

February 1, 2021

Via Electronic Mail (Confidential Version)
Via Electronic Filing (Public Version)

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
rchiavetta@pa.gov

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

Dear Secretary Chiavetta:

We are counsel for Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, with this letter, the Company's Replies to the Exceptions of Sunoco Partners Marketing & Terminals, L.P. (*Confidential Version* and *Public Version*). The *Confidential Version* is being filed via electronic mail. The *Public Version* is being filed via electronic filing. Copies of the Replies to Exceptions are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
ra-OSA@pa.gov
The Honorable Angela T. Jones, Administrative Law Judge (via email, w/encl.)
The Honorable F. Joseph Brady, Administrative Law Judge (via email, e/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The Honorable Angela T. Jones, Presiding
The Honorable F. Joseph Brady, Presiding**

| | | |
|---|---|---------------------------|
| 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 | : | |

**REPLIES OF
AQUA PENNSYLVANIA WASTEWATER, INC.
TO THE EXCEPTIONS OF SUNOCO PARTNERS MARKETING & TERMINALS, L.P.**

(Public Version)

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DATED: February 1, 2021

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I. INTRODUCTION

A. Procedural History

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”).

The Application asks the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to approve Aqua’s acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”) and allow Aqua to begin to provide wastewater service in portions of Delaware and Chester Counties (“Proposed Transaction”).

The Application also asks the Commission to approve ratemaking rate base of \$276,500,000 for the wastewater system pursuant to Section 1329(c)(2) of the Code, for certificates of filing pursuant to Section 507 of the Code and for such other approvals, certificates, registrations and relief, if any, under the Code.

By Recommended Decision dated January 12, 2021, (“RD”), Judge Jones and Judge Brady (“ALJs”) concluded that Aqua failed to meet its burden of proof and recommended that the Application be denied.

Aqua and DELCORA filed Exceptions on January 22, 2021 asking the Commission to reverse the R.D. and to approve the Application with certain conditions and the proposed ratemaking rate base of \$276,500,000.

On January 22, 2021, Sunoco Partners Marketing & Terminals, L.P. (“Sunoco” or SPMT”) filed Exceptions in support of the R.D. but asserting, further, that, if the Application is not denied, then the Commission should impose certain conditions.¹

Aqua submits the following Replies to the Sunoco Exceptions.²

¹ Sunoco Exceptions at 1.

² Pursuant to 52 Pa. Code Section 5.535, Aqua incorporates into its Replies to Exceptions, by reference and citation, relevant pages of its previously filed Main and Reply Briefs and Exceptions.

B. Summary of Replies to Exceptions

Sunoco raises six Exceptions to the R.D. that it claims further supports the dismissal of the Application. None of those Exceptions is meritorious. Rather, for the reasons specified in these Replies and in the Aqua Exceptions, the Commission should approve the Application with the various conditions proposed by Aqua, which are intended to ensure that closing of the Proposed Transaction takes place only after the standard open matters in a transaction of this type and magnitude have been resolved. Upon satisfaction of any conditions, the Commission will issue a certificate of public convenience and Section 507 authorizations so that Aqua may proceed to closing of the Proposed Transaction and commence service to the former DELCORA customers. The overwhelming affirmative, substantial public benefits of the Proposed Transaction support this reasonable result.

Sunoco's Exceptions represent a myopic and unrealistic perspective about the nature of utility acquisitions and the degree of transaction completeness that can be expected at the time of seeking Chapter 11 approval of such a transaction from the Commission. As described further below, the prevailing and unacceptable theme of Sunoco's Exceptions is that the Commission cannot and should not approve the Proposed Transaction because of standard open issues, outside the Commission's jurisdiction, that still exist with respect to environmental permitting, the precise amount to be included in the DELCORA Customer Trust ("Trust"), and pending litigation. Sunoco provides no legal basis for the Commission denying the Application because of these open matters, but asserts nonetheless that they require just such a result. Just like the R.D. itself, Sunoco fails to acknowledge that the nature and complexity of utility acquisitions routinely require a series of regulatory and other approvals (other than from the Commission) to be obtained/completed before closing can occur. In recognition of these accepted and incontrovertible facts, the Commission is empowered by the Code to establish reasonable conditions that must be satisfied *before* a

transaction the subject of a Chapter 11 application, like that filed by Aqua, can proceed to closing. The R.D. failed to consider and establish such conditions despite Aqua's and DELCORA's entreaty to do so. And, Sunoco merely compounds that error by improperly – and contrary to applicable law – insisting in its Exceptions that the R.D. had other reasons to deny the Application when all of the matters to which Sunoco “excepts” can easily be addressed by the imposition of the very conditions Aqua and DELCORA advised the Commission they were willing to accept.

First, Sunoco insists that Aqua's [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] permitting uncertainties justify denying the relief requested in the Application.³ However, there are no “uncertainties” with respect to such permitting, but rather a currently an on-going process of working with the Pennsylvania Department of Environmental Resources (“DEP”) to determine how and on what basis the applicable permits will be transferred or issued as part of the Proposed Transaction that contemplates the DELCORA wastewater treatment plant, among other facilities – moving from public (DELCORA) to private (Aqua) ownership. This issue is squarely within the jurisdiction of the DEP and simply an attempt by Sunoco to obtain an outcome on this issue through the Application before the PUC. This is precisely the type of non-Commission approval that supports a condition to any PUC order like that proposed by Aqua and DELCORA in this proceeding and not, as suggested by Sunoco, grounds for outright denial of the Application.⁴

Second, Sunoco's insistence that Aqua's rates will be significantly higher than DELCORA's under the Proposed Transaction⁵ is both legally and factually flawed. Both in briefing and the Aqua Exceptions, Aqua has demonstrated by clear and a preponderance of the evidence that DELCORA's

³ Sunoco Exceptions at 4.

⁴ Sunoco has proposed a [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Sunoco
Exceptions at 4-9.

⁵ Sunoco Exceptions at 9.

customers will benefit from a rate perspective by being part of the Aqua system. Indeed, DELCORA pursued this transaction with Aqua so that its customers would benefit from a lower long-run cost of service. Various rate techniques, among other things, support these rate benefits, in addition to the Trust that is expected to limit the impact of future rate increases to the former DELCORA customers post-closing of the Proposed Transaction. And, from a legal perspective, it is important to understand that this is not a rate proceeding and, while rate impacts are required to be addressed, they are not required to be precisely quantified and can be outweighed by other substantial affirmative benefits – as they have been in this proceeding.

Sunoco's third Exception chastises the R.D. because of alleged uncertainties regarding the funding of the Trust.⁶ Sunoco's Exceptions, much like its earlier briefing, is riddled with unsupported assertions relating to alleged double counting, payments to the Philadelphia Water Department under its Long Term Control Plan, and potential repayments under federal Executive Order 12803 ("EO") which require, under certain circumstances, repayments to governmental units for grants provided to DELCORA in the construction of certain of its assets. All of these issues are addressed further below on the merits. However, there is no uncertainty that the Trust will be funded with a substantial amount of money that will in fact be available to mitigate the impact of future Aqua rate increases on the former DELCORA customers. This is a new benefit pioneered in this proceeding, which has significant potential to assist customers if used in other sales of facilities, provided the Proposed Transaction is approved. Whether the amount of the initial funding of the Trust is \$200 million or some amount higher or lower depending on a variety of factors that typically impact utility plant acquisitions, the preponderance of evidence supports the substantial amount of money DELCORA has agreed to set aside from its net Proposed Transaction sale proceeds to provide real benefits to former DELCORA customers.

⁶ Sunoco Exceptions at 16.

Sunoco's claim of uncertainty and potential incurrence of additional costs with respect to sewer overflow remediation (Exception No. 4)⁷ is similarly flawed and not supported by the record evidence. As noted in briefing and later in these Replies, Sunoco's concerns here are unjustified because it has failed to acknowledge that Aqua and DELCORA have been and continue to be in discussions with both the EPA and DEP that includes (i) submitting a revision to the existing Long Term Control Plan, (ii) obtaining approval of DELCORA's Long Term Control Plan, (iii) acknowledging that the existing Consent Decree between the EPA and DELCORA allows a party acquiring DELCORA to fulfill the Long Term Control Plan and Consent Decree obligations and (iv) substituting Aqua for DELCORA in the Consent decree at or near closing of the Proposed Transaction. This issue can and should be addressed by a condition that provides the requisite protection to Sunoco and all parties in the proceeding.

While Aqua agrees with Sunoco that the R.D. failed to address and evaluate the claimed substantial affirmative public benefits associated with the Proposed Transaction, it vehemently disagrees that Aqua failed to prove substantial affirmative public benefits.⁸ On the contrary, the benefits of the Proposed Transaction satisfy all applicable legal standards and are fully consistent with the type and nature of benefits the Commission has found in other water/wastewater acquisition proceedings. Sunoco's suggestions/Exceptions to the contrary are unsupportable.

Finally, Sunoco's catch-all Exception urges the Commission to deny the relief requested in the Application because of certain "unripe" approvals.⁹ Sunoco uses this Exception to repeat its concerns about lack of final environmental permitting approval, open issues regarding the implementation of the EO as well as pending litigation with the Municipal Protestants¹⁰. However,

⁷ Sunoco Exceptions at 20.

⁸ Sunoco Exceptions at 24.

⁹ Sunoco Exceptions at 29.

¹⁰ During the pendency of the RD, Aqua and Trainer filed with the Commission a Stipulation resolving all outstanding issues and Trainer withdrew its Protest of the Application. Upland Borough's Protest has been withdrawn per a Stipulation as well.

as noted, these are the types of matters in which the Commission typically conditions transactions of this type in order to ensure that such matters do not proceed to closing without the necessary requirements satisfied. The fact that some standard matters in utility acquisition transactions remain open during the pendency of a Commission proceeding is not a basis for rejecting the underlying application or relief sought. The imposition of reasonable conditions – as already agreed to by Aqua and DELCORA – can fully satisfy Sunoco’s concerns and should be used in the final order issued in this proceeding approving the Application.

II. REPLIES TO SUNOCO EXCEPTIONS

Aqua Reply to Sunoco Exception 1 - Aqua's [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] permitting uncertainties justify denial of the Application; the R.D. erred in failing to consider them.

*Aqua Main Brief, Section V.B.5.a and b and
Aqua Reply Brief, Section III.B.4.a and b*

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹ [END HIGHLY CONFIDENTIAL] Sunoco is the only industrial user of DECLORA that has raised this appellate issue. No other party in this proceeding, including the Public Advocates that have considerable experience in matters such as the Proposed Transaction, has advanced these types of positions on environmental permitting, and for good reason.

Sunoco's positions are not only erroneous, but they are impractical and inconsistent with how the Commission reviews Code Chapter 11 requests. Viewed as a whole, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹²

¹³

[REDACTED]

[REDACTED]

[REDACTED]¹⁴

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL]** The

Commission should not take Sunoco's "bait".

In *Application of CMV Sewage Company, Inc.*, the utility ("CMV") argued that a provision in its DEP-issued NPDES permit required the Commission to grant its application to abandon service.¹⁵ The DEP NPDES permit specified that, when municipal sewerage facilities became available, CMV would abandon its sewage treatment plant. The Commission denied the request to abandon service and made it clear that while it will consider DEP's views, its Chapter 11 authority is exercised independently of DEP in determining what is in the public interest: "[t]he ALJ correctly found that our ruling on an application pursuant to Section 1103(a) of the Code, 66 Pa.C.S. § 1103(a), is not controlled by DEP's determination on an application for an NPDES permit."¹⁶ Sunoco's view that **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL]**

is inconsistent with how the Commission views its jurisdiction and its Chapter 11 public interest determinations made pursuant to that jurisdiction.

¹⁴ [REDACTED]

¹⁵ *Application of CMV Sewage Company, Inc. for Approval to Transfer to North Codorus Township Sewer Authority All Assets Used and Useful in the Provision of Sewage Collection Service in North Codorus Township, York County, Pennsylvania; and Application of CMV Sewage Company, Inc. for Approval to Abandon its Provision of Sewage Service to the Public in North Codorus Township, York County, Pennsylvania*, Docket No. A-230056F2002, Order Entered December 23, 2008 ("*Application of CMV Sewage Company, Inc.*").

¹⁶ *CMV Sewage Company, Inc.* at 25-26.

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]¹⁷ [REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY

CONFIDENTIAL] This is not only implausible, but there is no evidence supporting the notion that Aqua is indifferent to whether it obtains necessary DEP permits.

Sunoco doubles down on its effort to persuade the Commission to step into the shoes of DEP by inviting it to opine that [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁸ [END HIGHLY CONFIDENTIAL]

The Commission should judge the Proposed Transaction on its merits and the standards applicable to Chapter 11 requests under the Code rather than speculation regarding DEP's future actions.

Aqua has presented evidence on the options DEP has for permitting wastewater facilities that are moving from public to private ownership, not to predict (or have the Commission predict) the precise approach to permitting DEP will take, but to rebut Sunoco's opinion that [BEGIN

¹⁷ [REDACTED]

¹⁸ [REDACTED]

HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁹ [REDACTED]

[REDACTED]

[REDACTED]²⁰ [REDACTED]

[REDACTED]²¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] are baseless:

- Since 1987, numerous Privately Owned Treatment Works (“POTWs”) have been sold to private owners and the related transitional issues have been worked out, in many instances by incorporating industrial pretreatment obligations into the new private owner’s NPDES permit.²²
- Transfer of the DELCORA NPDES permit to Aqua as the proposed “permittee” is a known process.²³
- Aqua has successfully transferred nine NPDES permits from municipalities or municipal authorities over the last twenty-two years.²⁴
- Sunoco misunderstands the scope of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

- [REDACTED]²⁵
- [REDACTED]²⁶
- [REDACTED]²⁷

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ [REDACTED]

²² Aqua St. No. 4-R at 3-5.

²³ *Id.*

²⁴ *Id.*

²⁵ [REDACTED]

²⁶ [REDACTED]

²⁷ [REDACTED]

-
-
-
-
-

[REDACTED]

28 [REDACTED]

[REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 33

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36

[REDACTED] [END HIGHLY CONFIDENTIAL]

Sunoco's Exception 1 should be denied.

Aqua Reply to Sunoco Exception No. 2 – Aqua's rates will be significantly higher than DELCORA's with no discernible benefit from Aqua ownership; the R.D. erred in failing to consider this issue

Aqua Main Brief, Section V.B.3.b, pages 29-39, Aqua Reply Brief, Section III.B.2.a.ii.(b)-(e) and III.B.2.b, and Aqua Exception No. 6

The Proposed Transaction will not have an adverse rate impact on DELCORA customers as contended by Sunoco in its Exception No. 2 but rather will *reduce – significantly –* the revenue requirement for service to DELCORA customers as presented in the Table reproduced below, which was also reproduced in Aqua's Main Brief and in its Exception No. 6.³⁷ The Table was presented and explained by Mr. Packer in his rebuttal testimony and there was no need to present it, again, and explain it, again, in rejoinder testimony as suggested by Sunoco.

³⁶ [REDACTED]

³⁷ Kimberly-Clark Corporation/Kimberly-Clark Pennsylvania, LLC ("KCC"), an industrial customer of DELCORA, raised concerns in its testimony regarding future Aqua rates, but has jointly filed a Stipulation with Aqua in this proceeding and has withdrawn its Protest of the Application..

| | (A.) | (A.I) | (B.) | (C.) | (D.) | (E.) | (F.) |
|--------------------------------------|--|--|------------------------|-----------------------------|---|---------------------------------|---------------------------------|
| DELCORA vs. Aqua with Trust Payments | | | | | | | |
| Year | Faryniarz Table 4 - DELCORA No Sale | SPMT - Woods - HJW-4 DELCORA no sale *^ | DELCORA no sale *^ | Aqua / Trust Payments ^^ | Aqua w/ Trust Payments (10% Cost Spread) ^^ | Difference Col. (B.) vs (C.) | Difference Col. (B.) vs (D.) |
| 2020 | \$70,978,127 | \$70,978,127 | \$70,978,127 | \$70,978,127 | \$70,978,127 | \$0 | \$0 |
| 2021 | \$67,754,039 | \$74,527,033 | \$74,997,375 | \$73,107,471 | \$73,107,471 | \$1,889,904 | \$1,889,904 |
| 2022** | \$68,973,113 | \$78,253,385 | \$80,495,980 | \$75,300,695 | \$75,300,695 | \$5,195,285 | \$5,195,285 |
| 2023 | \$75,328,305 | \$82,166,054 | \$87,181,320 | \$77,559,716 | \$77,559,716 | \$9,621,605 | \$9,621,605 |
| 2024 | \$83,788,448 | \$86,274,357 | \$94,245,102 | \$79,886,507 | \$79,886,507 | \$14,358,594 | \$14,358,594 |
| 2025** | \$87,837,306 | \$90,588,075 | \$106,710,726 | \$82,283,102 | \$82,283,102 | \$24,427,623 | \$24,427,623 |
| 2026 | \$89,407,570 | \$95,117,479 | \$115,808,624 | \$84,751,596 | \$84,751,596 | \$31,057,028 | \$31,057,028 |
| 2027 | \$101,931,332 | \$99,873,353 | \$125,682,186 | \$87,294,143 | \$87,294,143 | \$38,388,043 | \$38,388,043 |
| 2028** | \$101,939,204 | \$105,865,754 | \$136,397,545 | \$124,632,143 | \$112,168,929 | \$11,765,401 | \$24,228,616 |
| 2029 | \$113,460,959 | \$105,865,754 | \$139,125,496 | \$149,533,281 | \$134,579,952 | (\$10,407,785) | \$4,545,543 |
| 2030 | \$115,724,467 | \$105,865,754 | \$141,908,006 | \$153,180,434 | \$137,862,390 | (\$11,272,428) | \$4,045,615 |
| 2031** | \$117,897,846 | \$105,865,754 | \$144,746,166 | \$147,016,127 | \$132,314,515 | (\$2,269,962) | \$12,431,651 |
| 2032 | \$120,620,368 | \$105,865,754 | \$147,641,089 | \$150,691,531 | \$135,622,377 | (\$3,050,441) | \$12,018,712 |
| 2033 | \$124,141,994 | \$105,865,754 | \$150,593,911 | \$154,366,934 | \$138,930,240 | (\$3,773,023) | \$11,663,671 |
| 2034** | \$128,374,653 | \$111,159,041 | \$153,605,789 | \$156,219,127 | \$140,597,215 | (\$2,613,338) | \$13,008,575 |
| 2035 | \$131,725,551 | \$111,159,041 | \$156,677,905 | \$160,124,606 | \$144,112,145 | (\$3,446,701) | \$12,565,760 |
| 2036 | \$135,994,218 | \$111,159,041 | \$159,811,463 | \$164,030,084 | \$147,627,075 | (\$4,218,621) | \$12,184,388 |
| 2037** | \$138,364,117 | \$111,159,041 | \$163,007,692 | \$160,807,127 | \$144,726,415 | \$2,200,565 | \$18,281,278 |
| 2038 | \$138,644,590 | \$111,159,041 | \$166,267,846 | \$164,827,306 | \$148,344,575 | \$1,440,541 | \$17,923,271 |
| 2039 | \$141,176,194 | \$111,159,041 | \$169,593,203 | \$168,847,484 | \$151,962,735 | \$745,719 | \$17,630,468 |
| 2040** | \$143,705,172 | \$111,159,041 | \$172,985,067 | \$161,656,127 | \$145,490,515 | \$11,328,940 | \$27,494,552 |
| Total | \$2,297,767,573 | \$2,091,085,674 | \$2,758,460,617 | \$2,647,093,667 | \$2,445,500,436 | \$111,366,950 | \$312,960,181 |
| PVRR^^^ | \$1,039,447,532 | \$990,743,427 | \$1,239,009,481 | \$1,166,503,753 | \$1,095,787,772 | \$72,505,728 | \$143,221,709 |

* = 2021 - 2025 DELCORA Projected increases in rates utilized from OCA - III - 11; 2026 - 2028 Projected at 8.53% per year

** = Indicates Aqua Base Rate Case Year

^ = 2029 through 2040 Projected increases capped at 2.0%

^^ = DSIC Included between rate cases (Every 3 years 2029 - 2040) up to 5%

^^^ = Net present value of cash flows at 7.37% discount rate

Under the “no sale” scenario in Column B, DELCORA customers are projected to experience a total revenue requirement of \$2,758,460,617 over the next 20 years as DELCORA addresses the investment needs of building a new pipeline and upgrading and upsizing its Western

Regional Treatment Plant (“WRTP”).³⁸ Under Aqua ownership, however, the total revenue requirement, as presented in Column C, is projected to be \$2,647,093,667, over those same 20 years.³⁹

Thus, the savings to DELCORA customers, over the long-term, as a result of Aqua ownership, is approximately \$111.4 million, even without an allocation of costs to other Aqua wastewater customers. The savings more than doubles (almost triples) to \$312.9 million when a 10% cost spread is factored into the analysis.⁴⁰ Sunoco’s contention that it is *undisputed* that the Proposed Transaction would significantly increase DELCORA system’s revenue requirement far above what it would be on a “stand-alone” basis⁴¹ is not supported by the evidence of record and, simply, wrong.⁴²

Sunoco contends that “four reasons”⁴³ support its claim that DELCORA customer rates will be higher as a result of the Proposed Transaction. Each reason is addressed below.

As a first reason, Sunoco challenges the Aqua Table by unreasonably attempting to shift the focus from a long term, 20-year analysis to a short term, 1-year analysis.⁴⁴ In that one year – 2029, the revenue requirement under Aqua ownership exceeds the revenue requirement under a “no sale”

³⁸ As part of its Exception No. 2, Sunoco comments on the RD’s view of the three Municipal Lawsuits describing them as “troubling uncertainties.” As addressed in the reply to Sunoco Exception No. 6, *infra* and in footnote No. 10, *supra*, Upland Borough, one of the three Municipal Protestants, has withdrawn its Protest.

³⁹ Column C represents the revenue requirement through 2040 assuming Aqua owns the wastewater system and Trust payments are applied through 2028 mid-year and continues to calculate the revenue requirement through 2040 utilizing the same methodology in Appendix A to Mr. Packer’s direct testimony. This calculation properly reflects the timing of three-year rate cycles and the Distribution System Improvement Charge (“DSIC”) between rate cases up to 5%. It also includes a higher weighted cost of capital. ***Even with these assumptions, DELCORA customers benefit as a result of the Proposed Transaction through a reduced revenue requirement between \$111.4 million and \$312.9 million.*** Aqua St. No. 2-R at 34-35.

⁴⁰ Aqua St. No. 2-R at 32-35.

⁴¹ See Sunoco Exception No. 2 at 11.

⁴² Aqua’s analysis, on the other hand, has been utilized in numerous Section 1329 Applications. The methods used here to forecast rate impacts have been reviewed and approved in at least three Aqua Section 1329 proceedings. Aqua St. No. 2-R at 4.

⁴³ See Sunoco Exception No. 2 at 11.

⁴⁴ See Sunoco Exception No. 2 at 11-12.

scenario by approximately \$10,000,000. But that is just one year – for other years, the results are markedly different.

As shown in the Table, by comparing Column B and Column C, the revenue requirement under Aqua ownership, *for each year from 2021 through 2028*, is less than the revenue requirement under a “no sale” scenario. While the savings from 2021 through 2028 include the impact of trust payments, the revenue requirement under Aqua ownership is also less than the “no-sale” revenue requirement in post-trust years 2037 through 2040.

Citing *McCloskey*,⁴⁵ Sunoco contends that the Commission must address the impact on rate rates. The impact on rates, however, must be addressed on a *long-term basis*. When that is done, the impact on rates is a substantial savings. As a result of Aqua ownership, the savings to DELCORA customers is between \$111,366,950 and \$312,960,181 over the long-term, 20-year period. The analysis is, in fact, conservative because there are regulatory tools to *further* reduce revenue requirement by lowering taxes with the election of “tax repair.”⁴⁶ Sunoco’s attempt to have the Commission address rate impacts by looking at a single year is arbitrary, unreasonable and should be given no weight and rejected.

As a second reason in support of alleged higher rates from the Proposed Transaction, Sunoco claims that Mr. Pileggi’s revenue requirement projections, which form the bases for Column B of the Table, “cannot be trusted.” This is an unwarranted criticism and not credible. Mr. Pileggi is the Chief Financial Officer (“CFO”) of DELCORA. He has worked at DELCORA for 20-years, first, in the Accounting Department, then as Controller and now as CFO.⁴⁷ The projections he provided for the Column B “no sale” scenario are based on his years of experience,

⁴⁵ *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa Cmwlth. 2018).

⁴⁶ See Aqua St. No 2-R at 4. Utilization of the tax code to reduce revenue requirement relative to income taxes, specifically, through the use of what is often referred to as “tax repairs,” was an issue in Aqua’s last base rate case and, ultimately, resulted in the meaningful reduction of the effective income tax rate to *near zero*. Aqua St. No. 2-R at 24.

⁴⁷ Aqua St. No. 6 at 1.

familiarity with and knowledge of the DELCORA system.⁴⁸ Mr. Pileggi's expertise in preparing the projections was appropriately addressed in his rebuttal testimony and there was no need to address it again in rejoinder testimony as suggested by Sunoco.

Mr. Pileggi's projections included increases in revenue requirement related to infrastructure investment and operations and maintenance expense. They included, specifically, DELCORA projected rate increases from 2021 to 2025⁴⁹ and rate increases of 8.53% per year from 2026-2028 as will be necessary as DELCORA implements its capital program to divert flows from PWD and to expand the WRTP.⁵⁰ DELCORA provided the projections, for 2021 through 2025,⁵¹ in response to discovery from Delaware County but Sunoco and the County chose to ignore the projections.⁵² The revenue requirement projections of Sunoco witness Woods (Table, Column A.1) (and County witness Faryniarz (Table, Column A)) are, consequently, significantly understated, not credible and should be given no weight.

Sunoco's further effort to support its criticism of Mr. Pileggi's revenue requirement projections by citing to testimony of the County and to the County's Main Brief,⁵³ likewise, should be given no weight. The testimony of County witness Faryniarz claiming that Mr. Pileggi's projections assumed funding through current rates (or cash) of *large* capital projects to redirect Eastern Region flow to the WRTP and to expand the WRTP was wrong. DELCORA sometimes funds *small* projects through current rates but not *large* projects.⁵⁴ Irrespective of the distinction between *small* and *large* projects, it is clear simply by reviewing the line entries in Column B of the

⁴⁸ Aqua St. No. 6-R at 3.

⁴⁹ Aqua St. No. 6-R at 3-4. The DELCORA calculated rate increases are 2021 – 5.66%; 2022 – 7.33%; 2023 – 8.31%; 2024 – 8.10%; and 2025 – 13.23%.

⁵⁰ Aqua St. No. 6-R at 6. The implementation of the capital program is projected to require rate increases of 8%-10% per year through 2028.

⁵¹ Aqua St. No. 6-R at 3-4. The DELCORA calculated rate increases are 2021 – 5.66%; 2022 – 7.33%; 2023 – 8.31%; 2024 – 8.10%; and 2025 – 13.23%.

⁵² Aqua St. No. 6-R at 3-4.

⁵³ See Sunoco Exception No. 2 at 14.

⁵⁴ Aqua St. No. 6-R at 5.

Table for 2020 through 2028 that there is no allowance for \$450 million of cash funding of projects to redirect flow to the WRTP or expansion of that Plant. Sunoco's contention is not plausible. Mr. Pileggi corrected Mr. Faryniarz in his rebuttal testimony and there was no need to correct him, again, in rejoinder testimony as suggested by Sunoco. The testimony of County witness Faryniarz is not credible in support of Sunoco's Exception.

As its third reason, Sunoco contends, citing Aqua Statement No. 2-R, pages 52 and 53, that Aqua witness Packer "conceded" the accuracy of the testimony of Sunoco witness Woods' calculations quantifying the respective revenue requirements for DELCORA and Aqua and the resulting projected rate increases.⁵⁵ Pages 52-53 of Mr. Packer's rebuttal testimony are reproduced below. Rather than *conceding* to Sunoco witness Woods, Mr. Packer *criticized* Mr. Woods' revenue requirement analysis as flawed including "incorrect assumptions" resulting in an understatement of DELCORA's overall revenue requirement analysis on a "no sale" basis.

Q. Please describe Mr. Woods' Schedules HJW-2 through HJW-4.

- A. Schedule HJW-2 is Mr. Woods' calculation of the Aqua Revenue Requirement, however, it includes incorrect assumptions. While the fundamental calculations appear to be accurate, the flaw of this analysis is that it does not address or acknowledge that the cost of service post 2028 would be allocated over a large wastewater customer base, thus changing the result.

Schedule HJW-3 is Mr. Woods' calculation of the DELCORA "No Sale" revenue requirement. I defer to Witness Pileggi to address and dispute the assumptions and ultimate end result. However, in summary, the overall revenue requirement is understated throughout the timeframe in the same manner as it was understated by Witness Faryniarz, and this is a failure in both analyses. I note as well the significant difference in end result (2040 revenue requirement) between both Witness Woods and Witness Faryniarz.

Schedule HJW-4 is a comparison of the Aqua vs. DELCORA revenue requirements, which is similar to Witness Faryniarz (Table 2). For the aforementioned reasons stated above in my rebuttal testimony, this comparison is flawed and my WCP-2R Schedule A presents a better and

⁵⁵ See Sunoco Exception No. 2 at 14.

more realistic end result, which is an overall lower revenue requirement under Aqua ownership.

The “better and more realistic end result” presented in Mr. Packer’s WCP-2R Schedule A is a reduced revenue requirement of between \$111,366,950 and \$312,960,181 as a result of Aqua ownership. Savings of this magnitude, as the system moves forward with a near \$1 billion capital improvement plan, are substantial and a clear and undeniable affirmative public benefit of the Proposed Transaction.

As a fourth reason in support of alleged higher rates under the Proposed Transaction, Sunoco asserts that, considering its reasons one through three, DELCORA customers will be penalized with an annual revenue requirement that is at least \$36 to \$44 million more than it would be under a “no sale” scenario. Aqua’s acquisition of the DELCORA system will *not* increase the DELCORA system’s revenue requirement. On a stand-alone basis, DELCORA’s projected revenue requirement increases year-to-year for the next 20 years as it addresses its significant capital needs going forward. However, the Proposed Transaction benefits DELCORA customers by significantly reducing that projection by between \$111,366,950 and \$312,960,181 over the next 20 years.

Sunoco’s Exception No. 2 should be denied.

Aqua Reply to Sunoco Exception 3 - The DELCORA Rate Stabilization Trust’s funding uncertainties justify denial of the Application; the R.D. erred in failing to consider this issue.

Aqua Main Brief, Section V.B.5.d and Aqua Reply Brief, Section III.B.4.d

This Sunoco Exception criticizes the R.D. for failing to address certain claimed uncertainties associated with the starting balance of the Trust.⁵⁶ While Aqua agrees that the R.D. failed to consider, evaluate and address numerous issues in the proceeding, including the substantial benefits associated with DELCORA election to fund the Trust with net Proposed Transaction proceeds in

⁵⁶ Sunoco Exceptions at 16.

the estimated amount of \$200 million⁵⁷, had it done so it would have concluded, based on the preponderance of evidence of record, that the Trust will provide enormous benefits to the former DELCORA customers by mitigating future Aqua rate increases.⁵⁸

The essence of this Sunoco Exception is that the estimated \$200 million starting balance in the Trust will be substantially less than projected by Aqua and DELCORA. First, the Trust funding of \$200 million is reasonably based on a present estimate of net Proposed Transaction sale proceeds to DELCORA at closing.⁵⁹ Further, not only is the Trust intended to hold the Proposed Transaction proceeds, it will also include DELCORA's cash on hand at closing.⁶⁰ As noted in Sunoco Exhibit SPMT Ex. HJW-1SR at 15, as of August 31, 2020, the following balances existed in various DELCORA accounts that will ultimately be placed in the Trust:

Operating Cash Accounts: \$6,393,401
Debt Service Fund: \$2,415,674.27
Debt Service Reserve Fund: \$11,620,979.66
Renewal and Replacement Fund: \$24,027,171.61
Rate Stabilization Fund: \$6,404,458.91
Revenue Fund: \$43,496,759.44
Sewer Reserve Fund: \$3,114,653.85
Sewer Repair and Replacement Fund: \$4,092,843.89

Sunoco's Exception, intentionally or otherwise, needlessly muddles the actual facts surrounding the Trust funding post-closing of the Proposed Transaction. As noted above and in the record, the Trust will be funded by a combination of net Proposed Transaction sale proceedings and cash on hand. Those items listed above are considered "cash on hand" since they largely lose their specific identified purposes as shown on DELCORA's books *after* the Proposed Transactions closes. It is estimated that the *combination* of net Proposed Transaction sale proceeds (those dollars

⁵⁷ Aqua St. No. 2 at 13.

⁵⁸ See, Aqua Exceptions at 27-36 for a detailed discussion of the preponderance of the evidence that the Proposed Transaction will result in substantial affirmative public benefits. Payments from the Trust will be made to DELCORA customers, the effect of which will provide for an annual increase in rates of 3% for 8-12 years. Aqua Main Brief at 40.

⁵⁹ Aqua Main Brief at 4, 39, 55, and 64.

⁶⁰ SPMT Ex. HJW-1SR at 15.

remaining after paying off all outstanding DELCORA debt) and cash on hand will be the approximate starting balance of \$200 million in the Trust. It is that amount that Aqua Witness Packer used as part of his long-term rate analysis.

While the exact amount of the starting Trust balance cannot be known until after closing of the Proposed Transaction and all outstanding DELCORA debts and liabilities are full paid from the net sale proceeds, the estimated \$200 million is a reasonable estimated amount based on the Proposed Transaction sale price and the cash on hand.

Importantly, and contrary to the implication in Sunoco's Exception, once the Trust funding is established, it will be used per the terms of the Trust Agreement to mitigate the impact of future Aqua rates for the former DELCORA customers and for no other purpose. Those dollars will not be used – despite Sunoco's claims to the contrary – to satisfy Long Term Control Plan or other costs. Those costs will be paid for by Aqua post-closing of the Proposed Transaction in the ordinary course of business and were specifically factored into Mr. Packer's long-term (20 year) rate analysis. Hence, there is no double counting or other uncertainty associated with the estimated starting Trust balance of approximately \$200 million or how those funds will be deployed to benefit customers.

As an additional part of this Exception and without any record or other support, Sunoco manufactures uncertainty with respect to the impact the implementation of Executive Order 12803 ("EO") will have on the starting Trust balance.⁶¹ Sunoco wrongly asserts and implies that large federal grants used previously to fund some of DELCORA's assets will need to be recaptured and will operate to significantly reduce the Trust's initial balance. While it is true that the process of implementing the EO is not completed, the federal grants provided to DELCORA are decades old and are likely to have been fully amortized on DELCORA's books, especially since the EO states

⁶¹ Sunoco Exceptions at 17.

that the depreciation should be calculated using the Internal Revenue Services' accelerated depreciation schedule. And, by the terms of the EO itself, these fully depreciated federal grants will not need to be recaptured by the EPA on the sale of DELCORA's assets.⁶² And, with respect to the state and local government grants (which, under the EO, requires the distribution of the "unadjusted dollar amount" of such grant), there is no evidence in the record supporting any large amounts that could materially reduce the estimated \$200 million starting balance in the Trust. The speculative and unsupported claim of uncertainty is no better established than by Sunoco's own words: "... but there are 49 other municipalities in the DELCORA system, each of which *may* need to be repaid at the 'unadjusted dollar amount' for its contribution."⁶³ (Emphasis added). Sunoco cites to nothing in the record in support of its speculative claim that the EO will operate to significantly reduce Trust proceeds.

Finally, to the extent any lingering issue remains with the EO and its role in the Proposed Transaction, Aqua has unequivocally indicated its willingness to condition the approval of the relief requested in the Application upon it obtaining waivers or otherwise resolving all issues relating to the EO. As this issue has evolved, Aqua submits the following updated condition: Aqua and DELCORA will submit any necessary information to the EPA related to the Executive Order 12803 and will provide the Commission with any impact on the funding of the Trust.

There is no merit to this Exception and it should be rejected.

⁶² Under the EO, the Transfer Price of the subject assets needs to be determined and then distributed as follows: (i) State and local governments shall first recoup in full the unadjusted dollar amount of their portion of total project costs (including any transaction and fix-up costs they incur) associated with the infrastructure assets involved; (ii) if proceeds remain, then the Federal Government shall recoup in full the amount of Federal grant awards associated with the infrastructure assets, *less the applicable share of accumulated depreciation on such asset* (calculating using the Internal Revenue Service accelerated depreciation schedule for the categories of assets in question); and (iii) finally, the State and local governments shall keep any remaining proceeds. EO 12803 Section 3(c). (Emphasis added).

⁶³ Sunoco Exceptions at 18.

Aqua Reply to Sunoco Exception 4 – Combined sewer overflow remediation cost uncertainties justify denial of the Application.

Aqua Main Brief, Section V.B.5c and Aqua Reply Brief, Section III.B.4.c

Sunoco asserts that if Aqua purchases the DELCORA system, EPA and DEP, “perhaps at the behest of [unidentified] third parties”, “may” require Aqua to use best available technology relative to DELCORA’s Combined Sewer Overflows (“CSOs”), resulting in the enormous expense of requiring the physical separating of facilities that currently carry both stormwater and sanitary sewage into two separate systems.⁶⁴ Sunoco’s “evidence” for this financial catastrophe is not a witness from EPA or a witness from DEP, but witness Woods’ statement that a provision of the CWA that he fails to identify requires EPA to impose best available technology requirements on private CSO discharges.⁶⁵ Sunoco’s concern of the environmental and financial impact of addressing CSOs in the greater Philadelphia region is admirable. If, when, and how this may become an issue, just like DELCORA would, Aqua stands ready to address it.

Combined sewer systems such as the one DELCORA operates comingle stormwater and sanitary sewage that ultimately flow to CSOs. DELCORA operates a CSO control program that is subject to EPA and DEP oversight, and governed by a Federal Consent Decree entered in the U.S. District Court for the Eastern District of Pennsylvania in 2015 at Docket No. 2:15-cv4652 (“Consent Decree”).⁶⁶ As noted in Aqua’s Exceptions, the Consent Decree contains provisions that allow a party acquiring the DELCORA system to become the part fulfilling the Long Term Control

⁶⁴ Sunoco Exceptions at 21. Sunoco’s crystal ball also predicts a reduction in Pennsylvania’s Federal funds for infrastructure improvements under the CWA which will be replaced by higher-cost investor-owned utility capital. As explained in Aqua’s Exceptions, removing DELCORA’s infrastructure needs from CWA funding may reduce Pennsylvania’s proportional amount of funding, but any reduction in funds will be offset by the reduction in infrastructure needs. Aqua Exceptions at 75. Regardless, CWA funding determinations outside the control of the PUC are not a significant factor that should sway the Commission’s public interest determination in deciding Aqua’s Application under Chapter 11.

⁶⁵ Sunoco Exceptions at 23, citing witness Woods St. No. 2R (sic) 28:1-14. This assertion by witness Woods appears in Sunoco’s surrebuttal testimony. Sunoco states that “*Aqua offered no rejoinder on this issue.*” Sunoco Exceptions at 23. Of course, when surrebuttal testimony merely repeats the Sunoco direct testimony that Aqua addressed in its rebuttal testimony, no rejoinder is necessary.

⁶⁶ SPMT St. No. 2 at 9; Aqua St. No. 4-R at 7.

Plan (“LTCP”) and Consent Decree obligations and Aqua and DELCORA have already approached the EPA and DEP to discuss the sale of the system and to formally request the substitution of Aqua for DELCORA in the Consent Decree at or near the time the Proposed Transaction is expected to close.⁶⁷ And, as further noted in Aqua’s Exceptions, Mr. Woods did not take into account that all point source discharges under the CWA, including CSOs, must comply with applicable water quality standards applicable to all discharges whether they be public or private.⁶⁸

There is no evidence that CSO obligations greater than those imposed on DELCORA in order to meet Pennsylvania’s water quality standards will be required by EPA or DEP if the Proposed Transaction is completed because Aqua is a private company. Therefore, Sunoco’s Exception No. 4 should be denied.

Reply to Sunoco Exception No. 5 – Aqua failed to prove affirmative public benefits; the R.D. erred to the extent it assumed such benefits exist

Aqua Main Brief, Section V.B.3, pages 26-41, Aqua Reply Brief, Section III.A.1.e, pages 29-30, and Aqua Exception No. 6

Aqua demonstrated through a preponderance of substantial evidence that the Proposed Transaction will produce substantial affirmative public benefits for DELCORA and Aqua customers. The benefits are addressed in Aqua Exception No. 6 and in Aqua’s Main Brief, Section V.B.3, pages 26-41, and Reply Brief, Section III.A.1.e, pages 29-30. In its Exception No. 5, pages 25-28, Sunoco presents a Table of Benefits from which it contends that the only likely beneficiaries of the Proposed Transaction will be Aqua shareholders. This contention is incorrect as a matter of law as the General Assembly, through Section 1329 of the Code, encourages fair market value

⁶⁷ Aqua Exceptions at 74; Aqua St. No. 4-R at 7.

⁶⁸ See EPA NPDES CSO Control Policy; 25 Pa. Code §93.7.

transactions such as the Proposed Transaction.⁶⁹ In further reply to Sunoco, Aqua presents the Table of Benefits modified to include a response to each of Sunoco's contentions:

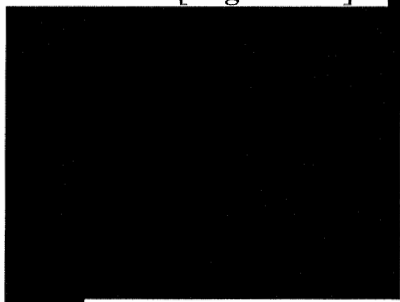
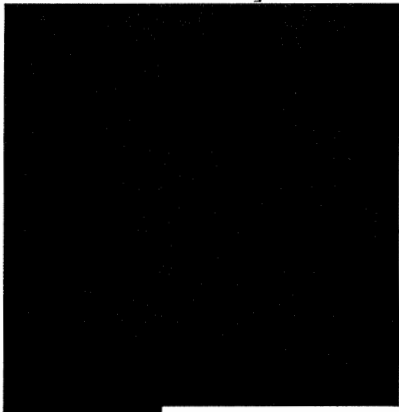
| ALLEGED BENEFIT FROM AQUA TESTIMONY | SUNOCO'S ASSERTED "REALITY" | REPLY TO SUNOCO ASSERTED "REALITY" |
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| <ul style="list-style-type: none"> • "The majority of the sale proceeds will be placed in an irrevocable Trust that will benefit DELCORA customers for years to come." Aqua Statement No. 2 at 13:16-17; Trust is the "primary benefit" of the transaction. Aqua Statement No. 5 at 11:12-14 | <p>The Trust is illusory. Projections that the Trust will be funded sufficiently to offset Aqua rate increases until mid-2028 are clearly wrong. The inputs Aqua and DELCORA provided are the product of double counting and wishful thinking. <i>See supra</i> Exception 3 (discussion of why the Trust is likely to be underfunded or unfunded because of double counting of expendable funds and the payout hierarchy requirements of E.O. 12803).</p> | <p>The County Court confirmed the legality of the Trust and enjoined the County from interfering with it. <i>See Aqua Exception No. 4</i>. Payments from the Trust to former DELCORA customers, which are estimated to total \$200 million, are a substantial and unique benefit of the Proposed Transaction. The Trust will not be underfunded. <i>See Aqua Reply to Sunoco Exception No. 3</i>.</p> |
| <ul style="list-style-type: none"> • "Aqua is familiar with the DELCORA service areas and serves populations of nearly 500,000 in Delaware County and 200,000 in Chester County" Aqua Statement No. 2 at 13:18-19. | <p>Familiarity with DELCORA's service territory cannot be viewed as anything more than a "met expectations" requirement. It certainly is not a benefit, as lack of familiarity would obviously be a detriment. Moreover, the customer counts Aqua cites are its affiliate's water customers – Aqua's wastewater footprint is far smaller than DELCORA's. Finally, Aqua obviously is not more familiar with DELCORA's customers than DELCORA is, and DELCORA is perfectly capable of continuing to service its customers.</p> | <p>The benefit is not simply an existing, large Aqua service population (water and wastewater) in Delaware and Chester Counties, but the added fact that the existing operations are nearby and/or overlap with DELCORA. As such, Aqua will be able to merge and integrate DELCORA's customers by folding them into a larger-scale, efficiently operated water and wastewater utility that over time will likely yield further efficiencies and improve long-term viability as envisioned in the Commission policy statement. <i>See Aqua Exhibit No. 1, Application ¶56.c. and Aqua St. No. 2 at 13</i>.</p> |

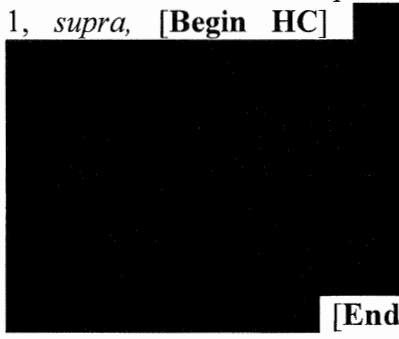
⁶⁹ *See Aqua St. No. 2-R at 47.*

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| <ul style="list-style-type: none"> • “Economies of scale will result from the these nearby and overlapping service areas” Aqua Statement No. 2 at 13:20. | <p>This claim is unsupported and unlikely. DELCORA’s existing customer base and size dwarfs Aqua wastewater operations, serving 197,000 Equivalent Dwelling Units to Aqua’s approximately 38,000. SPMT Statement No. 2 at 13:3-13; 15:11-19; SPMT Statement No. 2SR 2R at Exhibit HJW-1SR p. 12. Given Aqua’s post-acquisition plans to operate DELCORA in place as a satellite under existing DELCORA management with all existing DELCORA employees, there can be no appreciable cost savings or economies of scale in any of the major cost centers. <i>See</i> Aqua Statement No. 4 at 9:22-10:2 (Aqua will maintain “the office and operations centers currently in place in DELCORA’s service territory”); Delaware County Statement No. 2 at 5 n. 1 (Current DELCORA executive director to have “oversight of Aqua PA in southeast PA including DELCORA and SEPA [wastewater] operations...”); Aqua Statement No. 1 at 8:3-4, (Aqua will “offer employment to all of the DELCORA employees”).</p> | <p>The economies of scale an acquisition of this size can bring are substantial and the Commission has recognized this fact as demonstrated by the longstanding success of leading public water utility purveyors providing quality and reliable service in the Commonwealth. Aqua St. No. 2-R at 4.</p> <p>The Proposed Transaction will generate immediate economies of scale. This is readily apparent, first, because Aqua is acquiring the DELCORA system at a rate base per customer of \$2,250, which is less than the Company’s rate base per customer of existing systems of \$7,750. Aqua St. No. 2 at 12 and Aqua St. No. 2-R at 4.</p> <p>The evidence of record further demonstrates economies of scale as a result of the lowering of average Aqua rates post-closing. The estimated rate increase of 12.55% to DELCORA retail customers <i>is the lowest increase to acquired customers of any of the Fair Market Value Applications submitted to the Commission by Aqua.</i> A 12.55% increase to DELCORA customers would increase monthly rates to approximately \$46.44 per month. This is significantly less than Aqua’s existing average wastewater rate of approximately \$68.27. Aqua St. No. 1 at 10.</p> <p>There is also a direct benefit to DELCORA customers through a projected</p> |
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| | | reduction of \$3.7 million in operating expenses related to Property, General Liability Insurance, Information Technology, Outside Services for Legal and Engineering, Office Supplies & Advertising, Education and Training and Contingency Expense. County Hearing Exhibit No. 1. |
| <ul style="list-style-type: none"> • “DELCORA customers will benefit from Aqua's experience in large-scale capital planning and replacement programs” Aqua Statement No. 2 at 13:21-22. | <p>DELCORA, not Aqua, created the capital investment plan that, post-acquisition, Aqua, employing existing DELCORA management, will implement. SPMT Statement No. 2 at 17:19-18:7. In other words, DELCORA, a much larger wastewater utility than Aqua Wastewater, after Aqua absorbs it, will use existing DELCORA personnel to implement existing DELCORA plans under the nominal leadership of Aqua. This is not a benefit.</p> | <p>Notably, and unlike DELCORA, but, as recognized in <i>McCloskey</i>, Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations. This recognized expertise, especially the ability to raise capital, is critical going forward. DELCORA has capital needs of nearly \$1 billion to disconnect from PWD. Aqua's recognized expertise is a clear and undeniable public benefit that has already yielded benefits and will continue to yield benefits to how DELCORA approaches long-term capital planning. Further, DELCORA has already benefited from its relationship with Aqua. DELCORA has qualified and capable workers and professionals and they chose to collaborate and associate with Aqua given the challenges they have been dealing with and Aqua's more developed expertise in addressing the treatment expansion project. Aqua and DELCORA collaborative</p> |

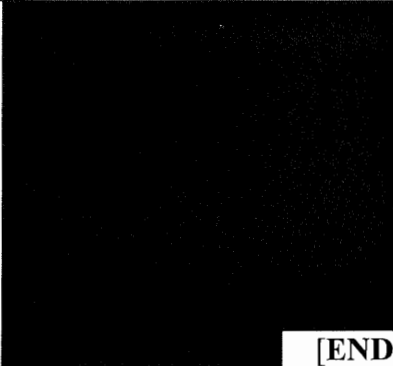
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| | | <p>efforts allowed for the engagement of both DELCORA's and Aqua's technical experts to take a fresh look at DELCORA's capital plans and recommend meaningful enhancements to DELCORA's long-term forecasts. DELCORA's technical experts have benefited from Aqua's expertise in the execution of a multi-million dollar project, the related challenges, and how best to approach them. <i>See Aqua St. No. 2-R at 41 and 48-49.</i></p> |
| <ul style="list-style-type: none"> • "DELCORA customers will benefit from customer protections provided by the Commission's regulations and the Company's Helping Hand program" Aqua Statement No. 2 at 14:1-2. | <p>DELCORA has been serving its customers as a public governmental entity for decades. There is no evidence in this record that DELCORA customers lack customer protections under DELCORA's existing programs.</p> | <p>The evidence of record is that, as Aqua customers, former DELCORA low income customers will have the opportunity to enroll in Aqua's Helping Hand program. Further benefitting DELCORA customers, Aqua has procedures in place that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Presently, DELCORA customers can only challenge proposed rates by bringing a legal action in the Court of Common Pleas. In contrast, under Commission jurisdiction, there are public input hearings and public advocates that will advocate for customers' interests in rate proceedings. An ALJ will recommend a result and the Commission will review and issue a final decision on future rates. An appellate court</p> |

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| | | review option is also available. These protections are only available to customers of a regulated public utility. Aqua St. No. 2 at 13 and Aqua St. No. 2-R at 5. |
| <ul style="list-style-type: none"> • “Aqua has committed to preserving the jobs of DELCORA employees” Aqua Statement No. 2 at 14:3. | <p>This is a laudable goal, but certainly not a benefit when there is no evidence that, absent acquisition by Aqua, DELCORA would need to lay off employees or downsize in order to remain viable on a stand-alone basis. The commitment is arguably a detriment, from the perspective of realizing economies of scale as the result of the transaction.</p> | <p>The preservation of jobs as part of a fair market value transaction encouraged by the General Assembly through the enactment of Section 1329 is a clear and substantial public benefit. DELCORA employees certainly have an interest in knowing that their livelihoods are not affected by the Proposed Transaction. Job preservation was raised a benefit of the Proposed Transaction during the public input hearing. See Aqua Exception No. 6.</p> |
| <ul style="list-style-type: none"> • “Aqua has a proven record of environmental stewardship of wastewater systems” Aqua Statement No. 2 at 14:4. | <p>Whatever its environmental record coming into this transaction, Aqua has demonstrated in this transaction [Begin HC]</p>  <p>[End HC]</p> | <p>Aqua established unequivocally that private ownership of what were public wastewater facilities does not present difficult or intractable permitting issues. The Application should not be rejected because [BEGIN HIGHLY CONFIDENTIAL]</p>  <p>[END HIGHLY CONFIDENTIAL] See Aqua Main Brief, Section V.B.5 and</p> |

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| <ul style="list-style-type: none"> • “Aqua's expertise in implementing large scale projects and compliance with Pennsylvania Department of Environmental Protection and US Environmental Protection Agency regulations” Aqua Statement No. 2 at 14:5-7. | <p>As demonstrated in Exception 1, <i>supra</i>, [Begin HC]</p>  <p>[End HC]</p> | <p>Reply Brief, Section III.B.4.</p> <p>See the above and the Aqua Reply to Sunoco Exception No. 1.</p> |
| <ul style="list-style-type: none"> • “The combining of systems and customers provides inherent stability in the day to day utility operations, in that, these systems do not all require major capital investments at the same time and, therefore, spreads the financial impacts over the long term operations of the utility” Aqua Statement No. 2 at 14:8-11. | <p>Whatever validity this principle may have as a general rule, under the circumstances presented in this transaction where DELCORA has a long track record of providing quality service at rates much lower than Aqua’s, and where Aqua is in the process of spending hundreds of millions of dollars on acquiring and investing in multiple additional wastewater systems, the costs associated with those acquisitions are likely to dramatically raise the rates of DELCORA customers, not subsidize or stabilize them. <i>See supra</i> Exception 2; SPMT Statement No. 2SR at 4:17-12:17; OSBA Statement No. 1 at 6:12 –7:8 (under rate equalization principles, rates charged by DELCORA for typical residential service would need to increase by 89% to match existing Aqua Wastewater Zone 1 rates) (see SPMT Statement No. 2-SR at 11:4-12:17).</p> | <p>The principle has even greater validity in this proceeding than in other proceedings. DELCORA has capital needs of nearly \$1 billion to flow wastewater from the Eastern Service Area to the WRTP and to upgrade and upsize the Plant.</p> <p>In contrast to DELCORA, Aqua is a growing wastewater utility that has the ability to utilize its larger customer base to share costs that more than offset the cost of capital and income tax differences between municipal and private ownership emphasized by the opponents to the Proposed Transaction. Aqua St. No. 2-R at 4.</p> <p>The following example provides context to the benefits of combination. Aqua water and wastewater utilities invested \$2.2 billion in capital from 2012 to 2019. In Aqua and Aqua PA’s last base rate case in 2018, the authorized increase in revenues was approximately \$47 million or about 10% increase in rates. If one were to assume the same level of capital investment financed by a</p> |

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| | | <p>municipal system, the interest alone at 4% would cost \$92 million. Aqua, on the other hand, as a result of its combined systems, was able to lower its cost of service due to its size, economies of scale, and proactive investment approach as demonstrated in that 2018 rate case. In addition, Aqua and Aqua PA are able to reduce their cost of service relative to income tax expense through the use of “tax repairs.” Aqua St. No. 2-R at 28-29.</p> |
| <ul style="list-style-type: none"> • “DELCORA's customers will become part of a larger-scale, efficiently operated, water and wastewater utility” Aqua Statement No. 2 at 14:12-13. | <p>DELCORA's existing customer base and size dwarfs Aqua's existing wastewater operations. SPMT Statement No. 2 at 15:17-19 (“By any objective measure, DELCORA is larger than Aqua Pennsylvania Wastewater, Inc., the AQUA entity that will actually acquire DELCORA if this transaction is approved.”). There is no evidence in the record that Aqua is more efficiently operated than DELCORA. There is ample evidence in the record to demonstrate that existing Aqua rates result in much higher charges for the same service provided by DELCORA. OSBA Statement No. 1 at 2:21-3:6.</p> | <p>Sunoco ignores the beneficial impact of Aqua's combined water/wastewater operations as discussed above. As also discussed above, (1) DELCORA will be folded into a larger-scale, efficiently operated water and wastewater utility that over time will likely yield further efficiencies and improve long-term viability as envisioned in the Commission policy statement; (2) the Proposed Transaction will generate immediate economies of scale and a lowering of average Aqua rates post-closing; and (3) reduced operating expenses are projected to total \$3.7 million</p> <p>The Commission's policy supports consolidation/regionalization of wastewater system assets irrespective of the relative size of the buying and selling systems.</p> <p>Finally, the revenue requirement under Aqua ownership is projected to be less than the revenue</p> |

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| | | requirement on a “no sale” basis. |
| <ul style="list-style-type: none"> • “By virtue of the Company's larger combined customer base, future infrastructure investments across the Commonwealth, driven by normal replacement cycles, emergency repairs, emergency response or compliance with new environmental regulations, will be shared at a lower incremental cost per customer for all of Aqua's customers over time” Aqua Statement No. 2 at 14:14-18. | <p>Whatever validity this principle may have as a general rule, under the circumstances presented in this transaction where DELCORA has a long track record of providing quality service at rates much lower than Aqua's, and where Aqua is in the process of spending hundreds of millions on acquiring and investing in multiple additional wastewater systems, the costs associated with that activity are likely to dramatically raise the rates of DELCORA customers, not stabilize them. <i>See supra</i> Exception 2; SPMT Statement No. 2SR at 4:17-12:17. Moreover, DELCORA's cost of capital is less than half that of Aqua's. SPMT Statement No. 2 at 7:16-8:9.</p> | <p>The beneficial impact of Aqua's combined water/wastewater operations is discussed above. The Proposed Transaction will likely yield efficiencies and improve long-term viability, generate immediate economies of scale and reduce operation expenses. The Proposed Transaction, moreover, is projected to significantly reduce the revenue requirement of DELCORA customers over the long-term, 20-year period. <i>See</i> the Aqua Reply to Sunoco Exception No. 2.</p> |
| <ul style="list-style-type: none"> • “The elimination of the treatment expense to PWD [Philadelphia Water Department] will allow DELCORA to control its own destiny and offset the potential risk of future increases” Aqua Statement No. 2 at 14:19-20. | <p>This is a strategy DELCORA had already planned to pursue on its own to eliminate the PWD treatment arrangement and associated expense and thereby “control its own destiny” long before it entered into this transaction with Aqua. Aqua ownership will actually make it less of a benefit, because there is no basis in the record to conclude that DELCORA is not able to follow through to “control its own destiny” on its own without the added revenue requirement burden on DELCORA ratepayers of Aqua ownership. SPMT Statement No. 2 at 16:1-13; 17:19-18:7. [BEGIN HC]</p> | <p>There is no added revenue requirement burden on DELCORA customers as a result of the Proposed Transaction. To the contrary, the projections presented in Aqua's Reply to Sunoco Exception No. 2 demonstrate a <i>reduced</i> revenue requirement and <i>significant savings</i> to DELCORA customers as a result of Aqua ownership. Aqua, moreover, as set forth above, has recognized operational expertise and ability to raise capital to support system operations. This recognized expertise, especially the ability to raise capital, is critical going forward. DELCORA has</p> |

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| |  [END] | capital needs of nearly \$1 billion to flow wastewater from the Eastern Service Area to the WRTP and to upgrade and upsize the Plant. Aqua's recognized expertise is a clear and undeniable public benefit. |
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In further support of its Exception No. 5, Sunoco emphasizes its disagreement with the Commission's regionalization policy. In doing so, Sunoco ignores the DELCORA circumstances that compelled it to explore solutions to its infrastructure challenges. Neither the Commission's policy statement nor Section 1329 of the Code is based on the selling entity being "non-viable" or "less viable." The Commission understands that there are inherent benefits to consolidation and benefits to economies of scale and that Aqua has the experience and expertise to achieve those benefits while fulfilling its statutory obligation to provide safe, adequate and reliable utility service. DELCORA is no exception to the many examples of systems that have been merged into Aqua.⁷⁰

Sunoco's Exception No. 5 should be denied.

Aqua Reply to Sunoco Exception 6 – As-yet unobtained approvals make the Application unripe.

Aqua Main Brief, Section V.B.d, pages 41-43, and Aqua Reply Brief, pages 26-28

This Sunoco Exception is a "catch-all" exception mimicking Sunoco's erroneous central theme – that there is too much uncertainty associated with various approvals associated with the Proposed Transaction making Commission approval of the Application impossible.⁷¹ That view is completely incorrect.

⁷⁰ Aqua St. No. 2-R at 36.

⁷¹ Sunoco Exceptions at 29.

As noted previously in briefing and in Aqua's Exceptions, both the R.D. and now Sunoco fail to appreciate the central role conditions play in Commission consideration and evaluation of CPC applications under Code Chapter 11 like the one at issue in this proceeding. This criticism was pointed out succinctly by Aqua earlier with respect to the R.D. generally and applies with equal force to Sunoco's misguided effort to prohibit approval of the Application because of normal and standard open matters in these types of transactions:

The RD sees perceived uncertainty in certain limited areas as a basis for rejecting the Application outright. However, the RD fails to appreciate and acknowledge that some uncertainty is expected and part of the transaction process associated with utility sales and acquisitions like the one at issue here. That is why the Code specifically recognizes and allows the Commission to impose "conditions" on its approval under Section 1103. The RD inexplicably and improperly fails to use conditions to address open and uncertain issues that must be resolved before the Proposed Transaction participants will be allowed to proceed to closing. This unrealistic view of how such transactions work is the ultimate flaw of the RD that must be redressed by the Commission.⁷²

Aqua has addressed repeatedly in briefing, its Exceptions and now in this Reply to Exceptions why open matters associated with environmental permitting, the implementation of the EO and pending litigation (more of which continued to be resolved during the pendency of this proceeding) are not barriers to Commission approval of the Application. This is particularly true where Aqua has advised the Commission and all parties of the various conditions it is willing to accept as part of Commission approval of the Application.⁷³

Lack of assent from municipalities is not a serious problem as Sunoco contends in this Exception. Stipulations resolving the Protests of Trainer Borough and Upland Borough have been filed and Trainer and Upland have withdrawn their respective Protests.⁷⁴ Settlement discussions with Edgmont Borough, Lower Chichester Township and the Southwest Delaware County

⁷² Aqua Exceptions at 5.

⁷³ See, for example, Aqua Exceptions at 47-48, 78.

⁷⁴ As noted earlier, the Protest of KCC, a DELCORA industrial customer, has also been resolved.

Municipal Authority are ongoing and Aqua and DELCORA are hopeful that they will result in the resolution of the remaining Municipal Protests.⁷⁵

For the reasons specified above, Sunoco's Exception No. 6 should be denied.

⁷⁵ See Aqua Exception No. 2 and Letter of Scott J. Rubin, Counsel for Municipal Protestants, dated January 22, 2021. The Stipulations with Trainer Borough, Upland Borough and KCC are attached to these Replies to Exceptions as Attachments A, B and C, respectively.

III. CONCLUSION

The Commission should deny the Exceptions of Sunoco Partners Marketing & Terminals, L.P., grant Aqua's Exceptions, reverse and modify the Recommended Decision, approve Aqua's Application filed pursuant to Section 1102, 1329 and 507 of the Public Utility Code, with Aqua's proposed conditions, and the Stipulations that have been filed and will be filed and:

- a. Issue Certificates of Public Convenience under Section 1102:
 - (1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of DELCORA; and
 - (2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory.
- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
 - (1) Include within its territory all the Requested Territory;
 - (2) Adopt and apply within the Requested Territory, DELCORA's rates as Aqua's Base Rates; and
 - (3) Apply Aqua's *Rules and Regulations* within the Requested Territory.
- c. As part of its Order approving the Application include a determination that the ratemaking rate base of the DELCORA system is \$276,500,000 pursuant to Section 1329(c)(2); and
- d. As part of its Order approving the Application approve Contracts, including Assignment of Contracts, between Aqua and DELCORA, pursuant to Section 507 of the Public Utility Code; and
- e. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code as may be appropriate.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: February 1, 2021

ATTACHMENT A

STIPULATION WITH TRAINER BOROUGH

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT STIPULATION OF AQUA PENNSYLVANIA WASTEWATER, INC., TRAINER
BOROUGH AND DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL
AUTHORITY**

Aqua Pennsylvania Wastewater, Inc. (“Aqua”), Trainer Borough (“Trainer”) and Delaware County Regional Water Quality Control Authority (“DELCORA”), (collectively “the Stipulating Parties”), pursuant to 52 Pa. Code § 5.234, enter into a Joint Stipulation to resolve their differences with regard to the above-captioned Pennsylvania Public Utility Commission (“Commission”) proceeding (“Application Proceeding”). The Parties stipulate and agree as follows:

STIPULATION TERMS

1. Trainer has protested the above-captioned Application proceeding, presented testimony, and litigated certain contractual issues relating to the proposed acquisition of DELCORA’s system assets by Aqua (“Proposed Transaction”). This Joint Stipulation between and among the Stipulating Parties resolves all issues associated with Trainer’s Protest of the Application Proceeding.

2. Pursuant to an existing Agreement of Sale and Service, Application Exhibit F137 (“Agreement”), DELCORA provides retail wastewater service to residents and commercial customers located in Trainer utilizing a collection system previously sold to DELCORA by Trainer. In the Agreement, Trainer reserved rights relative to the collection system. Pursuant to

those reserved rights, in the event DELCORA ceases to operate the collection system, the collection system shall revert to Trainer's ownership, in accordance with the terms of the Agreement.

3. The Stipulating Parties agree as follows:

A. In a separate filing made concurrently with the filing of this Joint Stipulation, Trainer will withdraw its Protest to the Application.

B. If the Commission issues an order granting the relief requested in the Application Proceeding, and Aqua and DELCORA proceed to closing on the Proposed Transaction, then at the time of closing (i) Trainer and DELCORA will terminate their current service agreement under which DELCORA provides wastewater service to customers in Trainer, (ii) Aqua will provide Trainer monetary compensation, and (iii) Trainer will terminate with prejudice any outstanding litigation related to the Proposed Transaction.

C. Upon closing of the Proposed Transaction, (i) all customers in Trainer will become retail customers of Aqua, taking service in accordance with the provisions of Aqua's tariffs applicable to retail customers in the former DELCORA service area; and (ii) Aqua, consistent with the Public Utility Code and its Commission tariff, will provide Trainer customers with any and all benefits available to former DELCORA customers, including but not limited to, applying payments from the trust established by DELCORA in the DELCORA Rate Stabilization Fund Trust Agreement dated December 27, 2019.

4. Aqua, DELCORA and Trainer request approval of this Stipulation by the Administrative Law Judges and the Commission, which eliminates the need for the Commission to consider the Agreement between DELCORA and Trainer under Section 507 of the Public Utility Code in this Application Proceeding.

Respectfully submitted,

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Dated: January 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the attached document 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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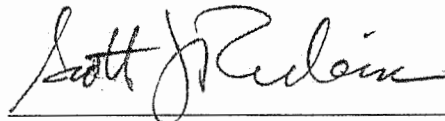
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January 8, 2021
Date



Scott J. Rubin, Counsel for
Trainer Borough

ATTACHMENT B

STIPULATION WITH UPLAND BOROUGH

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT STIPULATION OF AQUA PENNSYLVANIA WASTEWATER, INC.,
BOROUGH OF UPLAND, AND DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY**

Aqua Pennsylvania Wastewater, Inc. (“Aqua”), the Borough of Upland (“Upland”) and Delaware County Regional Water Quality Control Authority (“DELCORA”), (collectively “the Stipulating Parties”), pursuant to 52 Pa. Code § 5.234, enter into a Joint Stipulation to resolve their differences with regard to the above-captioned Pennsylvania Public Utility Commission (“Commission”) proceeding (“Application Proceeding”). The Parties Stipulate and Agree as follows.

STIPULATION TERMS

1. Upland has protested the above-captioned Application Proceeding, presented testimony, and litigated certain contractual issues relating to the proposed acquisition of DELCORA’s system assets by Aqua (“Proposed Transaction”). This Joint Stipulation between and among the Stipulating Parties resolves all issues associated with Upland’s Protest of the Application Proceeding.

2. Pursuant to an existing service agreement, Application Exhibits F139-F142, DELCORA provides retail wastewater service to residents and commercial customers located in Upland utilizing a collection system previously sold to DELCORA. In that service agreement,

Upland reserved rights relative to assignment of the contract and with respect to ownership of the collection system (“Reversionary Interests”). Pursuant to those Reversionary Interests, in the event DELCORA ceases to operate the collection system, the collection system reverts to ownership by Upland.

3. The Stipulating Parties agree as follows:

A. In a separate filing made concurrently with the filing of this Joint Stipulation, Upland will withdraw its Protest to the Application.

B. Within five (5) business days of the signing of this Joint Stipulation, Upland will Discontinue its Complaint against DELCORA and other parties in the Court of Common Pleas of Delaware County, No. CV-2020-007596 (“Civil Complaint”).

C. Concurrently with the signing of this Joint Stipulation, Upland, DELCORA, and Aqua will enter an agreement to toll the statute of limitations regarding the causes of action asserted in the Civil Complaint.

D. If the Commission issues an order granting the relief requested in the Application Proceeding, and Aqua and DELCORA proceed to closing on the Proposed Transaction, then immediately prior to closing (i) Upland and DELCORA will terminate their current service agreement under which DELCORA provides wastewater service to customers in Upland; (ii) Aqua will provide Upland monetary compensation; and (iii) Upland will terminate with prejudice any outstanding litigation related to the Proposed Transaction..

E. Upon closing of the Proposed Transaction, (i) all customers in Upland will become retail customers of Aqua, taking service in accordance with the provisions of Aqua’s tariffs applicable to retail customers in the former DELCORA service area; and (ii) DELCORA will

provide Upland customers with any and all benefits available to former DELCORA customers, including but not limited to payments from the Customer Assistance Trust.

4. Aqua, DELCORA and Upland request approval of this Stipulation by the Administrative Law Judges and the Commission that eliminates the need for the Commission to consider the current agreement between DELCORA and Upland under Section 507 of the Public Utility Code in this Application Proceeding.

Respectfully submitted,

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Dated: January 27, 2021

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I hereby certify that I have this day served a true copy of foregoing document 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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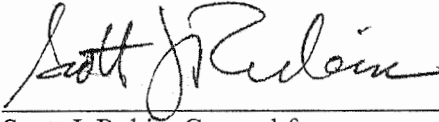
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January 27, 2021
Date



Scott J. Rubin, Counsel for
Upland Borough

ATTACHMENT C

**STIPULATION WITH
KIMBERLY-CLARK CORPORATION/
KIMBERLY CLARK PENNSYLVANIA, LLC**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---------------------------|
| Application of Aqua Pennsylvania | : | |
| Wastewater, Inc. pursuant to Sections 11C2, | : | Docket No. A-2019-3015173 |
| 1329 and 507 of the Public Utility Code for | : | |
| Wastewater system assets of the Delaware | : | |
| County Regional Water Quality Control | : | |
| Authority | : | |

**JOINT STIPULATION OF AQUA PENNSYLVANIA WASTEWATER, INC., AND
KIMBERLY-CLARK PENNSYLVANIA, LLC**

Aqua Pennsylvania Wastewater, Inc. (“Aqua”), Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC (together “Kimberly-Clark”) (collectively, the “Stipulating Parties”), pursuant to 52 Pa. Code § 5.234, enter into a Joint Stipulation to resolve their differences with regard to the above-captioned Pennsylvania Public Utility Commission (“Commission”) proceeding (“Application Proceeding”). The Stipulating Parties stipulate and agree as follows.

STIPULATION TERMS

1. Kimberly-Clark has protested the above-captioned Application proceeding, presented testimony and litigated certain issues relating to the proposed acquisition of Delaware County Regional Water Quality Control Authority’s (“DELCORA”) system assets by Aqua (“Proposed Transaction”). This Joint Stipulation between the Stipulating Parties resolves all issues associated with Kimberly-Clark’s Protest of the Application Proceeding.

2. The Stipulating Parties have disagreed in the Application Proceeding on, among other things, (i) whether wastewater service to Kimberly-Clark is currently being provided under a fully effective written service contract, and (ii) the appropriate rate for prospective wastewater treatment service to be supplied by Aqua on and after closing of the Proposed Transaction.

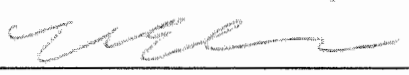
3. Subject to the Administrative Law Judges' and Commission's approval of this Stipulation in this proceeding, Kimberly-Clark (i) shall withdraw its Protest of the Application Proceeding, (ii) shall terminate with prejudice any outstanding litigation related to the Proposed Transaction, and (iii) agrees not to initiate any litigation regarding any issues that have been raised in Kimberly-Clark's Protest and in this proceeding.

4. Subject to a final Commission order granting the relief requested in the Application Proceeding that is acceptable to Aqua and closing on the Proposed Transaction, Aqua agrees, (i) to accept in writing the assignment of a Service Agreement dated as of January 7, 2021 between Kimberly-Clark and DELCORA ("Service Agreement") without modification, which Service Agreement shall be effective on the date of closing of the Proposed Transaction and (ii) to file with the Commission within twenty (20) days after the Commission approves the Proposed Transaction in a final order not subject to appeal or reconsideration a new tariff rider known as "Rider LWCUR – Large Wastewater Customer User" containing terms and other conditions of service applicable to Kimberly-Clark which, along with the Service Agreement, (i) shall provide the rates, terms and conditions under which Aqua will charge for and provide wastewater service and related services to Kimberly-Clark and (ii) shall be effective immediately after closing of the Proposed Transaction.

5. The Stipulating Parties agree that as long as the Service Agreement and Tariff Rider LWCUR remain in effect, Kimberly-Clark shall not be eligible to participate in or receive any proceeds from the DELCORA Customer Assistance Trust to be established and as proposed in this proceeding.

Respectfully submitted,

TROUTMAN PEPPER HAMILTON
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Inc.*

Dated: January 28, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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:

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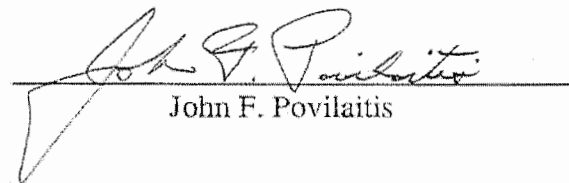
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Date: January 28, 2021



John F. Povilaitis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The Honorable Angela T. Jones, Presiding
The Honorable F. Joseph Brady, Presiding**

| | | |
|--|----------|----------------------------------|
| 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 1st day of February, 2021, served a true and correct copy of the foregoing Replies of Aqua Pennsylvania Wastewater, Inc. to the Exceptions of Sunoco Partners Marketing & Terminals, L.P., upon the persons and in the manner set forth below:

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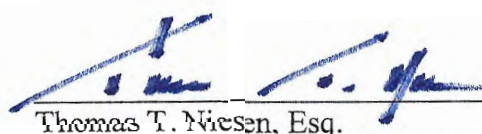
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