



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

November 13, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

In re: Docket No. A-2019-3015173
Application of Aqua Pennsylvania Wastewater, Inc. – DELCORA

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Motion to Keep the Record Open for the Limited Purpose of Admitting the Decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185. Copies of the Motion are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable Angela T. Jones, Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2019-3015173
Wastewater, Inc. Pursuant to Sections :
1102, 1329 and 507 of the Public Utility :
Code for Approval of its Acquisition of the :
Wastewater System Assets of the :
Delaware County Regional Water Quality :
Control Authority :

NOTICE

NOTICE is hereby given that an Answer or other responsive pleading shall be filed with the Public Utility Commission within 20 days of service of the following Motion to Keep Record Open for the Limited Purpose of Admitting the Decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185.

By 

Thomas T. Niesen, Esq. (PA ID # 31379)

THOMAS, NIESEN & THOMAS, LLC

212 Locust Street, Suite 302

Harrisburg, PA 17101

Tel: 717-255-7600

Attorney for Respondent

Aqua Pennsylvania Wastewater, Inc.

Date of Service: November 13, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2019-3015173
Wastewater, Inc. Pursuant to Sections :
1102, 1329 and 507 of the Public Utility :
Code for Approval of its Acquisition of :
the Wastewater System Assets of the :
Delaware County Regional Water Quality :
Control Authority :

**MOTION OF AQUA PENNSYLVANIA WASTEWATER, INC. TO KEEP THE
RECORD OPEN FOR THE LIMITED PURPOSED OF ADMITTING
THE DECISION OF THE COURT OF COMMON PLEAS OF
DELAWARE COUNTY AT NO. CV-2020-003185**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), by its attorneys, and, pursuant to 52 Pa. Code § 5.102, moves to keep the record open for the limited purpose of admitting the decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185. In support thereof, Aqua submits as follows:

I. INTRODUCTION

1. This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on March 3, 2020, pursuant to Sections 1329, 1102 and 507 of the Public Utility Code (“Code”).

2. The Application asks the Commission to approve, *inter alia*, Aqua’s acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”) and the assignment of certain contracts to Aqua.

3. DELCORA uses the wastewater system assets to provide retail wastewater service to approximately 16,000 customers in parts of Delaware and Chester Counties and wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities.

4. Protests to the Application were filed by the Office of Consumer Advocate, the Office of Small Business Advocate, the County of Delaware, Sunoco Partners and Marketing Terminals, Kimberly-Clark, certain Municipal Protestants and others. The Bureau of Investigation and Enforcement filed a Notice of Appearance.

5. Administrative Law Judge Angela T. Jones was assigned to the matter. Two days of evidentiary hearings were held on November 9 and 10, 2020, with Judge Jones presiding.

6. At the beginning of the hearing on November 10, 2020, Aqua asked if the evidentiary record could be left open for the limited purpose of admitting the decision of the Delaware County Court of Common Pleas in pending civil litigation between the County of Delaware and DELCORA.

7. Addressing Aqua's request, Judge Jones inquired of other parties whether they had any objection. I&E and Delaware County asked for time to consider the request. Judge Jones directed Aqua to submit its request in writing via formal motion.

II. KEEPING THE RECORD OPEN FOR LIMITED PURPOSE

8. The presiding officer in a Commission proceeding has the authority to close the record at a time or date other than the conclusion of the hearing. Section 5.431 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.431, states that "[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission."

9. By this motion, Aqua asks that the record be kept open for a limited, single purpose – the admission into the evidentiary record of the decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185, in the event the decision is entered prior to final Commission action. Hearings in the County Court proceeding are scheduled for Dec 1 and 2, 2020,

with a decision expected soon thereafter.¹

10. Although the civil litigation in Delaware County Court concerns issues that are not jurisdictional to the Commission, Aqua believes that it is appropriate to bring the Court decision to the Commission's formal attention and include it in the evidentiary record in the event the County decision is entered prior to final Commission action.

11. The Commission may also be interested in having the decision formally before it as a document of record in the event the County Court decision is entered prior to its final action.

WHEREFORE, for the reasons set forth above, Aqua Pennsylvania Wastewater, Inc. requests that Administrative Law Judge Jones and the Public Utility Commission grant this Motion to Keep the Record Open for the Limited Purpose of Admitting the Decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

John F. Povilaitis, Esquire
Alan M. Seltzer, Esquire
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
john.povilaitis@bipc.com
alan.seltzer@bipc.com

Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: November 13, 2020

¹ Pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, and the Commission's Opinion and Order entered August 31, 2020, final Commission action on Aqua's Application must occur by March 26, 2021.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2019-3015173
Wastewater, Inc. Pursuant to Sections :
1102, 1329 and 507 of the Public Utility :
Code for Approval of its Acquisition of the :
Wastewater System Assets of the :
Delaware County Regional Water Quality :
Control Authority :

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of November, 2020, served a true and correct copy of the foregoing Motion of Aqua Pennsylvania Wastewater, Inc. to Keep the Record Open for the Limited Purpose of Admitting the Decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

Gina L. Miller, Prosecutor
Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ginmiller@pa.gov
ermclain@pa.gov

Steven C. Gray
Senior Supervising
Assistant Small Business Advocates
Office of Small Business Advocate
sgray@pa.gov

Kenneth D. Kynett, Esq.
Charles G. Miller, Esq.
Petrikin, Wellman, Damico, Brown & Petrosa
kdk@petrikin.com
cgm@petrikin.com

Christine Maloni Hoover
Erin L. Gannon
Senior Assistant Consumer Advocates
Harrison W. Breitman
Santo G. Spataro
Assistant Consumer Advocates
Office of Consumer Advocate
OCADELCORA@paoca.org

Adeolu A. Bakare, Esq.
Robert F. Young, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com

Thomas Wyatt, Esq.
Matthew S. Olesh, Esq.
Obermayer Rebmann Maxwell & Hippel,
LLP
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com

Scott J. Rubin, Esq.
scott.j.rubin@gmail.com

Justin Weber, Esq.
Michelle M. Skjoldal, Esq.
Jason T. Ketelson, Esq.
Marc Machlin, Esq.
Troutman Pepper Hamilton Saunders LLP
michelle.skjoldal@troutman.com
jason.ketelson@troutman.com
justin.weber@troutman.com
marc.machlin@troutman.com

John F. Povilaitis, Esquire
Alan M. Seltzer, Esquire
Buchanan Ingersoll & Rooney, PC
john.povilaitis@bipc.com
alan.seltzer@bipc.com

Ross Schmucki
rschmucki@gmail.com

Patricia Kozel
Pattyk6@icloud.com

Peter Ginoplus
pete@kiddertax.com

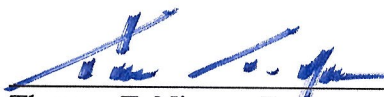
Robert W. Scott, Esq.
rscott@robertwscottpc.com

Thomas J. Sniscak, Esq.
Kevin J. McKeon, Esq.
Whitney E. Snyder, Esq.
Melissa A. Chapaska, Esq.
Hawke McKeon & Sniscak LLP
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com
machapaska@hmslegal.com

Cynthia Pantages
C&L Rental Properties, LLC
cyndipantages@gmail.com

Edward Clark, Jr.
Treasure Lake Property Owners Association
gm@treasurelake.us

Lawrence and Susan Potts
Susie01213@aol.com



Thomas T. Niesen, Esq.
PA Attorney ID No. 31379
Counsel for Aqua Pennsylvania Wastewater, Inc.