

**John F. Povilaitis**  
717 237 4825  
john.povilaitis@bipc.com

409 North Second Street  
Suite 500  
Harrisburg, PA 17101-1357  
T 717 237 4800  
F 717 233 0852

September 24, 2020

**VIA EFILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

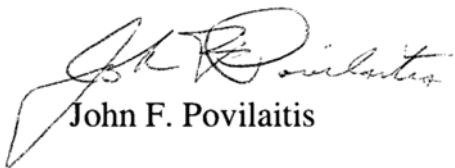
Re: Aqua Pennsylvania Wastewater, Inc.'s Acquisition of Delaware County Regional  
Water Quality Control Authority, Delaware and Chester Counties Sanitary  
Wastewater Collection and Treatment System;  
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed please find the Answer of Aqua Pennsylvania Wastewater, Inc. to Motion of the  
County of Delaware to Dismiss Objections and/or Compel the Answering of County  
Interrogatories Set VIII, Nos. 6-7 in the above-captioned proceeding.

Copies are being served as indicated in the attached Certificate of Service.

Very truly yours,

  
John F. Povilaitis

JFP/tlg  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc.’s	:	
Acquisition of Delaware County Regional	:	Docket No. A-2019-3015173
Water Quality Control Authority, Delaware	:	
and Chester Counties Sanitary Wastewater	:	
Collection and Treatment System	:	

**ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. TO MOTION OF THE  
COUNTY OF DELAWARE TO DISMISS OBJECTIONS AND/OR COMPEL THE  
ANSWERING OF COUNTY INTERROGATORIES SET VIII NOS. 6-7**

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) hereby responds to the Motion to Compel (“Motion”) filed by the County of Delaware (“DelCo” or the “County”) on September 22, 2020, pursuant to the Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.342(g)(1) as follows:

**I. INTRODUCTION**

1. Through its Motion, DelCo seeks an Order from the Administrative Law Judge (“ALJ”) directing the production of active Aqua Excel spreadsheets<sup>1</sup> relating to materials it identified in its Set VIII, Nos. 6 and 7 discovery requests that had previously been provided to DelCo in PDF format. To fully understand the nature of DelCo’s demand, substantial context is needed. Although styled as Interrogatories, Nos. 6 and 7 are solely document requests. And, importantly, DelCo is already in possession of the documents it identified in Nos. 6, 6a., 6b., 7, 7a. and 7b because they were provided to the County via discovery initiated in a totally separate proceeding before the Court of Common Pleas of Delaware County at Docket No. CV-2020-003185 (“Common Pleas Litigation”). The Common Pleas Litigation, initiated by the County against the Delaware County Regional Water Control Authority (“DELCORA”) (and in which Aqua is an intervenor) involves *different legal issues* than this proceeding, such as whether

---

<sup>1</sup> See paragraph three below for a discussion of “active” components of Excel spreadsheets.

DELCORA violated the Municipal Authorities Act, whether DELCORA may continue to exist after sale of its assets to Aqua, and whether DELCORA's Articles of Incorporation permit it to establish a trust to assist DELCORA customers after closing of the proposed DELCORA asset sale to Aqua. DelCo was able to obtain the documents referenced in Nos. 6 and 7 because it has the same law firm representing it in this proceeding and the Common Pleas Litigation.

2. The documents referenced by DelCo in Nos. 6 and 7 were not produced by Aqua in discovery in this proceeding. Nor Aqua does not concede the relevancy or admissibility of these documents in this proceeding. However, in good faith and because DelCo already had physical possession of the documents referenced in Nos. 6 and 7, the Company provided Bates Numbers to DelCo so they could locate the referenced documents among the Common Pleas Litigation discovery materials. The only material DelCo does not already possess and which is the object of its Motion to Compel, are the Aqua active Excel spreadsheets referenced in Nos. 6c. and 7c. As DelCo is well aware, in Aqua's objections and responses to the County's Set VIII discovery it did not provide active Excel spreadsheets. However, in the parties' attempt to resolve those objections, the issue of whether active Excel spreadsheets would be provided was the subject of significant discussion. Because active Excel spreadsheets were not provided to DelCo in the Court of Common Pleas Litigation, Aqua has not waived its objection to providing such information, despite the County's suggestion otherwise. Motion p. 4.

3. There are generally three levels of information in an Excel spreadsheet. First, there are the visible contents of the spreadsheets. DelCo already possesses this material. Next, there are formulas or links to other spreadsheets that populate a spreadsheet cell with a visible value. Finally, there are annotations to the contents of the spreadsheets. The active Excel spreadsheets sought by DelCo are critical to Aqua's evaluation of potential acquisition

transactions. The County admits that it seeks the “formulas, inputs and rationale” embedded in these native form Excel spreadsheets as well as the “sources and assumptions” within Aqua PowerPoint charts, tables and graphs in the material referenced. Motion p. 3. However, DelCo has not explained exactly why the confidential and proprietary material embedded in these Excel spreadsheets are needed and relevant to any issues in this proceeding. Because Nos. 6c. and 7c. are document requests and not interrogatories, DelCo has been able to avoid articulating in the form of a question why possession of these active Excel spreadsheets are necessary and relevant for the County to be able to tell its evidentiary story in this proceeding.

4. There is something of paramount significance DelCo has not revealed in its Motion, but of which it is well aware of because it already possesses all the documents referenced in Nos. 6 and 7, with the exception of the 6c. and 7c. active Excel spreadsheets. That is, *none* of these materials analyze the financial implications of 1) the purchase price mutually agreed to by Aqua and DELCORA, 2) the purchase amount reflected in the Asset Purchase Agreement submitted to the Commission in this proceeding or 3) the purchase price of the DELCORA assets Aqua is supporting in this proceeding - \$276.5 million. DelCo is seeking active Excel spreadsheets that will allow it to review Aqua’s ability to evaluate potential transactions, an issue wholly unrelated to the issues in this proceeding. Analyses related to the rate consequences of purchase prices not embodied in the Asset Purchase Agreement are not at issue in this proceeding and are not relevant to the relief sought by Aqua herein. The active Excel spreadsheets sought by DelCo have only been used internally by Aqua and not been provided outside the Company. If ordered to provide them, Aqua would seek the highest levels of protection available under the Proposed Protective Order in this proceeding.

## **II. Relevancy of the Active Spreadsheets Sought.**

5. A party may obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the pending action. 52 Pa. Code § 5.321(c). According to the Pennsylvania Supreme Court in *Commonwealth v. Scott*, 480 Pa. 50, 54, 389 A.2d 79, 82 (1978), “[e]vidence which tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable, is relevant.” As explained above, DelCo is already in possession of the documents referenced in Nos. 6 and 7. With respect to No. 6, there are two documents covered by the Bates Numbers provided by Aqua to DelCo in their response to this Interrogatory. See Attachment 1 Aqua Responses to DelCo Set VIII Nos. 6 and 7. These two PDF formatted documents, marked “Draft” at Bates Numbers AQUA 43374-43429, are the same document entitled “Rate Stabilization Trust Scenario Analysis”, in slightly different formats (printed slides versus PowerPoint). They were prepared by Aqua staff solely for internal analysis purposes and consider various purchase price scenarios. The analyses predate execution of the Asset Purchase Agreement between Aqua and DELCORA. None of the purchase prices evaluated in this document are the purchase price ultimately reached by Aqua and DELCORA, which is the relevant amount in this proceeding. By seeking the active Excel spreadsheet used to generate part of this document, DelCo is attempting to obtain access at no cost to Aqua’s model and formulas used to evaluate potential transactions for unspecified uses by its experts in this proceeding, based on the model’s generation of materials that have no relevancy to this proceeding. The phrase “Rate Stabilization Trust Scenario Analysis” in the Excel spreadsheet file name does not open Aqua to unlimited discovery, particularly where the Trust is neither an Aqua proposal nor something for which the Company is seeking Commission approval in this proceeding.

6. With respect to No. 7, there are four documents covered by the Bates Numbers provided by Aqua to DelCo in their response to this Interrogatory. *See* Attachment 1 Aqua Responses to DelCo Set VIII Nos. 6 and 7. These four PDF formatted documents, all marked “Confidential”, are versions of two documents in slightly different formats (printed slides versus PowerPoint). The document at Bates Nos. AQUA 32211-32218 was created before the document at Bates No. AQUA 33107-33114. These two documents were prepared by Aqua staff solely for internal analysis purposes and consider potential future DELCORA rates and a purchase price scenario. The analyses predate execution of the Asset Purchase Agreement between Aqua and DELCORA. The purchase price evaluated in this document is not the purchase price ultimately reached by Aqua and DELCORA, which is the relevant subject matter of this proceeding. By seeking the active Excel spreadsheet used to generate part of this document, DelCo is attempting to obtain access at no cost to Aqua’s model and formulas used to evaluate potential transactions for unspecified uses by its experts in this proceeding, based on the model’s generation of materials that have no relevancy to this proceeding. DelCo’s reliance on the ALJ’s Motion to Compel ruling in *PUC v. Pennsylvania American Water Co.*, Docket No. R-2011-2232243 (July 21, 2011) is misplaced and erroneous here. Obviously, budget forecasts are relevant to a public utility base rate case claim that involves a future test year. On the other hand, analyses of hypothetical purchase price scenarios that are not the actual purchase price in the actual transaction with DELCORA are not relevant. The Commission will not be determining an alternative purchase price for the DELCORA system in this case.

7. Through its Motion, DelCo is seeking active Excel spreadsheets relating to documents that analyze potential DELCORA purchase prices that are not relevant to the actual agreed upon purchase price for the DELCORA system assets. The County should not be

permitted to bootstrap discovery it obtained in another legal proceeding to obtain active Excel files that are the “engine” Aqua uses to analyze potential system acquisitions. Because the material sought fails the relevancy standard, the Motion can be resolved on this basis alone and the ALJ need not consider further grounds for directing the production of materials sought by DelCo. Nevertheless, Aqua will address its further arguments underlying its objections to DelCo’s request.

### **III. The Material Sought by DelCo is Protected Under Section 5.323 of the Commission’s Regulations.**

8. The Commission’s protection of active Excel spreadsheets in Section 1329 cases commenced before the first Section 1329 proceeding was even filed. In the Commission’s docket on implementation of Section 1329, Pennsylvania American Water Company (“PAWC”) raised the issue of access to “formulas and other calculation embedded in spreadsheets and other working electronic files [that] are confidential, proprietary information.”<sup>2</sup> *Implementation Order* at 12-13. The Commission agreed with PAWC’s concern and mandated special procedures for “confidential or proprietary electronic working documents (i.e., Excel spreadsheets). Such materials that are part of Section 1329 filings will not be posted on the public version of the filing system and are to be provided to the Commission on separate discs, labeled confidential and in separate envelopes. *Implementation Order* at 14-15.

9. The Commission understood the special role active Excel spreadsheets play in a type of regulatory proceeding that evaluates system purchase prices and sets a future rate base. That special role is present in this proceeding and explains what DelCo perceives as an inconsistency in Aqua’s Objections. The County takes issue with Aqua arguing that the requested material is not relevant, and also arguing that the material should be protected because

---

<sup>2</sup> *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 Order Entered February 28, 2019)(“*Implementation Order*”).

it relates to material prepared for hearing by its representative witnesses. Both propositions are true. DelCo seeks the active Excel spreadsheets by citing their use in connection with purchase price scenarios that did not prove to be the actual purchase price for DELCORA's system assets. Thus, as noted above, these analyses are irrelevant. However, the active Excel models DelCo is seeking also relate to the purchase price that *was* reached between Aqua and DELCORA and that represents the claim Aqua is supporting in this proceeding. Therefore, they relate to claims being made in this case.

10. 52 Pa. Code § 5.323(a) of the Commission's regulations state that, with respect to a party's representative, other than the party's attorney, their impressions, conclusions, opinions respecting the value or merit of a claim are not subject to discovery. This protection extends to preliminary or draft versions of testimony and exhibits. Testimony from in-house experts are common elements of a public utility's evidentiary proceeding and there is no basis for DelCo's argument that these protections only apply to outside consultants. The active Excel spreadsheets DelCo seeks are in-house analytical tools Aqua uses to formulate a defensible acquisition price for a wastewater system. They help to form Aqua's representatives' conclusions regarding an appropriate acquisition price and clearly tie to the merits of a claim Aqua is making in this case. Therefore, the active Excel spreadsheets DelCo seeks are not subject to discovery under 52 Pa. Code Section 5.323(a).

#### IV. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. respectfully requests that Your Honor deny the County of Delaware's Motion to Compel Answers to Interrogatories and Requests for Production, Set VIII, Nos. 6-7, and grant Aqua such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC



By: \_\_\_\_\_

John F. Povilaitis (PA ID No. 28944)

Alan M. Seltzer (PA ID No. 27890)

409 North Second Street, Suite # 500

Harrisburg, PA 17101-1357Tel:

(717) 237-4800

[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)

[alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com)

And

Thomas T. Niesen (PA ID No. 31379)

Thomas, Niesen & Thomas, LLC

212 Locust Street, Suite 302

Harrisburg, PA 17101

(717) 255-7641

[tniesen@tntlawfirm.com](mailto:tniesen@tntlawfirm.com)

Dated: September 24, 2020

*Attorneys for Aqua Pennsylvania Wastewater, Inc.*

# Attachment 1

**APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

**DOCKET NO. A-2019-3015173**

**COUNTY OF DELAWARE, PENNSYLVANIA**

**SET VIII TO AQUA INTERROGATORIES**

---

- COUNTY-VIII-6** Please provide a copy of the document provided in discovery in the Court of Common Pleas case at Bates Number AQUA 06084. Regarding the document provided in response to this COUNTY VII-6, please provide:
- a. A copy of all attachments referenced, linked, or otherwise identified in the document, including the files labeled “Project Grey Seal Rate Stabilization Trust Analysis v4.pdf” and “Project Grey Seal Rate Stabilization Trust Analysis v4.pptx”.
  - b. All prior and subsequent versions of the documents provided in response to County VII-6(a).
  - c. Working Excel files of all charts, tables and graphs displayed in the documents in COUNTY VII-6(a).

**RESPONSE**

Aqua filed objections to this request on September 16, 2020. The documents referenced are already in the County’s possession. See Court of Common Pleas Bates Numbers AQUA 43374-43429.

Respondent: William C. Packer  
Date: 09/17/2020

**APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

**DOCKET NO. A-2019-3015173**

**COUNTY OF DELAWARE, PENNSYLVANIA**

**SET VIII TO AQUA INTERROGATORIES**

---

**COUNTY-VIII-7** Please provide a copy of the documents provided in discovery in the Court of Common Pleas case at Bates Number AQUA 04587. Regarding the document provided in response to this COUNTY VII-7, please provide:

- a. A copy of all attachments referenced or otherwise identified in the document, including the files labeled "Project Grey Seal Rate Detail\_v8 3 2019.pdf.awsec", "Project Gray Seal 07112019 v1.5.pptx.awsec", "Project Gray Seal 07112019 v1.4.pptx.awsec" and "Project Gray Seal 07112019 v1.4.pptx.awsec".
- b. All prior and subsequent versions of the documents provided in response to County VII-7(a), regardless of the naming convention being different.
- c. Working Excel files of all charts, tables and graphs displayed in the documents in COUNTY VII-7(a).

**RESPONSE**

Aqua filed objections to this request on September 16, 2020. The documents referenced are already in the County's possession. See Court of Common Pleas Bates Numbers AQUA 32211-32218 and 33107-33114.

**VERIFICATION**

I, William C. Packer, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and expect to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

*William C. Packer*

---

William C. Packer  
Vice President-Controller,  
Aqua Pennsylvania Wastewater, Inc.

DATED: September 24, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc.'s	:	
Acquisition of Delaware County Regional	:	Docket No. A-2019-3015173
Water Quality Control Authority, Delaware	:	
and Chester Counties Sanitary Wastewater	:	
Collection and Treatment System	:	

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**Via Email:**

The Honorable Angela T. Jones  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
[angeljones@pa.gov](mailto:angeljones@pa.gov)

Sean Donnelly, P.E., Supervisor  
Water/Wastewater Section  
Bureau of Technical Utility Services  
Pennsylvania Public Utility Commission  
[sdonnelly@pa.gov](mailto:sdonnelly@pa.gov)

Erin L. Fure  
Steven C. Gray  
Assistant Small Business Advocates Office  
of Small Business Advocate  
[efure@pa.gov](mailto:efure@pa.gov)  
[sgray@pa.gov](mailto:sgray@pa.gov)

Adeolu A. Bakare, Esq.  
Robert F. Young, Esq.  
Kenneth R. Stark, Esq.  
McNees Wallace & Nurick LLC  
[abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com)  
[ryoung@mcneeslaw.com](mailto:ryoung@mcneeslaw.com)  
[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)

Christine Maloni Hoover  
Erin L. Gannon  
Senior Assistant Consumer Advocates  
Harrison G. Breitman  
Santo G. Spataro  
Assistant Consumer Advocates  
[choover@paoca.org](mailto:choover@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)  
[hbreitman@paoca.org](mailto:hbreitman@paoca.org)  
[sspataro@paoca.org](mailto:sspataro@paoca.org)

Gina L. Miller, Prosecutor  
Erika L. McLain, Prosecutor  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
[ginmiller@pa.gov](mailto:ginmiller@pa.gov)  
[ermclain@pa.gov](mailto:ermclain@pa.gov)

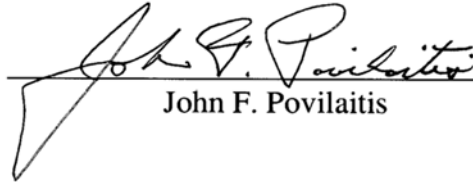
Kenneth D. Kynett, Esq.  
Charles G. Miller, Esq.  
Petrikin, Wellman, Damico, Brown & Petrosa  
[kdk@petrikin.com](mailto:kdk@petrikin.com)  
[cgm@petrikin.com](mailto:cgm@petrikin.com)

Thomas Wyatt, Esq.  
Matthew S. Olesh, Esq.  
Obermayer Rebmann Maxwell & Hippe LLP  
[Thomas.Wyatt@obermayer.com](mailto:Thomas.Wyatt@obermayer.com)  
[Matthew.Olesh@obermayer.com](mailto:Matthew.Olesh@obermayer.com)

Scott J. Rubin, Esq.  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)

Cynthia Pantages  
C&L Rental Properties, LLC  
[cyndipantages@gmail.com](mailto:cyndipantages@gmail.com)

Date: September 24, 2020



John F. Povilaitis