



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Kenneth R. Stark
Direct Dial: 717.237.5378
Fax: 717.237.5300
kstark@mcneeslaw.com

December 2, 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 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
Docket No. A-2019-3015173**

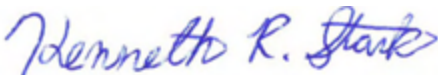
Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Answer in Opposition of the County of Delaware, Pennsylvania to the Motion to Keep the Record the Open of Aqua Pennsylvania Wastewater, Inc., in the above-referenced proceeding.

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

Counsel to County of Delaware, Pennsylvania

KRS/ams

Enclosure

c: The Honorable Angela T. Jones and F. Joseph Brady (via email only)
Pamela McNeal, Legal Assistant to ALJ (via email only)
Certificate of Service (via email only)

www.McNeesLaw.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • YORK, PA • COLUMBUS, OH • FREDERICK, MD • WASHINGTON, DC

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).

VIA E-MAIL

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com
Counsel to Aqua Pennsylvania

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

Alexander R. Stahl, Esq.
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Steven Gray, Esq.
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
sgray@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Harrison W. Breitman, Esq.
Santo G. Spataro, Esq.
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101
OCADelcora@paoca.org

Gina L. Miller, Esq.
Erika L. McLain, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
ginmiller@pa.gov
ermclain@pa.gov

Kenneth Kynett, Esq.
Charles G. Miller, Esq.
Petrikin Wellman Damico Brown & Petrosa
The William Penn Building
109 Chesley Drive
Media, PA 19063
kdk@petrikin.com
cgm@petrikin.com
Counsel to Edgmont Township

Thomas Wyatt, Esq.
Matthew Olesh, Esq.
Obermayer Rebmann Maxwell & Hippel
1500 Market Street, Suite 3400
Philadelphia, PA 19102
thomas.wyatt@obermayer.com
matthew.olesh@obermayer.com
*Counsel to Delaware County Regional
Water Quality Control Authority*

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com
*Counsel to Southwest Delaware County
Municipal Authority*

Ross F. Schmucki
218 Rutgers Avenue
Swarthmore, PA 19081
rschmucki@gmail.com

Certificate of Service

Page 2

Thomas J. Sniscak, Esq.
Whitney E. Snyder, Esq.
Kevin J. McKeon, Esq.
Melissa A. Chapaska, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
TJSniscak@hmslegal.com
WESnyder@hmslegal.com
KJMckeon@hmslegal.com
MAChapaska@hmslegal.com
Counsel to Sunoco Partners Marketing

Michelle M. Skjoldal, Esq.
Justin G. Weber, Esq.
Troutman Pepper Hamilton Sanders LLP
100 Market Street, Ste. 200
P.O. Box 1181
Harrisburg, PA 17108-1181
michelle.skjoldal@troutman.com
justin.weber@troutman.com
Counsel to Kimberly Clark Corp.

Jason T. Ketelsen, Esq.
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
jason.ketelsen@troutman.com

Marc D. Machlin, Esq.
Troutman Pepper Hamilton Sanders LLP
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
marc.machlin@troutman.com
Counsel to Kimberly Clark Corp.

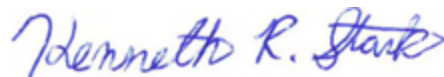
Cynthia Pantages
C&L Rental Properties, LLC
30 S. Lake Drive
P.O. Box 516
Lake Harmony, PA 18624
cyndipantages@gmail.com

Edward Clark Jr.
Treasure Lake Property Owners Association
13 Treasure Lake
DuBois, PA 15801
gm@treasurelake.us

Robert W. Scott, Esq.
Robert W. Scott PC
205 North Monroe Street
P.O. Box 468
Media, PA 19063
rscott@robertwscottpc.com

Patricia Kozel
15 Hazzard Run Road
Lake Harmony, PA 18624
pattyk6@icloud.com

Lawrence and Susan Potts
11 Chestnut Street
P.O. Box 522
Lake Harmony, PA 18624
susie01213@aol.com



Kenneth R. Stark

Counsel to the County of Delaware,
Pennsylvania

Dated this 2nd day of December, 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:	:	

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

**TO THE HONORABLE ANGELA T. JONES AND THE HONORABLE F. JOSEPH
BRADY, PRESIDING ADMINISTRATIVE LAW JUDGES:**

Pursuant to Section 5.61 of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) regulations, 52 Pa. Code § 5.61, the County of Delaware, Pennsylvania (“the County”) hereby files this Answer in opposition to the Motion to Keep the Record Open for the Limited Purposes of Admitting the Decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185 (“Motion”) submitted by Aqua Pennsylvania Wastewater, Inc. (“Aqua”) in the above-captioned proceeding. In response, the County states as follows:

I. ANSWER

1. Pending in Docket No. CV-2020-003185 in the Court of Common Pleas of Delaware County is a dispute between the County and the Delaware County Regional Water Quality Control Authority (“DELCORA”) involving, among other things, the County’s exclusive right, power, and authority to terminate DELCORA pursuant to Section 5619 of Municipality Authorities Act, 53 Pa. C.S. § 5619.

2. In its Motion, Aqua asks the Presiding Judge to keep the record open for the limited purpose of admitting into the evidentiary record the decision of the Court of Common Pleas of Delaware County in Docket No. CV-2020-003185. Motion at ¶ 9. However, Aqua fails to explain why the record should be kept open indefinitely, and asserts that “the civil litigation in Delaware County Court concerns issues that are not jurisdictional to the Commission.” *See id.* Aqua further asserts “it is appropriate to bring the [Common Pleas] Court decision to the Commission’s formal attention and include it in the evidentiary record.” *See Aqua Motion at ¶ 10.* However, Aqua fails to specify and explain why, at this moment, after the evidentiary hearing, the record should remain open indefinitely.

3. The County suggests that Your Honors and the Commission may take judicial notice of the decisions in any Common Pleas Court Order. The Commission or Your Honors could then account for that Order, as necessary, in the rendering of an initial decision or final order in this proceeding *or* in determining whether additional briefing on the impact of that decision is appropriate and necessary. The narrow taking of judicial notice is consistent with the Commission’s regulations and precedent. *See 52 Pa. Code § 4.408; see UGI Utils. v. City of Reading*, 179 A.3d 624, n. 3 (Pa. Cmwlth. 2017) (explaining the authority of the Commonwealth Court to take judicial notice of the status of a PUC proceeding).

4. As the Commission may take judicial notice of the Court of Common Pleas’ Order, there exists no reason to hold the record open to address Aqua’s concern. To the extent Aqua desires to hold the record open for admission of evidence other than the legal findings in the Court of Common Pleas’ Order, the County submits that the appropriate course of action would be stay the proceeding, as originally proposed in the County’s Petition for Stay in this proceeding.

II. CONCLUSION

WHEREFORE, Delaware County respectfully requests that the Pennsylvania Public Utility Commission deny Aqua's Motion to Keep the Record Open for the Limited Purposes of Admitting the Decision of the Court of Common Pleas of Delaware County at No. CV-2020-003185. Instead of indefinitely keeping open the factual and evidentiary record, Delaware County submits that Your Honors and the Commission may take judicial notice of the decisions in the Court of Common Pleas' Order.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare (I.D. No. 208541)
Robert F. Young (I.D. No. 55816)
Kenneth R. Stark (I.D. No. 312945)
McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com

Counsel to the County of Delaware,
Pennsylvania

Dated: December 2, 2020