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September 25, 2020

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
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 please find the Motion for Summary Judgment filed on behalf of Edgmont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, Trainer Borough, and Upland Borough (collectively, Municipal Protestants).

This document is being served on the Administrative Law Judge and all parties of record. The document was filed electronically with the Commission on this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

Enclosure

cc: Angela Jones, Administrative Law Judge
All parties of record

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

NOTICE TO PLEAD

To: Aqua Pennsylvania Wastewater, Inc., and Delaware County Regional Water Quality Control Authority, through their attorneys:

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Pursuant to 52 Pa. Code § 5.102, you are hereby notified that a written response to the enclosed Motion for Summary Judgment is due within **twenty (20) days** from the date of this Notice.

File with:
Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:
Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com

Dated: September 25, 2020



Scott J. Rubin, Esq.

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

MOTION FOR SUMMARY JUDGMENT
OF
MUNICIPAL PROTESTANTS

Pursuant to 52 Pa. Code § 5.102, Edgmont Township (Edgmont), Lower Chichester Township (Lower Chichester), Southwest Delaware County Municipal Authority (SWDCMA), Trainer Borough (Trainer), and Upland Borough (Upland), collectively Municipal Protestants, file this Motion for Summary Judgment. As set forth in detail below, the material facts are not in dispute and, based on those facts, the Application of Aqua Pennsylvania Wastewater, Inc. (Aqua) to acquire certain assets of Delaware County Regional Water Quality Control Authority (DELCORA), must be dismissed as a matter of law. In support of this Motion, Municipal Protestants state as follows:

Background

1. This proceeding was initiated on March 3, 2020, when Aqua filed its Application.
2. On September 17, 2019, Aqua and DELCORA entered into an Asset Purchase Agreement (APA) that is attached to Aqua's Application as Exhibit B-1.

3. The purpose of the APA is for Aqua to purchase various DELCORA assets used to provide wastewater service in portions of Delaware and Chester Counties, and for Aqua to begin providing wastewater service to the public in DELCORA's service territory. Application p. 20.

4. DELCORA provides retail wastewater service (that is collection, transmission, and treatment) to approximately 16,000 individual residences and businesses. Application ¶ 8.

5. In addition, DELCORA provides wholesale wastewater service (transmission and treatment) to numerous municipal corporations¹ that own and operate wastewater collection systems in portions of 49 municipalities. Application ¶ 8.

6. Wholesale service is provided by DELCORA under contracts with each municipal corporation, copies of which are appended to the Application as the "F" exhibits.²

7. The DELCORA assets proposed to be sold to Aqua include physical assets (such as treatment plants, sewer mains, pump stations, and related facilities), and DELCORA's contractual rights under each of the contracts listed in Exhibit 4.15 to the APA and included in the "F" exhibits to the Application. APA § 2.01.

8. Each of Municipal Protestants has filed a Protest against the Application.³

Service to DELCORA's Customers is Based on Various Contract Rights

9. As described more fully below, each of Municipal Protestants has a contract with DELCORA.

¹ The Public Utility Code defines a municipal corporation as including municipalities, counties, municipal authorities, and other local government entities. 66 Pa. C.S. § 102 (definition of municipal corporation).

² The "F" exhibits also include contracts between DELCORA and municipalities that sold their collection systems to DELCORA, in some cases subject to a reversionary interest, as discussed below.

³ Protests were filed by Edgmont on August 19, 2020; Lower Chichester on August 7, 2020; SWDCMA on July 17, 2020; Trainer on August 17, 2020; and Upland on August 7, 2020.

10. Aqua's Application seeks a certificate of public convenience and necessity (CPCN) to provide wastewater service to the public in the entirety of DELCORA's service area, including service to both retail and wholesale customers. Application p. 20.

11. DELCORA's right to provide wastewater service in various locations, including in the areas governed by Municipal Protestants, is based on the terms and conditions of the contracts between numerous municipal corporations and DELCORA.

12. DELCORA does not have the unfettered right to sell, assign, or otherwise avoid its obligations under the contracts with each of the Municipal Protestants, as described more fully below.

13. Aqua cannot provide the service for which it requests a CPCN without receiving the assets (both physical assets and contractual rights to serve) from DELCORA, and it is requesting Commission approval to acquire those assets. Application p. 20.

14. DELCORA lacks the ability to transfer certain facilities and rights, as set forth below.

Applicable Law

15. As a matter of law Aqua fails to meet an essential and indispensable prerequisite for the receipt of a CPCN: access to the assets (facilities and contract rights) needed to serve the customers proposed to be acquired.

16. Almost 60 years ago, the Superior Court decided *Bobtown Sewage Co. v. Pa. PUC*, 195 Pa. Super. 330, 171 A.2d 625 (1961). In that case, a coal company was attempting to sell a sewer system it constructed to serve housing for approximately 300 of its employees, and for which it did not charge a fee. The proposed acquiring company was to be a new public utility that would charge a fee for service, and thus would be regulated by this Commission. While the

application for a CPCN was pending before the Commission, however, a municipal authority initiated proceedings to take the sewer system by eminent domain. The eminent domain proceeding was being litigated in civil court while approval of the sale and the granting of a CPCN was pending before the Commission.

The Commission denied the application for a CPCN because the buyer lacked the ability to acquire the property needed to provide the requested service. As Superior Court summarized, the Commission rejected the application “upon the ground that it [the buyer] did not have and was not in a position to acquire the facilities necessary to render the proposed service.” Id., 195 Pa. Super. at 332, 171 A.2d at 626.

Superior Court affirmed the Commission’s decision holding: “since the plaintiff is not now in a position to render the service, there is ample evidence to sustain the order of the commission and it must be affirmed.” Id. The court noted that future events may cause this to change; for example, if the court were to rule that eminent domain were improper. If that were to happen and “the plaintiff is again in a position to acquire the facilities, it may file a new application. Until that time, obviously no certificate can be granted ...” Id., 195 Pa. Super. at 333, 171 A.2d at 626. As the court concluded: “All we have before us is a situation in which the applicant cannot presently render the service.” Id.⁴

17. That is exactly the situation in which Aqua finds itself in this case. DELCORA does not have the right to assign certain contracts and contract rights, or transfer certain physical facilities, to Aqua, as set forth in detail below.

18. Indeed, DELCORA and Aqua have had a full year since the APA was signed and they have obtained consents to assign DELCORA’s contracts and certain facilities covered by those

⁴ The Dunkard-Bobtown Municipal Authority was ultimately successful in acquiring the assets (see *Balazick v. Dunkard-Bobtown Municipal Authority*, 414 Pa. 182, 199 A.2d 430 (1964)) and it continues to exist today.

contracts, with only five wholesale customers. Aqua and DELCORA joint response to interrogatory SWDCMA I-2 (attached hereto as Attachment 1) and Application Exhibits F158 through F162.⁵

Edgmont Contract

19. On October 17, 2012, Edgmont entered into a contract with DELCORA to provide service to the Crum Creek Sewer District of Edgmont, which is appended to the Application as Exhibit F81 (“the Edgmont/DELCORA Agreement”). DELCORA Responses to Edgmont Township’s Requests for Admissions, Set I, attached hereto as Attachment 2 (“DELCORA Edgmont Admissions”), no. 2.

20. The Edgmont/DELCORA Agreement provides for residents of the Crum Creek Sewer District of Edgmont to be served as retail customers of DELCORA. DELCORA Edgmont Admissions, no. 1.

21. The facilities serving the Crum Creek Sewer District were constructed by DELCORA at an original cost of approximately \$11.3 million and entered service on or about February 1, 2016. DELCORA Edgmont Admissions, nos. 13 and 14.

22. The Edgmont/DELCORA Agreement has an initial term of 25 years which expires on October 16, 2037, subject to Edgmont’s options to further extend the agreement. DELCORA Edgmont Admissions, no. 4.

23. The Edgmont/DELCORA Agreement is currently in effect. DELCORA Edgmont Admissions, no. 6.

⁵ The interrogatory response contains a typographical error, including Exhibit F163 as one of the assignments. Exhibit F163 is a license agreement between Amtrak and DELCORA that appears to be at least 20 years old.

24. DELCORA cannot assign the Edgmont/DELCORA Agreement (except for an assignment of revenues for financing purposes) without Edmont's consent. DELCORA Edgmont Admissions, no. 8.

25. Edgmont has not consented to the assignment of its contract to Aqua. DELCORA Edgmont Admissions, no. 9.

26. The Edgmont/DELCORA Agreement prevents DELCORA from selling the Crum Creek Sewer District facilities without prior written approval of Edgmont. Application Exhibit F81, ¶ 22(c).

27. If DELCORA attempts to sell the facilities serving the Crum Creek Sewer District in Edgmont, Edgmont has a right of first refusal to purchase the facilities for the remaining balance on debt incurred by DELCORA to construct the facilities. DELCORA Edgmont Admissions, no. 10.

28. The APA constitutes an attempt by DELCORA to sell the facilities serving the Crum Creek Sewer District in Edgmont. DELCORA Edgmont Admissions, no. 11.

29. As of the end of 2020, DELCORA estimates the remaining balance on the financing associated with the Crum Creek Sewer District will be approximately \$4 million. DELCORA Edgmont Admissions, no. 20.

30. The Edgmont/DELCORA Agreement does not have a deadline by which Edgmont must exercise its right of first refusal. Application Exhibit F81, § 22(c).

31. Edgmont has not consented to the sale of the Crum Creek Sewer District facilities by DELCORA, and has not yet determined if it will exercise its right of first refusal to purchase the facilities.

32. At the present time, therefore, DELCORA does not have the right to sell the Crum Creek Sewer District facilities to Aqua, and DELCORA may never have that right.

33. At the present time, therefore, Aqua does not have the right to purchase the Crum Creek Sewer District facilities and Aqua may never have that right.

Lower Chichester Contract

34. Lower Chichester collects wastewater from its customers and transports the wastewater to DELCORA for treatment. DELCORA Responses to Lower Chichester Township's Requests for Admissions, Set I, attached hereto as Attachment 3 ("DELCORA Lower Chichester Admissions"), no. 1.

35. Lower Chichester is a wholesale customer of DELCORA in DELCORA's Western Service Region. DELCORA Lower Chichester Admissions, no. 2.

36. Lower Chichester transports wastewater to DELCORA for treatment pursuant to the terms of a contract entered into by Lower Chichester and DELCORA on April 12, 1977, which is attached to the Application as Exhibit F84 ("DELCORA/Lower Chichester Contract"). DELCORA Lower Chichester Admissions, no. 3.

37. The DELCORA/Lower Chichester Contract is currently in effect. DELCORA Lower Chichester Admissions, no. 6.

38. The current term of the DELCORA/Lower Chichester Contract expires on April 11, 2022, but it can be renewed for an additional 50 years upon mutual agreement of the parties. DELCORA Lower Chichester Admissions, no. 7.

39. DELCORA's rights and obligations under the DELCORA/Lower Chichester Contract cannot be assigned without the consent of Lower Chichester. DELCORA Lower Chichester Admissions, no. 8.

40. DELCORA has not received Lower Chichester's consent to assign the DELCORA/Lower Chichester Contract to Aqua. DELCORA Lower Chichester Admissions, no. 9.

41. At the present time, therefore, DELCORA does not have the right to assign its rights and obligations under the DELCORA/Lower Chichester Contract to Aqua, and DELCORA may never have that right.

42. At the present time, therefore, Aqua does not have the right to acquire the facilities used to provide wholesale service to Lower Chichester and it may never have that right.

SWDCMA Contract

43. SWDCMA collects wastewater from its customers and transports the wastewater to DELCORA for treatment. DELCORA Responses to Southwest Delaware County Municipal Authority's Requests for Admissions, Set I, attached hereto as Attachment 4 ("DELCORA SWDCMA Admissions"), no. 1.

44. SWDCMA is a wholesale customer of DELCORA in DELCORA's Western Service Region. DELCORA SWDCMA Admissions, no. 2

45. SWDCMA transports wastewater to DELCORA for treatment pursuant to the terms of a contract entered into by SWDCMA and DELCORA on December 21, 2009, as amended on December 17, 2013 (collectively "DELCORA/SWDCMA Contract"). Application Exhibits F110 and F111; DELCORA SWDCMA Admissions, nos. 3 and 4.

46. The DELCORA/SWDCMA Contract is currently in effect. DELCORA SWDCMA Admissions, no. 6.

47. The current term of the DELCORA/SWDCMA Contract expires on December 20, 2034, but it can be renewed for an additional 25 years by either party. DELCORA SWDCMA Admissions, no. 8.

48. DELCORA's rights and obligations under the DELCORA/SWDCMA Contract cannot be assigned without the consent of SWDCMA, except for financing transactions. DELCORA SWDCMA Admissions, no. 9; Application Exhibit F110, § 9.11.

49. DELCORA has not received SWDCMA's consent to assign the DELCORA/SWDCMA Contract to Aqua. DELCORA SWDCMA Admissions, no. 10.

50. At the present time, therefore, DELCORA does not have the right to assign its rights and obligations under the DELCORA/SWDCMA Contract to Aqua, and DELCORA may never have that right.

51. At the present time, therefore, Aqua does not have the right to acquire the facilities used to provide wholesale service to SWDCMA and it may never have that right.

Trainer Contract

52. Trainer is a retail customer of DELCORA. DELCORA Responses to Trainer Borough's Requests for Admissions, Set I, attached hereto as Attachment 5 ("DELCORA Trainer Admissions"), no. 1.

53. On August 9, 2005, Trainer entered into an Agreement of Sale and Service which, inter alia, provided for the sale of its wastewater collection system to DELCORA ("the

DELCORA/Trainer Contract"), which is appended to the Application as Exhibit F137.

DELCORA Trainer Admissions, no. 3.

54. The DELCORA/Trainer Contract is currently in full force and effect. DELCORA Trainer Admissions, no. 6.

55. The Contract states that if DELCORA fails to operate the wastewater system, then the collection system in Trainer reverts to Trainer's ownership, unless Trainer declines to take ownership in which case the Trainer system reverts to the County of Delaware or any other agency, as may be dictated by law. DELCORA Trainer Admissions, no. 9; Application Exhibit F137 § 12.4.

56. The Contract prohibits either party from assigning its interest in the Contract. DELCORA Trainer Admissions, no. 10.

57. Trainer and DELCORA have not amended the Contract since 2005. DELCORA Trainer Admissions, no. 11.

58. Trainer and DELCORA have not entered into an agreement permitting the assignment of either party's interest in the Contract. DELCORA Trainer Admissions, no. 12.

59. At the present time, therefore, DELCORA does not have the right to sell the facilities comprising the collection system in Trainer to Aqua, and DELCORA may never have that right.

60. At the present time, therefore, Aqua does not have the right to purchase the facilities comprising the collection system in Trainer. Indeed, as soon as DELCORA ceases to operate the wastewater treatment system, the facilities comprising the collection system in Trainer revert to Trainer by operation of law. Consequently those facilities cannot be owned or operated by Aqua.

Upland Contract

61. Upland is a retail customer of DELCORA. DELCORA Responses to Upland Borough's Requests for Admissions, Set I, attached hereto as Attachment 6 ("DELCORA Upland Admissions"), no. 1.

62. On July 22, 1975, Upland entered into a contract to sell its wastewater collection system to DELCORA, and was subsequently amended on January 18, 1983, December 21, 1983, and February 12, 1985 (collectively "the DELCORA/Upland Contract"), which documents are appended to the Application as Exhibits F139 through F142. DELCORA Upland Admissions, nos. 3-4.

63. The DELCORA/Upland Contract is currently in effect. DELCORA Upland Admissions, no. 7.

64. The current term of the DELCORA/Upland Contract runs until November 17, 2022, continuing thereafter as long as DELCORA is in existence unless either party gives a one-year notice of termination. DELCORA Upland Admissions, no. 8.

65. The Contract states that if DELCORA fails to operate the wastewater system, then the collection system in Upland reverts to Upland's ownership. DELCORA Upland Admissions, no. 10; Application Exhibit F139 § 13.6.

66. DELCORA's rights and obligations under the DELCORA/Upland Contract cannot be assigned without the consent of Upland. DELCORA Upland Admissions, no. 11.

67. DELCORA has not received Upland's consent to assign the DELCORA/Upland Contract to Aqua. DELCORA Upland Admissions, no. 12.

68. At the present time, therefore, DELCORA does not have the right to sell the facilities comprising the collection system in Upland to Aqua, and DELCORA may never have that right.

69. At the present time, therefore, Aqua does not have the right to purchase the facilities comprising the collection system in Upland. Indeed, as soon as DELCORA ceases to operate the wastewater treatment system, the facilities comprising the collection system in Upland revert to Upland by operation of law. Consequently those facilities cannot be owned or operated by Aqua.

The APA Cannot Cure Aqua's Inability to Acquire These and Other Assets

70. The APA contains a provision that appears to contemplate that certain DELCORA assets (including contracts) might not be assignable to Aqua. Specifically, Section 2.06 of the APA states, in relevant part:

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a), Section 2.06(b) and Section 12.01(c), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a "Nonassignable Asset"). Following the Closing, the Seller and Buyer shall use its commercially reasonable efforts (at the cost and expense of the Party that is responsible for compliance with such Law or obtaining such consent, authorization, approval or waiver), and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; provided, however, that in no event shall Buyer be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, the Seller shall sell, transfer, assign, convey and deliver to Buyer the relevant Acquired Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Any applicable sales, transfer and other similar Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid one-half by Buyer and one-half by the Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer and the Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as leasing/subleasing, licensing/sublicensing or contracting/subcontracting) to provide to the Parties the economic and, to the extent permitted under Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its obligations with respect thereto, and so long as the Seller transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under Law and the terms of any applicable contract that constitutes a Nonassignable Asset, as agent or subcontractor for the Seller, pay, perform and discharge the liabilities and obligations of the Seller thereunder from and after the Closing Date, but only to the extent that such liabilities and obligations would constitute Assumed Liabilities if the applicable consent or approval had been obtained on or prior to the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under Law, the Seller shall hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by the Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

Application Exhibit B-1, § 2.06 (emphases added).

71. That provision, however, is not capable of being implemented. The contracts between DELCORA and each of Municipal Protestants require DELCORA to own and operate the wastewater treatment system. Specifically:

- a. **DELCORA/Edgmont Contract:** “the Crum Creek Sewer District System will be financed, designed, constructed, installed, owned, operated, maintained and repaired by DELCORA.” Application Exhibit F81, p. 1. “DELCORA represents and warrants to the Township that DELCORA has and will maintain the ability to treat and discharge the Township Capacity through the DELCORA System and the Crum Creek Sewer District System, during the Term of this Agreement.” Id., § 12.
“During the Term of this Agreement, DELCORA shall without limitation, maintain the sewers from any main up to the curb line.” Id., § 13.

b. **DELCORA/Lower Chichester Contract:** “DELCORA agrees to provide at all times during the term of this Agreement ... sufficient conveyance and treatment capacity for all Wastewater emanating from Municipality ...” Application Exhibit F84, § 2.03. “During the term hereof, DELCORA will continuously operate, maintain and repair the Western Regional Treatment Plant and Marcus Hook Conveyance System (subject to Section 8.04) or cause them to be maintained and repaired so they will be at all times in efficient operating condition and in compliance with the standards prescribed by all appropriate regulatory agencies for the purpose of this Agreement.” Id., § 6.01.

c. **DELCORA/SWDCMA Contract:** “DELCORA will then operate and maintain ‘The System’ in accordance with the provisions set forth in this Agreement.” Application Exhibit F110, p. 1. “After completion of the construction of the Pump Station and the Force Main, DELCORA will exercise best efforts to continuously operate, maintain and repair ‘The System’ or cause it to be maintained and repaired so that it will be at all times in efficient operating condition and in compliance with the standards prescribed by all appropriate regulatory agencies for the purpose of this Agreement.” Id., § 7.01.

d. **DELCORA/Trainer Contract:** “If at any time in the future during the term of this Section 12 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the Sewer Properties, such as they may exist at such time, shall revert to Seller’s ownership ...” Application Exhibit F137, § 12.4.

e. **DELCORA/Upland Contract:** “If, at any time in the future, during the term of this Section 13 or at the end thereof, Buyer ceases to operate the system being

purchased by it hereunder, then the fixed assets and the Real Property ... shall revert to the Seller's ownership ..." Application Exhibit F139, § 13.6. "It is the intent of the parties that DELCORA will acquire, own, maintain, and operate the property of the Seller, and supply sewage treatment and collection service in accordance with the provisions of this Agreement ..." Id., § 14.5.

72. Importantly, while some of the contract provisions quoted above contemplate DELCORA contracting for maintenance or repair of the system, none of the contracts permit DELCORA to cease the actual operation of the system.

73. There is no mechanism in those agreements to permit a third party to own and operate the system, but create the fiction that DELCORA retains those responsibilities.

74. Further, the APA itself recognizes an important exception to Section 2.06. Section 12.01 of the APA states: "The obligation of Buyer to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before Closing, of the following conditions, any one or more of which may be waived in writing by Buyer in its sole discretion: ...

Notwithstanding Section 2.06, the Assigned Contracts set forth on Schedule 12.01(c), shall be amended on terms acceptable to Buyer in its reasonable discretion." Application Exhibit B-1, § 12.01(c). The contract between DELCORA and SWDCMA is one of the Assigned Contracts listed on Schedule 12.01(c). Thus, at least as to that contract, Aqua and DELCORA recognized that the transaction could not occur unless the contract is amended to permit Aqua to provide service.

75. Moreover, even if Section 2.06 of the APA were lawful and able to be implemented, Aqua and DELCORA currently have no plan to do so. Municipal Protestants asked a detailed interrogatory (Upland I-7) concerning the manner in which Section 2.06 would be implemented.

The joint response from Aqua and DELCORA (a copy of which is provided as Attachment 7) demonstrates that Aqua and DELCORA have no plan to, and frankly no idea how to, implement this provision.

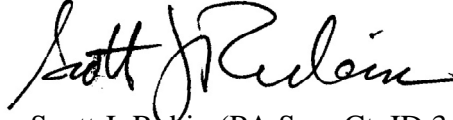
Indeed, the response begins with an incorrect premise, stating that if the Commission approves the Application, then “Aqua will be the certificated wastewater provider in the requested service territory.” That is attempting to pre-ordain a result that violates the standard enunciated by the Superior Court 60 years ago, and that attempts to unlawfully extinguish the contract rights of Municipal Protestants. Aqua cannot be certificated to be the service provider if pre-existing contracts require DELCORA to be the service provider. Aqua cannot own or operate facilities that DELCORA is required to own or operate. Aqua cannot provide service to customers using facilities that pre-existing contracts require be transferred to municipalities if DELCORA ever stops operating the system.

76. As explained above, the Superior Court plainly stated the law almost 60 years ago: a CPCN cannot be granted if the buyer “did not have and was not in a position to acquire the facilities necessary to render the proposed service.” That is precisely the situation here: Aqua does not have and is not in a position to acquire the facilities and other rights necessary to render the proposed service. DELCORA lacks the legal ability to assign Municipal Protestants’ contracts DELCORA lacks the legal authority to sell the property used to serve customers located within Municipal Protestants’ boundaries. DELCORA cannot lawfully stop operating the wastewater system under the contracts in place with Municipal Protestants.

WHEREFORE, Municipal Protestants move for summary judgment. As a matter of law, Aqua cannot purchase and DELCORA cannot sell various facilities and contract rights that are essential components of the provision of wastewater service under Municipal Protestants’

contracts. This proceeding, therefore, should be dismissed without prejudice to Aqua's ability to submit a new application if those circumstances change.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

Scott J. Rubin (PA Sup. Ct. ID 34536)

333 Oak Lane

Bloomsburg, PA 17815-2036

Voice: (570) 387-1893

Email: scott.j.rubin@gmail.com

Counsel for Municipal Protestants

Dated: September 25, 2020

Respondent: Robert Willert and Marc A. Lucca

Date: 8/10/2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

SOUTHWEST DELAWARE COUNTY MUNICIPAL AUTHORITY

SET I INTERROGATORIES

SWDCMA-I-2

For each contract or agreement provided in the “F” exhibits to the Application, please provide the following information:

- a. State whether the municipality or municipal authority has agreed to the assignment of DELCORA’s rights and obligations to Aqua, or otherwise agreed to change or not enforce the agreement with DELCORA.
- b. In each instance where the municipality or municipal authority has agreed to the assignment or other change, please provide a copy of the written assignment or contract amendment between the municipality or municipal authority and DELCORA and/or Aqua.
- c. In each instance where the municipality or municipal authority has agreed to the assignment or change, please state the amount of money or other consideration (if any) paid or to be paid by Aqua and/or DELCORA to the municipality or municipal authority or any official thereof.
- d. In each instance where money or other consideration was paid, or will be paid, for agreement to an assignment or contract change, please state whether the money was paid (or will be paid) by Aqua or DELCORA.
- e. In each instance where money was paid, or will be paid, for agreement to an assignment or contract change, please state how the funds will be accounted for, whether they will affect the transaction price, and Aqua’s proposed ratemaking treatment for the amounts paid if the Commission approves the Application.

RESPONSE

- a. Please see the Application Exhibits F159-163 for those municipalities or municipal authorities that have agreed to assignment.
- b. Please see the response to part a., above.
- c. No consideration for the amendment and assignment of the agreement was made for those that have agreed.
- d. N/A.
- e. N/A.

Respondent: John Pileggi

Date: September 17, 2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

Docket No. A-2019-3015173

EDGMONT TOWNSHIP

SET I REQUESTS FOR ADMISSIONS – DELCORA RESPONSES

1. Certain residents and businesses located in Edgmont are served under a rate schedule that is only for customers located within the township limits.

RESPONSE: Admitted.

2. On October 17, 2012, Edgmont entered into a contract with DELCORA to provide service to the Crum Creek Sewer District of Edgmont, which is appended to the Application as Exhibit F81 (“the Edgmont/DELCORA Agreement”).

RESPONSE: Admitted.

3. Exhibit F81 is a true, correct, and complete copy of the Edgmont/DELCORA Agreement.

RESPONSE: Admitted.

4. The Edgmont/DELCORA Agreement has an initial term of 25 years which expires on October 16, 2037.

RESPONSE: Admitted in part, denied in part. The initial term of the Edgmont/DELCORA Agreement is 25 years, but section 22 of the Edgmont/DELCORA Agreement provides the Township has five (5) options to extend the Edgmont/DELCORA Agreement, with each extension being for a period of five (5) years.

5. Neither DELCORA nor Edgmont is in breach of the Edgmont/DELCORA Agreement.

RESPONSE: Admitted in part, denied in part. DELCORA admits that it is not in breach of the Edgmont/DELCORA Agreement. DELCORA is not aware of Edgmont breaching the agreement but cannot conclusively state that it is not in breach.

6. The Edgmont/DELCORA Agreement is currently in effect.

RESPONSE: Admitted.

7. The Edgmont/DELCORA Agreement requires DELCORA to operate the wastewater system for the Crum Creek Sewer District.

RESPONSE: Denied. Section 18 of the Edgmont/DELCORA Agreement provides Edgmont the option to buyback the Crum Creek Sewer District System, and Section 30 provides DELCORA with an option to assign its rights to receive payments for customers in the Crum Creek Sewer District where required for any financing of the Crum Creek Sewer District System, present or future.

8. DELCORA's rights and obligations under the Edgmont/DELCORA Agreement cannot be assigned without the consent of Edgmont.

RESPONSE: Admitted in part, denied in part. DELCORA's right and obligations under the Edgmont/DELCORA Agreement cannot be assigned without the consent of Edgmont; however, pursuant to Section 29 of the Edgmont/DELCORA Agreement, such consent "shall not be unreasonably withheld, conditioned or delayed." Additionally, Section 30 provides DELCORA with an option to "assign and/or pledge its rights to receive payments for customers in the Crum Creek Sewer District where required for any financing of the Crum Creek Sewer District System, present or future."

9. DELCORA has not received Edgmont's consent to assign the Edgmont/DELCORA Agreement to Aqua.

RESPONSE: Admitted.

10. In the event that DELCORA attempts to sell, lease, or otherwise convey the facilities serving the Crum Creek Sewer District of Edgmont, Edgmont has a right to buy the facilities for the principal remaining on the debt that financed the construction of the facilities (plus any prepayment penalties), or the sum of one dollar if no debt is outstanding.

RESPONSE: Admitted in part, denied in part. Section 18 of the Edgmont/DELCORA Agreement provides that "The Township may acquire the Crum Creek Sewer District System from DELCORA upon eighteen months notice for the sum of One Dollar (\$1.00), plus the principal and any pre-payment penalty remaining and any other costs related to the termination of any debt related to the Crum Creek Sewer District." However, Section 22(c) provides that "During the Term of this Agreement, including any extension thereof, DELCORA shall not sell, lease or convey any other interest in any part or all of the Crum Creek Sewer District System without prior written approval of the Township; provided however that if DELCORA should desire to sell the Crum Creek Sewer District System, the Township shall have a right of first refusal to purchase the System by paying to or on behalf of DELCORA: i) the remaining principal and any pre-payment, penalties and any other costs related to the

termination of debt incurred by DELCORA related to construction of the Crum Creek Sewer District System then outstanding; or ii) if no such sum is outstanding, then the purchase price shall be one dollar (\$1.00).”

11. DELCORA’s entry into the Asset Purchase Agreement with Aqua is an attempt by DELCORA to sell, lease, or otherwise convey the facilities serving the Crum Creek Sewer District of Edgmont to Aqua.

RESPONSE: Admitted in part, denied in part. DELCORA’s entry into the Asset Purchase Agreement with Aqua is an attempt by DELCORA to sell the facilities serving the Crum Creek Sewer District of Edgmont to Aqua. DELCORA’s entry into the Asset Purchase Agreement with Aqua is not an attempt to lease the facilities serving the Crum Creek Sewer District of Edgmont to Aqua.

12. DELCORA will not charge Edgmont a prepayment penalty on the debt that was used to finance the construction of the facilities serving the Crum Creek Sewer District of Edgmont.

RESPONSE: Denied. DELCORA cannot definitively know whether it will charge Edgmont a prepayment penalty on the debt incurred to finance the construction of the facilities serving the Crum Creek Sewer District of Edgmont and is, therefore, unable to admit this statement.

13. DELCORA started serving customers in the Crum Creek Sewer District of Edgmont on or about February 1, 2016.

RESPONSE: Admitted.

14. The original cost of the facilities DELCORA constructed to serve the Crum Creek Sewer District of Edgmont was \$11,328,329.

RESPONSE: Admitted.

15. As of September 30, 2016, DELCORA received tap-in fees from customers in the Crum Creek Sewer District of Edgmont totaling \$2,815,550.

RESPONSE: Admitted.

16. DELCORA received the proceeds of state grants totaling \$898,196 to help pay for the cost of the extension to serve customers in Crum Creek Sewer District of Edgmont.

RESPONSE: Admitted.

17. DELCORA received a third-party reimbursement in the amount of \$71,145 to help pay for the cost of the extension to serve customers in the Crum Creek Sewer District of Edgmont.

RESPONSE: Admitted.

18. As of December 31, 2018, the original cost of the facilities DELCORA constructed to serve the Crum Creek Sewer District of Edgmont (net of accrued depreciation, state grants, initial tap-in fees, and third-party reimbursements) was \$7,033,739.

RESPONSE: Denied. As of December 31, 2018, the original cost of the facilities DELCORA constructed to serve the Crum Creek Sewer District of Edgmont (net of accrued depreciation, state grants, initial tap-in fees, and third-party reimbursements) was \$7,543,437.

19. Customers in the Crum Creek Sewer District of Edgmont are responsible for paying all costs of financing the facilities (except the portion of costs paid through grants, third-party reimbursements, or initial tap-in fees) installed to serve the Crum Creek Sewer District of Edgmont, either through tap-in fees paid after September 2016 or through user charges.

RESPONSE: Admitted.

20. As of the end of 2020, DELCORA estimates the remaining balance on the debt incurred to construct the Crum Creek Sewer District facilities will be \$4,210,403.

RESPONSE: Denied. As of the end of 2020, DELCORA estimates the remaining balance on the debt incurred to construct the Crum Creek Sewer District facilities to be \$4,002,364.

21. DELCORA residential customers in the Crum Creek Sewer District of Edgmont pay an annual flat fee for wastewater service of \$1,275.

RESPONSE: Admitted.

22. DELCORA commercial customers in the Crum Creek Sewer District of Edgmont pay an annual flat fee for wastewater service of \$1,025 per Equivalent Dwelling Unit plus a rate of \$10.25 per 1,000 gallons.

RESPONSE: Admitted.

23. DELCORA's 2020 budget for serving customers in the Crum Creek Sewer District of Edgmont is for total revenues of \$1,148,492, total operations and maintenance expenses of \$341,992, and total debt service on the debt incurred by DELCORA to construct the Crum Creek Sewer District facilities of \$806,500.

RESPONSE: Admitted in part, denied in part. DELCORA's 2020 budget for serving customers in the Crum Creek Sewer District of Edgmont is for total revenues of \$1,148,492, total operations and maintenance expenses of \$341,992. However, DELCORA's 2020 budget also includes expenses of the following: (1) Reserve for Capital at 1.5% of System Costs of \$129,024.25; (2) Reserve for LTCP of \$17,382.32; (3) Common Capital of \$9,713.65 and amortizing of CDCA loan of \$137,375. DELCORA does not budget an amount for debt service on the

debt incurred by DELCORA to construct the Crum Creek Sewer District facilities.

24. Edgmont and DELCORA also are parties to an agreement with Ashford Land Company LLP, Newtown Township, and the Newtown Township Municipal Authority which is appended to the Application as Exhibit F59 (“Multi-Party Agreement”).

RESPONSE: Admitted.

25. Exhibit F59 is a true, correct, and complete copy of the Multi-Party Agreement.

RESPONSE: Admitted.

Respondent: John Pileggi

Date: September 14, 2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

LOWER CHICHESTER TOWNSHIP

SET I REQUESTS FOR ADMISSIONS – DELCORA RESPONSES

1. Lower Chichester collects wastewater from its customers and transports the wastewater to DELCORA for treatment.

RESPONSE: Admitted.

2. Lower Chichester is a wholesale customer of DELCORA in DELCORA's Western Service Region.

RESPONSE: Admitted.

3. Lower Chichester transports wastewater to DELCORA for treatment pursuant to the terms of a contract entered into by Lower Chichester and DELCORA on April 12, 1977, which is attached to the Application as Exhibit F84 ("the Contract").

RESPONSE: Admitted.

4. Exhibit F84 is a true, correct, and complete copy of the agreement between Lower Chichester and DELCORA.

RESPONSE: Admitted.

5. Neither DELCORA nor Lower Chichester is in breach of the Contract.

RESPONSE: Admitted.

6. The Contract is currently in effect.

RESPONSE: Admitted.

7. The current term of the Contract runs until April 11, 2022.

RESPONSE: Admitted in part, denied in part. The current term of the Contract runs until April 11, 2022, but the Contract provides that it can be renewed for an additional 50 years upon mutual agreement of the parties.

8. DELCORA's rights and obligations under the Contract cannot be assigned without the consent of Lower Chichester.

RESPONSE: Admitted in part, denied in part. Section 8.13 of the Contract provides that the agreement may not be voluntarily assigned by either party

without the consent of the other. However, DELCORA's rights to receive payments under the Contract may be assigned and pledged to Girard Trust Bank, as Trustee under Indenture dated May 1, 1974, or any subsequent Indenture to Secure DELCORA's Sewer Revenue Bonds Series of 1974 or any bonds hereafter issued to cover any project costs of DELCORA.

9. DELCORA has not received Lower Chichester's consent to assign the Contract to Aqua.

RESPONSE: Admitted.

10. The rate Lower Chichester pays to DELCORA in 2020 is based on Lower Chichester having a flow of 182,500,000 (182,500 units of 1000 gallons) during the 2020 calendar year.

RESPONSE: Admitted.

11. Lower Chichester currently pays to DELCORA a rate of \$2.87 per 1000 gallons.

RESPONSE: Admitted.

12. The rate paid by Lower Chichester to DELCORA includes \$0.34 per 1000 gallons as a contribution toward the costs of DELCORA meeting DELCORA's future obligations for stormwater control under a Long Term Control Plan.

RESPONSE: Admitted.

13. Lower Chichester's payment of \$0.34 per 1000 gallons toward DELCORA's Long Term Control Plan costs helps to fund DELCORA's Reserve for Future Long Term Control Plan costs.

RESPONSE: Admitted.

Respondent: John Pileggi

Date: September 14, 2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

SOUTHWEST DELAWARE COUNTY MUNICIPAL AUTHORITY

SET I REQUESTS FOR ADMISSIONS – DELCORA RESPONSES

1. SWDCMA collects wastewater from its customers and transports the wastewater to DELCORA for treatment.

RESPONSE: Admitted.

2. SWDCMA is a wholesale customer of DELCORA in DELCORA's Western Service Region.

RESPONSE: Admitted.

3. SWDCMA transports wastewater to DELCORA for treatment pursuant to the terms of a contract entered into by SWDCMA and DELCORA on December 21, 2009, which is attached to the Application as Exhibit F110.

RESPONSE: Admitted.

4. The contract between SWDCMA and DELCORA was amended on December 17, 2013, which amendment is attached to the Application as Exhibit F111.

RESPONSE: Admitted.

5. Exhibits F110 and F111 (collectively "the Contract") are true, correct, and complete copies of the agreement between SWDCMA and DELCORA.

RESPONSE: Denied. In addition to these documents, there is an Agreement of Sale, located at Exhibit F109.

6. Neither DELCORA nor SWDCMA is in breach of the Contract.

RESPONSE: Admitted.

7. The Contract is currently in effect.

RESPONSE: Admitted.

8. The current term of the Contract runs until December 20, 2034.

RESPONSE: Admitted in part, denied in part. The current term of the Contract runs until December 20, 2034, but the Contract may be renewed by either party for an additional period of 25 years.

9. DELCORA's rights and obligations under the Contract cannot be assigned without the consent of SWDCMA.

RESPONSE: Denied. DELCORA may assign and/or pledge its rights to receive payments from Southwest incident to any financing, present or future.

10. DELCORA has not received SWDCMA's consent to assign the Contract to Aqua.

RESPONSE: Admitted.

11. The Chester Ridley Creek Pump Station and Force Main were built by DELCORA to provide service to SWDCMA and Middletown Township Sewer Authority.

RESPONSE: Admitted.

12. The Chester Ridley Creek Force Main was placed in service in 2014 at a book cost of \$6,290,802.

RESPONSE: Admitted.

13. After depreciation accruals, the net book value of the Chester Ridley Creek Force Main at December 31, 2018, was \$5,448,814.

RESPONSE: Admitted.

14. The Chester Ridley Creek Pump Station was placed in service on or about December 31, 2015, at a book cost of \$10,853,911.

RESPONSE: Admitted.

15. After depreciation accruals, the net book value of the Chester Ridley Creek Pump Station at December 31, 2018, was \$10,039,868.

RESPONSE: Admitted.

16. SWDCMA and Middletown Township Sewer Authority are responsible for paying to DELCORA 100% of the costs associated with the Chester Ridley Creek Pump Station and Force Main, including all principal and interest on the debt DELCORA incurred to construct those facilities.

RESPONSE: Denied. Rose Valley Township is responsible for 2.38% (2020 Budget) of the costs associated with the Chester Ridley Creek Pump Station and Force Main.

17. SWDCMA is current on its payments to DELCORA for all costs associated with the Chester Ridley Creek Pump Station and Force Main, including the payment of principal and interest on the debt DELCORA incurred to construct those facilities.

RESPONSE: Admitted.

18. DELCORA's calculation of the net book value of the Chester Ridley Creek Pump Station and Force Main does not include the contributions made by SWDCMA and Middletown Township Sewer Authority to the cost of those facilities.

RESPONSE: Admitted.

19. DELCORA will retire the debt it incurred to finance the Chester Ridley Creek Pump Station and Force Main as part of the proposed sale of assets to Aqua.

RESPONSE: Admitted.

20. The rate SWDCMA pays to DELCORA in 2020 is based on SWDCMA having a flow of 967,250,000 (967,250 units of 1000 gallons) during the 2020 calendar year.

RESPONSE: Admitted.

21. SWDCMA currently pays to DELCORA a rate of \$3.50 per 1000 gallons.

RESPONSE: Admitted.

22. The rate paid by SWDCMA to DELCORA includes \$0.79 per 1000 gallons for debt service (including coverage) for the Chester Ridley Creek Pump Station and Force Main.

RESPONSE: Admitted.

23. The rate paid by SWDCMA to DELCORA includes \$0.34 per 1000 gallons as a contribution toward the costs of DELCORA meeting DELCORA's future obligations for stormwater control under a Long Term Control Plan.

RESPONSE: Admitted.

24. DELCORA has established a Reserve for Future Long Term Control Plan costs as part of its Revenue Fund cash account.

RESPONSE: Admitted.

25. As of January 29, 2020, DELCORA's balance in the Reserve for Future Long Term Control Plan costs was \$27,880,000.

RESPONSE: Admitted.

26. SWDCMA's payment of \$0.34 per 1000 gallons toward DELCORA's Long Term Control Plan costs helps to fund the Reserve for Future Long Term Control Plan costs.

RESPONSE: Admitted.

27. Under the terms of the Asset Purchase Agreement with Aqua, DELCORA will not transfer the balance in the Reserve for Future Long Term Control Plan fund to Aqua.

RESPONSE: Admitted.

28. DELCORA routinely changes its estimated rates effective January 1 of each year.

RESPONSE: Admitted.

29. After DELCORA's annual audit is complete, DELCORA reconciles the revenues it collected from SWDCMA during the previous year to actual expenditures to serve SWDCMA, and DELCORA issues an invoice or credit to SWDCMA for the difference.

RESPONSE: Admitted.

30. DELCORA usually sends the reconciliation invoice or credit to SWDCMA during the second quarter of the year.

RESPONSE: Admitted.

31. DELCORA expects the transaction with Aqua to close before DELCORA's annual audit for 2020 is completed.

RESPONSE: Denied. DELCORA does not presently know the date of closing so is unable to admit this statement.

32. The Asset Purchase Agreement between DELCORA and Aqua does not make any provision for reconciling 2020 estimated rates to actual expenditures after the transaction closes.

RESPONSE: Admitted.

Respondent: John Pileggi

Date: September 17, 2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

TRAINER BOROUGH

SET I REQUESTS FOR ADMISSIONS – DELCORA RESPONSES

1. Trainer is a retail customer of DELCORA.

RESPONSE: Admitted.

2. Trainer and the residents and businesses located in Trainer are served under a rate schedule that is only for customers located within the borough limits.

RESPONSE: Admitted.

3. On August 9, 2005, Trainer entered into an Agreement of Sale and Service which, inter alia, provided for the sale of its wastewater distribution system to DELCORA (“the Contract”), which is appended to the Application as Exhibit F137.

RESPONSE: Admitted.

4. Exhibit F137 is a true, correct, and complete copy of the agreement between Trainer and DELCORA.

RESPONSE: Denied. In addition to this document, there is a Service Agreement that predates the agreement between Trainer and DELCORA, located at Exhibit F135.

5. Neither DELCORA nor Trainer is in breach of the Contract.

RESPONSE: Admitted in part, denied in part. DELCORA admits that it is not in breach of the Contract. DELCORA is not aware of Trainer breaching the agreement but cannot conclusively state that it is not in breach.

6. The Contract is currently in full force and effect.

RESPONSE: Admitted.

7. The Contract requires DELCORA to operate the wastewater system.

RESPONSE: Denied. The Contract provides options for Trainer if DELCORA ceases to operate the wastewater system. See response to No. 9 below.

8. The Contract provides the customers of DELCORA located in Trainer Borough shall bear none of the costs of the collection of sewage outside the service area of Trainer Borough.

RESPONSE: Admitted.

9. The Contract states that if DELCORA fails to operate the wastewater system, then the collection system in Trainer reverts to Trainer's ownership, unless Trainer declines to take ownership in which case the Trainer system reverts to the County of Delaware or any other agency, as may be dictated by law.

RESPONSE: Denied as stated. Section 12.4 of the Contract provides that "If at any time in the future during the term of this Section 12 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the Sewer Properties, such as they may exist at such time, shall revert Seller's ownership, unless Seller declines to accept such reversion, om which case they shall or revert to the County of Delaware or any other agency, as may dictate by law."

10. The Contract prohibits either party from assigning its interest in the Contract.

RESPONSE: Admitted.

11. Trainer and DELCORA have not amended the Contract since 2005.

RESPONSE: Admitted.

12. Trainer and DELCORA have not entered into any separate contract or agreement permitting the assignment of either party's interest in the Contract.

RESPONSE: Admitted in part, denied in part. DELCORA admits that it has not entered into any separate contract or agreement permitting the assignment of either party's interest in the Contract. DELCORA is without information or knowledge about whether Trainer has done so and therefore denies same.

13. The rate Trainer pays to DELCORA in 2020 is based on Trainer residents and businesses having a flow of 39,561,000 (39,561 units of 1000 gallons) during the 2020 calendar year.

RESPONSE: Admitted.

14. Trainer and residents and businesses in Trainer currently pay to DELCORA a rate of \$5.75 per 1000 gallons.

RESPONSE: Admitted.

15. The rate paid by Trainer to DELCORA includes \$0.34 per 1000 gallons as a contribution toward the costs of DELCORA meeting DELCORA's future obligations for stormwater control under a Long Term Control Plan.

RESPONSE: Admitted.

16. Trainer's payment of \$0.34 per 1000 gallons toward DELCORA's Long Term Control Plan costs helps to fund DELCORA's Reserve for Future Long Term Control Plan costs.

RESPONSE: Admitted.

Respondent: John Pileggi

Date: September 14, 2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

UPLAND BOROUGH

SET I REQUESTS FOR ADMISSIONS – DELCORA RESPONSES

1. Upland is a retail customer of DELCORA.

RESPONSE: Admitted.

2. Upland and the residents and businesses located in Upland are served under a rate schedule that is only for customers located within the borough limits.

RESPONSE: Admitted.

3. On July 22, 1975, Upland entered into a contract to sell its wastewater distribution system to DELCORA, which is appended to the Application as Exhibit F139.

RESPONSE: Admitted.

4. The agreement between Upland and DELCORA was subsequently amended on January 18, 1983, December 21, 1983, and February 12, 1985, which amendments are appended to the Application as Exhibits F140, F141, and F142, respectively.

RESPONSE: Admitted.

5. Exhibits F139, F140, F141, and F142 (collectively “the Contract”) are true, correct, and complete copies of the agreement between Upland and DELCORA.

RESPONSE: Admitted.

6. Neither DELCORA nor Upland is in breach of the Contract.

RESPONSE: Admitted.

7. The Contract is currently in effect.

RESPONSE: Admitted.

8. The current term of the Contract runs until November 17, 2022.

RESPONSE: Admitted in part, denied in part. The current term of the Contract runs until November 17, 2022, but the Contract provides that it can continue thereafter for a term as long as the existence of DELCORA unless terminated by either party on one year’s notice.

9. The Contract requires DELCORA to operate the wastewater system.

RESPONSE: Denied. The Contract provides options for Upland if DELCORA ceases to operate the wastewater system. See response to No. 10 below.

10. The Contract states that if DELCORA fails to operate the wastewater system, then the collection system in Upland reverts to Upland's ownership.

RESPONSE: Denied as stated. Section 13.6 of the Contract provides that "If, at any time in the future, during the term of this Section 13 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real Property, other than the Treatment Plant and those facilities in the Collection System described in Section 2(d) shall revert to the Seller's ownership rather than to the County of Delaware or any other agency."

11. DELCORA's rights and obligations under the Contract cannot be assigned without the consent of Upland.

RESPONSE: Admitted.

12. DELCORA has not received Upland's consent to assign the Contract to Aqua.

RESPONSE: Admitted.

13. The rate Upland pays to DELCORA in 2020 is based on Upland residents and businesses having a flow of 133,361,000 (133,361 units of 1000 gallons) during the 2020 calendar year.

RESPONSE: Admitted.

14. Upland and residents and businesses in Upland currently pay to DELCORA a rate of \$5.75 per 1000 gallons.

RESPONSE: Admitted.

15. The rate paid by Upland to DELCORA includes \$0.34 per 1000 gallons as a contribution toward the costs of DELCORA meeting DELCORA's future obligations for stormwater control under a Long Term Control Plan.

RESPONSE: Admitted.

16. Upland's payment of \$0.34 per 1000 gallons toward DELCORA's Long Term Control Plan costs helps to fund DELCORA's Reserve for Future Long Term Control Plan costs.

RESPONSE: Admitted.

Respondent: Robert Willert and Marc A. Lucca

Date: August 17, 2020

APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

UPLAND BOROUGH

SET I INTERROGATORIES

UPLAND-I-7

Reference: Asset Purchase Agreement dated as of September 17, 2019 (Exhibit B1 to the Application), section 2.06(b). Concerning this provision:

- a. Please provide a detailed description of the “commercially reasonable and economically feasible arrangement” that Aqua and DELCORA would use to continue providing service to any DELCORA wholesale customers who do not consent to the asset transfer.
- b. Please provide a detailed description of the “commercially reasonable and economically feasible arrangement” that Aqua and DELCORA would use to continue providing service to any DELCORA retail customers who live in municipalities where the municipality does not consent to the asset transfer.
- c. Please provide the proposed form of agreement between Aqua and DELCORA that would be used to facilitate and/or implement the “commercially reasonable and economically feasible arrangements” described in response to (a) and (b), above.
- d. In the event that this provision is triggered after closing (that is, there are Nonassignable Assets as the term is defined in the Asset Purchase Agreement), how would DELCORA determine the rates that would be charged to customers for service?

RESPONSE:

If the Commission approves Aqua’s Application to acquire the assets of DELCORA, Aqua will be the certificated wastewater provider in the requested service territory. Aqua and DELCORA intend to actively discuss with any of the parties the provision of wastewater service, and is committed to providing wastewater service to the DELCORA customers after closing.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Summary Judgment upon the following parties by electronic mail. Service by first-class mail will be provided to any party that requests such service.

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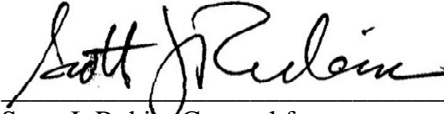
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