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August 31, 2020

**VIA E-MAIL**

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 filing in the above-referenced proceeding is the Prehearing Memorandum Of Kimberly Clark Pennsylvania, LLC and Kimberly Clark Corporation. This Prehearing Memorandum is being served on all parties of record and is being eFiled.

Please contact me should you have any questions.

Sincerely,



Michelle Skjoldal

Enclosures

cc: All parties of record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PREHEARING MEMORANDUM OF KIMBERLY-CLARK PENNSYLVANIA, LLC  
AND KIMBERLY-CLARK CORPORATION**

Pursuant to the Prehearing Conference Order, Kimberly-Clark Pennsylvania, LLC and Kimberly-Clark Corporation (together “Kimberly-Clark”) hereby submit this Prehearing Memorandum. As specified by the Administrative Law Judge (“ALJ”), this memorandum identifies the issues and sub-issues that Kimberly-Clark plans to address. It also outlines Kimberly-Clark’s position on these issues and identifies its witness.

Kimberly-Clark is separately filing its Protest and its Notices of Appearance of Counsel. These related submissions will be filed today.

**I. STATEMENT OF ISSUES**

Kimberly-Clark is a manufacturing firm located in the City of Chester, Delaware County that produces paper tissue products such as toilet paper. Kimberly-Clark is a large wholesale industrial customer of the Delaware County Regional Water Quality Control Authority (“DELCORA”). The prior owner of this manufacturing facility, the Scott Paper Company, entered into an agreement with DELCORA in 1973 titled Agreement Between DELCORA And Scott Paper Company For Conveyance And Treatment Of Industrial Wastewater In The Western Regional System (the “1973 Agreement”). Under the 1973 Agreement, which is still in effect, Kimberly-Clark agreed to pay a substantial share of the

infrastructure costs incurred by DELCORA to serve a specific group of customers in the western sector of DELCORA's system. Kimberly-Clark and/or the prior plant owner then paid their share of DELCORA's debt service charges over several decades. The 1973 Agreement also established a formula that governs the user charges that are now imposed on Kimberly-Clark. That formula takes into account the high volume of low-toxicity wastewater produced and the debt service costs that have been paid over many years by Kimberly-Clark and several similarly situated firms. Kimberly-Clark's wastewater contains few, if any, hazardous or toxic substances. However, its wastewater contains paper particles and small wood particles which are believed to be beneficial to the treatment process used at DELCORA's Western Regional Wastewater Treatment Plant (the "Western Plant").

Against this background, Kimberly-Clark intends to raise the following issues:

**A. Allocation Of Customer Trust Fund**

Kimberly-Clark has not received from DELCORA or from Aqua Pennsylvania Wastewater, Inc. ("Aqua") adequate information on how the Customer Trust Fund will function and will be allocated.<sup>1</sup> Kimberly-Clark's position is that customers which financed DELCORA's infrastructure should be compensated appropriately through the Customer Trust Fund. DELCORA is essentially selling, and Aqua is buying, assets that were financed partly by Kimberly-Clark. A substantial share of the proceeds from this asset sale should be dedicated to the customers that paid for these assets.

Furthermore, unlike many smaller customers of DELCORA, Kimberly-Clark has high enough wastewater volume that it could elect to build its own wastewater treatment facility. If, in the future, Aqua establishes rates that are too high for Kimberly-Clark, the utility may lose

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<sup>1</sup> Kimberly-Clark just this morning received the entire Aqua application with all supporting exhibits. Kimberly-Clark had received only the 21 pages of the narrative portion of the Aqua application mid-week last week, but had not obtained the exhibits until today.

one of its most valued customers. Aqua should make a commitment now that it will take this into account in developing or proposing tariff rates now or in the future.

**B. Assignment and Assumption Of 1973 Agreement**

To the maximum extent allowed by law, DELCORA should assign, and Aqua should assume, the 1973 Agreement. Aqua should confirm that, consistent with applicable law, it will use best efforts to maintain the existing rates and the existing rate structure. While this may not be a base rate proceeding, and while Aqua has signaled that it will not initiate a rate case until 2022, the Commission should impose a condition on any approval of this transaction ensuring that Kimberly-Clark will continue to receive rates that reflect its high level of usage, the low toxicity of its wastewater, and its years of paying debt service charges for the benefit of DELCORA. Kimberly-Clark may not own any of the DELCORA assets, but it has paid for its share of the assets used in providing service to Kimberly-Clark.

**C. Benefits To Ratepayers In General**

The burden is on Aqua and DELCORA to establish that the proposed transaction will benefit ratepayers and will serve the public interest. Yet the transaction is structured in a way that it will substantially increase rates for all consumers in the long run. Under the governing statute, the purchase price will be used to substantially increase the rate base. While the Consumer Trust Fund may potentially offset or defer any rate increase for a limited period of time, many customers will require service long into the future. Aqua and DELCORA must strengthen their commitments to avoid placing substantial new economic burdens on ratepayers.

**D. Increased Capital Costs and Increased Rate of Return**

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.

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 rate of return would likely be substantially higher than DELCORA's. This would inevitably have an adverse impact on all ratepayers, including Kimberly-Clark.

## **II. IDENTIFICATION OF WITNESSES**

At this time, based on the information known to it, Kimberly-Clark anticipates it will present two witnesses. The first witness is Mr. Tom Brooks, the Finance and Logistics Manager at Kimberly-Clark's Chester, Pennsylvania plant. His address is Kimberly-Clark Pennsylvania, LLC, 1 Avenue of the States, Chester, Pennsylvania 19013. His telephone number is 610.499.6328; his email address is tbrooks@kcc.com. He will address the history of the relationships between DELCORA and Kimberly-Clark. He will describe the 1973 Agreement and Kimberly-Clark's debt service payment and the DELCORA rate structure now in place. He will also explain that Kimberly-Clark is not a captive customer of DELCORA; nor will it be a captive customer of Aqua. If the rates imposed by either entity become unacceptably high, Kimberly-Clark may be forced to develop its own treatment system on site.

The second witness is Mr. Eric Wentz, Lead Environmental Engineer – Chester Mill, at Kimberly-Clark's Chester plant. His street address is the same as Mr. Brooks' address. His telephone number is 610.499.6262; his email address is ewentz@kcc.com. Mr. Wentz will explain that Kimberly-Clark produces a high volume of wastewater. However, this wastewater is beneficial to DELCORA's operations. The primary constituents in this wastewater are paper particles and small wood particles. These constituents essentially feed the microorganisms used by DELCORA at its treatment plant. Mr. Wentz will also describe the conveyance system or

pipng system that transports wastewater from Kimberly-Clark's plant to DELCORA's plant over a very short distance.

### III. CONCLUSION

Kimberly-Clark is a new party in this proceeding and is still gathering information on the proposed transaction. This prehearing memorandum is based upon the limited information now available. If necessary, based upon the emergence of new evidence, Kimberly-Clark reserves the right to supplement or amend this memorandum.

Respectfully submitted,

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Dated: August 31, 2020

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

## **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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