves the right to raise further issues as necessary and appropriate during this proceeding and to respond to issues raised by other parties.

III. PROPOSED WITNESSES

The County anticipates sponsoring testimony from the following witnesses:

Stan Faryniarz
Principal Consultant
Daymark Energy Advisors
370 Main Street Ste. 325
Worcester, MA 01608
sfaryniarz@daymarkea.com

Melissa Whitten
Managing Consultant
Daymark Energy Advisors
370 Main Street Ste. 325
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The County also intends to participate in this proceeding through the submission of discovery, cross-examination of other parties' witnesses, and the submission of briefs, exceptions and reply exceptions, if necessary. The County also reserves the right to add or otherwise modify its proposed witness list.

IV. PROPOSED SCHEDULE AND DISCOVERY RULES

The County will cooperate with the ALJ and the parties at the Prehearing Conference to determine a procedural schedule and develop appropriate discovery rules in accordance with the Commission's regulations and any directives issued by the ALJ. In the event the parties are unable to agree on a procedural schedule and discovery rules, the County does not oppose the procedural schedule or discovery rules contained in the Further Corrected Prehearing Conference Order.

V. SETTLEMENT

The County is willing to participate in settlement discussions with the other parties to amicably resolve the issues in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: August 31, 2020