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March 8, 2021

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

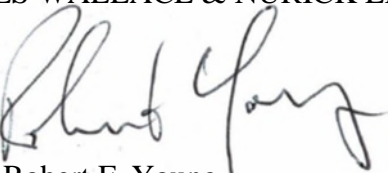
Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Objections of the County of Delaware to the Joint Stipulation between Aqua Pennsylvania Wastewater, Inc., Edgmont Township, and Delaware County Regional Water Control Authority, 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 these proceedings 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 upon request.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Robert F. Young

Counsel to County of Delaware, Pennsylvania

RFY/ams

Enclosure

c: The Honorable Angela T. Jones (via email only)
The Honorable Joseph Brady (via email only)
Pamela McNeal, Legal Assistant to ALJ (via email only)
Kathryn Sophy, Director, Office of Special Assistants (via email only)
Certificate of Service (via email only)

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CERTIFICATE OF SERVICE

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

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Certificate of Service

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Robert F. Young

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Dated this 8th day of March, 2021, 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	:	

**OBJECTIONS OF THE COUNTY OF DELAWARE TO THE JOINT STIPULATION
BETWEEN AQUA PENNSYLVANIA WASTEWATER, INC., EDMONT TOWNSHIP
AND DELAWARE COUNTY REGIONAL WATER CONTROL AUTHORITY**

BEFORE THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Now comes the County of Delaware, Pennsylvania (“County”), by and through counsel, who files these Objections of the County of Delaware to the Joint Stipulation between Aqua Pennsylvania Wastewater, Inc. (“Aqua”), Edgmont Township (“Edgmont”) and Delaware County Regional Water Control Authority (“DELCORA”).¹ In support thereof, the County avers as follows:

¹ The filing of written objections is the traditional and proper procedural method for a party to oppose a proposed stipulation or settlement. See 52 Pa.Code §5.232(g) (“[p]arties not joining in the settlement may submit objections to the Commission within 20 days of the filing of the petition unless another time period is set by the Commission.”). *see also* *Petition of Duquesne Light Co. for Approval of Its Default Serv. Plan for the Period from June 1, 2021 Through May 31, 2025*, No. P-2020-3019522, 2021 WL 163642, at *3 (Jan. 14, 2021); *Petition of UGI FKA Cent. Penn Gas, Inc. to Voluntarily Reduce Base Rates Following Fed. Energy Regulatory Comm’n Approval of the Transfer of Existing Nat. Gas Storage Facilities in Interstate Commerce.*, No. P-2009-2145774, 2010 WL 4271608, at *9 (Sept. 2, 2010). Lastly, there are no regulatory provisions which allow for the filing of answers to objections.

Introduction

1. On January 11, 2021, Presiding Administrative Law Judges (“ALJs”) Angela T. Jones and F. Joseph Brady issued a Recommended Decision (“RD”) recommending that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) deny the Application of Aqua Pennsylvania Wastewater, Inc. seeking approval of the acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (the “Application”).

2. Between January 22, 2021 and February 1, 2021 various parties filed Exceptions and Reply Exceptions to the RD, all of which are pending before the Commission.

3. On February 26, 2021, protestant Edgmont, through counsel, filed with the Commission a Notice of Withdrawal of Protest of Southwest Delaware County Municipal Authority (“Notice”). Attached to the Notice as Appendix A was a document titled “Joint Stipulation of Aqua Pennsylvania Wastewater, Inc., Southwest Delaware County Municipal Authority, and Delaware County Regional Water Control Authority” (the “Proposed Stipulation”).² The Proposed Stipulation cites to 52 Pa.Code § 5.234. Proposed Stipulation (“PS”), Appendix A.

4. The County has standing to oppose any proposed stipulation and the County claims the privilege to do so herein. 52 Pa. Code § 5.231(d) (“proposed stipulations not agreed to by every party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or party claiming the privilege”).

² Edgmont concurrently filed a withdrawal of its protest pursuant to 52 Pa.Code § 5.94(b). The County does not object to Edgmont’s withdrawal of its protest, however, the Proposed Stipulation goes beyond the Section 5.94(b) requirement to “provide the reasons for the withdrawal” in the notice. 52 Pa. Code § 5.94(b). As stated in the County’s Reply Exceptions, these stipulations are extra-record evidence that should not be considered by the Commission in rendering a final determination on Aqua’s Application. *See* County Reply Exceptions at 7-8. The County also explained that the filing of recent stipulations and withdrawals of protests after the close of the record (and after the issuance of the RD) does not provide sufficient certainty that Aqua has clear legal authority to acquire the DELCORA assets and actually serves to confirm the RD’s determination that the transaction remains riddled with uncertainties. *Id.* at 39. The Proposed Stipulation does not remove uncertainties, it magnifies the existing uncertainties.

5. For the following reasons, the County of Delaware requests the Commission to reject the Proposed Stipulation in its entirety.³

Objection No. 1 - The Proposed Stipulation Does Not Include or Describe the Claimed Amendment to Exhibit F81 of the Asset Purchase Agreement

6. The Proposed Stipulation relates to an exhibit which is part of Aqua's Application, specifically Exhibit F81. Exhibit F81 constitutes the existing service agreement under which DELCORA provides wholesale wastewater service to Edgmont ("Service Agreement"). Proposed Stipulation, ¶ 2.

7. Paragraph 3A of the Proposed Stipulation asserts that DELCORA and Edgmont have amended the Service Agreement and that, "**as part of that amendment**, Edgmont has consented to the assignment of the amended Service Agreement to Aqua at the time of closing...." Proposed Stipulation, ¶ 3A (emphasis added). The Proposed Stipulation does not include a copy of the amendment or fully describe the amendment.

8. Aqua's Application seeks the approval of the original Service Agreement between DELCORA and Edgmont as an "Acquired Asset", not the amended service agreement. Aqua Application ¶ 28 ("Acquired Assets also include the contracts identified on Schedule 4.15 of the Agreement to which DELCORA is a party (the "Assigned Contracts"). The Assigned Contracts are attached hereto as **Exhibit F1** through **Exhibit F163**." (emphasis in original, footnote omitted).

9. The Edgmont Township Board of Supervisors approved the amended service agreement at a public board meeting held February 24, 2021.

³ See 52 Pa.Code § 5.234(c) (providing that "[t]he Commission may disregard in whole or in part a stipulation of facts"). The Commission can reject a stipulation in whole or in part under its "mandate to protect the public interest, as opposed to interests of the individual parties." *Application of Beyah Trans. Co.*, A-00099920F1, 1978 WL 50987 (Public Meeting December 29, 1977, entered January 10, 1978). The Commission is not required to reopen the record following the rejection of a stipulation. *Glenside Suburban Radio Cab, Inc. v. Pa.PUC*, 411 A.2d 874, 876 (Pa. Commw. Ct. 1980); *but see* 52 Pa.Code § 5.234(c) (allowing a party to the stipulation 15 days to request further hearing if the Commission disregards a stipulation of fact).

10. The amended service agreement materially changes the terms of the Service Agreement Aqua presented to the Commission for approval pursuant to Section 507 of the Public Utility Code.

11. By modifying an agreement filed as an exhibit to Aqua's Application, the amended service agreement materially changes the terms of Aqua's entire Application.

12. The Proposed Stipulation states that "[n]o later than 30 days prior to closing of the Proposed Transaction, Aqua will file the Service Agreement as amended with the Commission pursuant to 66 Pa. C.S. § 507." Proposed Stipulation, ¶3C.

13. Section 507 of the Public Utility Code applies broadly to "contracts or agreements" between public utilities and municipal corporations. The Proposed Stipulation itself is subject to PUC approval pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, as a contract or agreement between Aqua, a public utility, and two municipal corporations, DELCORA and Edgmont.

14. As a matter of law the Proposed Stipulation and the amended service agreement are nullities and cannot be considered unless submitted to and approved by the Commission pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507.

15. As a matter of fact and of law, Aqua's filing of the amended Service Agreement will occur long after the evidentiary record in this proceeding closed on December 14, 2020. See Order Closing Record, dated December 21, 2020. It is likely, if not inevitable, that the Commission's review of the Exceptions and Reply Exceptions will be concluded long before Aqua files the amended Service Agreement.⁴

⁴ A final order by the Commission is required to be issued no later than March 26, 2021. RD at 1.

16. At no time has Aqua amended its Application to include the amended Service Agreement. Moreover, no existing testimony supports the Proposed Stipulation as it was not in existence when the record was created. Yet, the amended Service Agreement is a material change to Aqua's Application and has not been made available for parties to evaluate either the amendment or the effect of the amendment on the Application.⁵

17. The Proposed Stipulation does not contain any discussion as to why approval of the Proposed Stipulation would be in the public interest. Aqua, DELCORA, and Edgmont have failed to demonstrate that the Proposed Stipulation is in the public interest.

18. Aqua's attempt to seek Commission approval of Exhibit F81 in its unamended form while withholding the amended Service Agreement from the Commission and the parties to the proceeding is wholly improper, casts further uncertainty over the terms that are material to Aqua's Application, prevents the Commission from making a determination as to whether Aqua's Application is in the public interest,⁶ and therefore serves as another reason to affirm the RD and reject the Application outright.⁷

Objection No. 2 - The Proposed Stipulation is Procedurally Improper

19. The Commission's regulations provide that the proper procedure to modify an Application is through amendments, not stipulations. See 52 Pa.Code § 5.91.⁸ At no time has the

⁵ Collectively, the stipulations recently filed in connection with the withdrawals of various protestants represent almost 20% of DELCORA's revenues.

⁶ See RD at p. 2, 20-21.

⁷ See *In Re Pennsylvania-American Water Co.*, 95 Pa.PUC 86 (2001) (slip op. at 2), rev'd on other grounds, *Penna. Suburban Water Co. v. Pa.PUC*, 808 A.2d 1044 (Pa.Comm. Ct. 2002) (noting that Section 507 contracts cannot be reviewed "sight unseen" and describing how ALJ Cocheres required the applicant to submit 13 Section 507 contracts for on the record review by the parties and ALJ when such contracts were not included in the application).

⁸ The Commission's regulations only allow parties to motor carrier applications to use stipulations as restrictive amendments and modifications to applications. 52 Pa.Code § 5.235(a).

amendment described in the Proposed Stipulation been filed by Aqua as an amendment to its Application.⁹

20. The Commission’s regulations provide that the proper procedure to open the record for the admission of new evidence is through a petition to reopen the record. *See* 52 Pa.Code § 5.572(a). The record has closed. At no time has Aqua petitioned to reopen the record.

21. While it is the policy of the Commission to encourage settlements, Commission regulations provide that proposed stipulations not agreed to by every party will not be admissible in evidence against a counsel or party claiming the privilege. 52 Pa. Code § 5.231(d). Aqua, DELCORA, and Edgmont have failed to demonstrate that proposed stipulation in Appendix A is admissible in evidence.

Objection No. 3 – The Proposed Stipulation Violates the Due Process Rights of Other Parties to Review and Comment on the Amendment

22. The filing of the stipulation at this late juncture in the proceeding without the underlying amendment does not comport with the fundamental due process rights of the other parties in the proceeding to review and comment on the material changes to Aqua’s Application. The stipulation was purely formulaic and contained nothing of substance; the substance lies in the amended service agreement because it will reveal any material changes to the revenue requirement, the rates of impacted non-stipulating parties, and to the DELCORA Customer Trust. The inability for parties to review and comment on material amendments to Aqua’s Application – the result of which would materially impact how rate increases are allocated across the Aqua/DELCORA footprint – constitutes “clear prejudice.”¹⁰

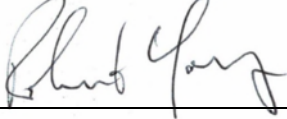
⁹ Moreover, Section 5.94(c) prohibits amendments late in a proceeding. 52 Pa.Code § 5.94(c) (“*Limitation*. Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.”).

¹⁰ *Id.* at 266-267 (finding that a party “would have been very clearly prejudiced if the argument and evidence was allowed in the after the record”); *see, e.g., Patrick Rafferty v. Verizon Pennsylvania, Inc.* Docket No. F-02211831

WHEREFORE, the County of Delaware respectfully requests that the Pennsylvania Public Utility Commission reject the proposed Joint Stipulation.

Respectfully submitted,

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By: 

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Dated: March 8, 2021

(Order entered December 22, 2008); *see also Pa. PUC v. Verizon Pennsylvania, Inc.; Rhythms Links, Inc. v. Verizon Pennsylvania, Inc.* Docket Nos. R-00994697; R-00994697C0001 (Order entered on June 3, 2001) (“[I]nasmuch as Verizon’s Exceptions contain extra-record evidence, they are stricken and will not be used to resolve the merits of any contested matters.”); *see also Application of PPL Electric Utilities Corporation* Docket Nos. A-2011-2267349, A-2011-2267352, A-2011-2267353, A-2011-2267416, A-2011-2267418, A-2011-2267426, A-2011-2267429, A-2011-2267446, A-2011-2267448 (Order entered July 16, 2013) (finding that certain parties attempted to advance arguments not previously made and factual evidence not of record at the exceptions phase).