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September 18, 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 Joint Answer of Kimberly-Clark Pennsylvania, LLC, Kimberly-Clark Corporation, and Sunoco Partners Marketing & Terminals L.P. to the Petition for Protective Order of Aqua Pennsylvania Wastewater, Inc. This pleading does not contain any new averments of fact and thus a verification is not required.

Copies have been served per the enclosed Certificate of Service.

Sincerely,



Michelle Skjoldal

Enclosures

cc: Angela Jones, Administrative Law Judge
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,	:	Docket No. A-2019-3015173
approval of the acquisition of the wastewater	:	
system assets of the Delaware County Regional	:	
Water Quality Control Authority,	:	
	:	

**JOINT ANSWER OF KIMBERLY-CLARK PENNSYLVANIA, LLC,
KIMBERLY-CLARK CORPORATION, AND SUNOCO PARTNERS MARKETING &
TERMINALS L.P. TO AQUA’S PETITION FOR PROTECTIVE ORDER**

Pursuant to 66 Pa. C.S. § 333, 52 Pa. Code § 5.61, and the Prehearing Orders issued in this case, Kimberly-Clark Pennsylvania, LLC, Kimberly-Clark Corporation (together “Kimberly-Clark”), and Sunoco Partners Marketing & Terminals L.P. (“SPMT”) (jointly with Kimberly-Clark the “Industrial Protestants”), by and through their below-signed counsel, hereby file this Answer to the Petition for Protective Order of Aqua Pennsylvania Wastewater, Inc. (“Aqua”), and in support thereof, state the following:

1. On August 31, 2020, Aqua filed the Petition for Protective Order.
2. Paragraph 4(d) of Aqua’s Proposed Protective Order states:

Information deemed as “CONFIDENTIAL” may be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket, including municipal Solicitors.

3. Paragraph 4(d) could be read to suggest, but does not make explicit, that in-house counsel are included in the list of employees or other representatives. The operative clause is awkwardly phrased, and in-house counsel are not always considered or classified as employees.

4. All in-house counsel with responsibility for the docket in this case should be covered by Paragraph 4(d) and allowed to access confidential documents, just as all municipal solicitors are covered.

5. Counsel for the Industrial Protestants raised this issue with Aqua and requested a minor modification to the language in order to clarify and confirm that in-house counsel would be covered. Aqua was unwilling to modify the language.

6. The Industrial Protestants propose the following revisions to Paragraph 4(d) of the Proposed Protective Order:

Information deemed as “CONFIDENTIAL” may be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket, including in-house counsel and municipal Solicitors.

7. Aqua’s Proposed Protective Order also includes a provision that would allow “Highly Confidential Protected Material” to be made available to counsel for the Bureau of Investigation & Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”), as well as the experts of I&E, OCA, and OSBA that qualify as “Reviewing Representatives.” The proposed order does not make Highly Confidential Protected Material available to other parties in that same manner. As a result, the other parties’ counsel and expert witnesses would not be allowed to receive Highly Confidential Protected Material in an electronic or stored format that would enable them to view such material at their convenience. Instead, Paragraph 5 states:

HIGHLY CONFIDENTIAL PROTECTED MATERIAL SHALL be produced remotely, via online video conference applications, solely for inspection by counsel of record for other parties. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record,

including Reviewing Representatives, she or he shall submit a written request to the producing party's counsel. If the requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue to the presiding Administrative Law Judge. In the meantime, the information shall be provided only to counsel of record and to I&E, OCA and OSBA and their experts as set forth above.

8. Counsel for the Industrial Protestants expressed their concerns to Aqua's counsel on multiple occasions regarding the restrictions in Paragraph 5 of the Proposed Protective Order that limit and impair the Industrial Protestants' right to view Highly Confidential Protected Material. However, Aqua did not articulate any rationale or basis for restricting the ease of access by which outside counsel to the Industrial Protestants could view Highly Confidential Protected Material. Instead, Aqua finds that they should only be able to review Highly Confidential Protected Material through an online videoconference virtual platform and then submit a follow-up written request for copies of documents as needed. Such a review process creates a roadblock without a reason, impairs and infringes on the parties' discovery rights, and could unnecessarily lead to more litigation and require the Presiding Judge's intervention to resolve a dispute regarding the viewing and access of certain discovery materials.

9. The Industrial Protestants are active parties in this proceeding and have significant interests in the outcome. Unlike other cases and rate proceedings before the Commission wherein certain less active protestants may agree to more limited discovery rights because their interests in the proceeding are more tangential, the Industrial Protestants are highly active and possess substantial interests in the outcome of this proceeding. Industrial Protestants submit there is no reason to treat their counsel and experts differently from counsel for the statutory advocates. Undersigned counsel are experienced Public Utility Commission practitioners who have been parties to numerous protective orders and fully understand their

responsibilities to abide by a protective order. Industrial Protestants also cannot rely on a statutory advocate to protect their interests in this proceeding because no statutory advocate specifically represents industrial or larger businesses interests, unlike residential customers whose interests the OCA represents or small businesses whose interests the OSBA represents, thus further justifying the Industrial Protestants' need for efficient access to Highly Confidential Materials. Further, as stated in the County of Delaware's Answer, at Paragraph 10 and Attachment A at Paragraph 6, this procedure is reasonable and consistent with a Protective Order approved in PUC Docket No. A-2016-2575829. Similar to the procedures set forth there, Industrial Protestants propose Highly Confidential Material will be provided solely to outside counsel and outside experts. Counsel to the Industrial Protestants consent to seek permission from the producing party prior to distributing any Highly Confidential Material to their respective employees who qualify as Reviewing Representatives.

10. The Industrial Protestants propose the following revisions to Paragraph 5 of the Proposed Protective Order:

Information deemed as "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" shall be made available to counsel for I&E, OCA and OSBA all active parties represented by counsel. Counsel for I&E, OCA and OSBA may make such information available to their experts who are designated and qualified as Reviewing Representatives. ~~HIGHLY CONFIDENTIAL PROTECTED MATERIAL SHALL be produced remotely, online video conference applications, solely for inspection by counsel of record for other parties. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, including Reviewing Representatives, she or he shall submit a written request to the producing party's counsel. If the requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue to the presiding Administrative Law Judge. In the meantime, the information shall be provided only to counsel of record and to I&E, OCA and OSBA and their experts as set forth above.~~

WHEREFORE, the Industrial Protestants respectfully request the Presiding Judge grant relief consistent with this Answer and modify the Proposed Protective Order to clarify in-house counsel's ability to access Confidential Information and enable outside counsel and their expert witnesses to receive and directly view Highly Confidential Protected Material.

Respectfully submitted,

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Dated: September 18, 2020

*Attorneys for Kimberly-Clark Pennsylvania, LLC
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Dated: September 18, 2020



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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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