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October 15, 2020

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

**Via Electronic Filing**

**RE: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 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 with the Pennsylvania Public Utility Commission is the Answer of the County of Delaware, Pennsylvania in Support of the Motion for Summary Judgment of the Municipal Protestants, in the above-referenced proceedings.

As shown by the attached Certificate of Service and per the Commission's March 20, 2020, Emergency Order, all parties to this proceeding are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy of this pleading upon request.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Kenneth R. Stark

KRS/ams

Enclosure

c: Angela T. Jones, Administrative Law Judge  
Steven Gray, Legal Assistant  
Certificate of Service

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## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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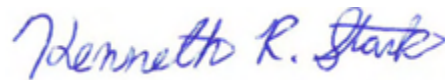
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Dated this 15<sup>th</sup> day of October, 2020, in Harrisburg, Pennsylvania

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. pursuant to Sections 507,	:	
1102 and 1329 of the Public Utility Code	:	Docket No. A-2019-3015173
for, inter alia, approval of the acquisition of	:	
the wastewater system assets of the	:	
Delaware County Regional Water Quality	:	
Control Authority:	:	

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**ANSWER OF THE COUNTY OF DELAWARE, PENNSYLVANIA  
IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT  
OF THE MUNICIPAL PROTESTANTS**

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NOW COMES the County of Delaware, Pennsylvania (the “County”), by and through counsel, pursuant to 52 Pa. Code §§ 5.61, 5.102(b), who files this Answer in support of the Motion for Summary Judgment (“Motion”) filed by the Municipal Protestants<sup>1</sup> on September 25, 2020 in the above referenced proceeding. In support thereof, the County submits the following.

1. In its application, Aqua Pennsylvania Wastewater, Inc. (“Aqua”) seeks Public Utility Commission (“PUC” or “Commission”) approval for the acquisition of the Wastewater System Assets (“System”) of the Delaware County Regional Water Quality Control Authority (“DELCORA” or “Authority”), and the right of Aqua to provide wastewater service to the areas served by the Authority.

2. In their Motion, the Municipal Protestants explain that Aqua proposes to not only acquire physical assets of the System, (such as treatment plants, sewer mains, pump stations, and related facilities), but also DELCORA’s contractual rights with each of the Municipal Protestants. Motion ¶¶ 7-9 (citing Aqua-DELCORA Asset Purchase Agreement § 2.01).

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<sup>1</sup> The Municipal Protestants are Edgmont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, Trainer Borough, and Upland Borough.

3. In their Motion, the Municipal Protestants assert that “DELCORA does not have the unfettered right to sell, assign, or otherwise avoid its obligations under the contracts with each of the Municipal Protestants.” Motion ¶ 12. Likewise, the Municipal Protestants assert that Aqua’s failure to demonstrate that it has legal access to certain assets it proposes to acquire, including wastewater facilities and contract rights, confirms that Aqua cannot meet the necessary requirements of a certificate of public convenience to serve the DELCORA customers. Motion ¶ 15. The Municipal Protestants further submit Aqua “cannot provide service to customers using facilities that pre-existing contracts require be transferred to municipalities if DELCORA ever stops operating the system.” Motion ¶ 75.

4. The Municipal Protestants explain that contracts between DELCORA and each of the Municipal Protestants require DELCORA to own and operate the System. Motion ¶ 71. In their Motion, the Municipal Protestants explain and cite to specific provisions in the relevant contracts between DELCORA and each of the Municipal Protestants.

5. The Municipal Protestants move for summary judgment because, as a matter of law, Aqua cannot purchase certain DELCORA System assets in light of the contracts between DELCORA and each of the Municipal Protestants.

6. The contractual arrangements between DELCORA and the Municipal Protestants do not appear to be in dispute. Aqua has not demonstrated it has authority to acquire certain System assets contractually or by operation of law. Parties to this proceeding should not be required to further exhaust time and financial resources litigating a proceeding regarding an application for a certificate of public convenience when the acquiring party cannot demonstrate it has legal authority to acquire substantial System assets.

7. Summary judgment is appropriate when a party demonstrates that “there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.” 52 Pa. Code § 5.102(d)(1). Under the Public Utility Code, the Commission may dismiss a proceeding without a hearing if the Commission finds a hearing is “not necessary in the public interest.” 66 Pa. C.S. § 703(b).


8. The Municipal Protestants have demonstrated that the relevant facts regarding the straightforward contractual terms of their agreements with DELCORA are not in dispute. The Municipal Protestants have demonstrated that Aqua does not have clear authority to acquire several components of the DELCORA System.

9. For those reasons, and as more fully discussed in the Motion, Aqua’s application should be dismissed.

**WHEREFORE**, the County of Delaware, Pennsylvania respectfully requests the Presiding Administrative Law Judge to grant the Motion for Summary Judgment of the Municipal Protestants and provide any other relief deemed appropriate.

Respectfully submitted,

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