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March 10, 2021

VIA EFILING

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

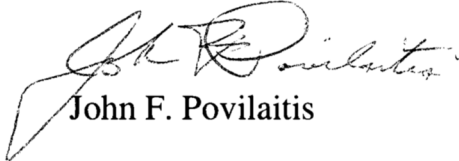
Re: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102,
1329 and 507 of the Public Utility Code for approval of the acquisition by Aqua
of the wastewater system assets of the Delaware County Regional Water Quality
Control Authority;
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed please find the Answer of Aqua Pennsylvania Wastewater, Inc. in Opposition to
Objections of the County of Delaware to Joint Stipulation with Edgmont Township in the above-
referenced proceeding.

This document is being served on the Administrative Law Judge and all parties of record.

Very truly yours,


John F. Povilaitis

JFP/tlg

Enclosure

cc: Certificate of Service
Kathryn G. Sophy, Director, Office of Special Assistants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. IN OPPOSITION TO
OBJECTIONS OF THE COUNTY OF DELAWARE TO JOINT STIPULATION WITH
EDGMONT TOWNSHIP**

AND NOW, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), pursuant to 52 Pa. Code §§ 1.2(a) and 5.61, answers the Objections of the County of Delaware (“Delco” or “County”) to the Joint Stipulation (“Joint Stipulation”)¹ among Aqua, Edgmont Township (“Edgmont” or “Township”) and Delaware County Regional Quality Water Control Authority (“DELCORA”) (“Objections”)² as follows:

¹ The Joint Stipulation to which the County objects is an attachment to Edgmont Township’s Notice of Withdrawal of Protest. The Joint Stipulation provides the reasons for Edgmont Township’s withdrawal of its Protest. The County improperly focuses on the Joint Stipulation, which was provided solely to satisfy the PaPUC’s requirements that a protestant explain the reasons for its withdrawal. While the pertinent pleading at issue is Edgmont’s Notice of Withdrawal of Protest, as noted in footnote 2, Delco has no legal basis for filing any objection to Edgmont Township’s Notice of Withdrawal.

² There is no provision in the Commission’s regulations for filing an objection to a Party’s Notice of Withdrawal of a Protest to an Application filed pursuant to 52 Pa. Code §5.94(b), and supported by a Joint Stipulation that provides the reasons for the withdrawal. Edgmont’s filing of the Notice of Withdrawal of Protest, supported by a Joint Stipulation, does not seek Commission approval of the Joint Stipulation. Therefore, the County’s reliance on 52 Pa. Code § 5.232(g) to file an objection to a “proposed stipulation or settlement” necessitating Commission approval is misplaced. Neither 52 Pa. Code § 5.232, which addresses Stipulations in the context of proposed settlements, nor 52 Pa. Code § 5.234, which considers Stipulations to be matters solely between the stipulating parties, provides for objections to stipulations. To protect its interests in this matter and to provide the proper context for the evaluation of the County’s Objection to the Joint Stipulation, Aqua is filing this Answer pursuant to the Commission’s general regulation governing answers, 52 Pa. Code § 5.61, and the Commission’s regulation at 52 Pa. Code § 1.2(a) that provides for liberal construction of its procedural regulations in order to secure a just, speedy and inexpensive determination of a matter.

I. HISTORY OF THE ISSUE

1. The Township filed a Protest to the above-captioned Application with the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) on August 21, 2020 (“Edgmont Protest”). Pursuant to an existing contract (“Service Agreement”), DELCORA provides retail wastewater services to customers in the Crum Creek Sewer District of the Township. In its Protest, the Township, *inter alia*, asserted that it had neither consented to DELCORA’s assignment of the Service Agreement to Aqua, which is required by the Service Agreement, nor exercised its right of first refusal to acquire DELCORA’s collection system in the Crum Creek Sewer District of the Township. The issues raised in the Township’s Protest were litigated before the Administrative Law Judges assigned to this proceeding and were the subject of Exceptions currently pending before the PaPUC. By letter dated March 10, 2021, Aqua informed the Commission and the Parties that it has voluntarily extended the six month consideration period for this proceeding to provide the Commission with additional time, to the extent necessary, to consider the amicable resolution of the withdrawal of Protests including withdrawal of the Edgmont Protest.

2. The Joint Stipulation was filed with the PaPUC on February 26, 2021 *as an attachment* to a Notice of Withdrawal of Protest (“Notice of Withdrawal”) filed by the Township pursuant to 52 Pa. Code § 5.94(b). As noted in the Township’s Notice of Withdrawal, an amendment to the Service Agreement between the Township and DELCORA (“Amended Service Agreement”) has sufficiently satisfied the Township’s concerns with Aqua’s proposed acquisition of DELCORA’s assets to warrant withdrawal of the Protest. The Township’s Notice of Withdrawal also states that Edgmont has consented to the assignment of its Amended Service Agreement from DELCORA to Aqua. The Joint Stipulation attachment provides the reasons for

the withdrawal of the Protest as required by 52 Pa. Code § 5.94(b).

3. On March 8, 2021, the County filed Objections to the Joint Stipulation on three primary bases. This Answer responds to the Objections and demonstrates they are meritless.

II. RESPONSE TO OBJECTION NO. 1

4. In its Objection No. 1, Delco asserts that because the parties to the Joint Stipulation have not filed the Amended Service Agreement with the Joint Stipulation, and do not intend to file the Amended Service Agreement until no later than 30 days prior to Closing of the Proposed Transaction between Aqua and DELCORA, the Amended Service Agreement “materially changes the terms of Aqua’s *entire* Application,” which warrants affirmance of the Recommended Decision and rejection of the Application. (Emphasis added). In addition, Delco asserts that Aqua, the Township and DELCORA have failed to demonstrate the Joint Stipulation is in the public interest.³

5. What Delco fails to understand or acknowledge is that the Parties to the Joint Stipulation (i.e., Edgmont, DELCORA and Aqua) have not requested or proposed that the Commission or any other party to this proceeding approve or accept the Joint Stipulation. The Joint Stipulation contains no proposed factual findings the Commission is being asked to make that are adverse to Delco or any other party to this case. Therefore, Delco’s claimed standing under 52 Pa. Code § 5.231(d),⁴ which contemplates parties disagreeing with “proposed” stipulations, does not provide standing or any procedural basis for Delco’s Objections. The Joint Stipulation merely provides the reasons for the Notice of Withdrawal, as required by 52 Pa. Code § 5.94(b) and is the vehicle through which the Township has advised the Commission that Edgmont’s two major concerns underlying its Protest have been resolved. The Joint Stipulation

³ Objections pp. 3-4.

⁴ Objections p. 2.

supporting the Notice of Withdrawal makes it clear that Edgmont consents to the assignment of the Amended Service Agreement with DELCORA and agrees not to exercise its right under that agreement to acquire the DELCORA collection system located in the Township. Rather than constituting a material change warranting dismissal of Aqua's Application, the Notice of Withdrawal and supporting Joint Stipulation in fact explain to the Commission why the Township's Protest has been withdrawn and that there is no need for the Commission to adjudicate any issues raised by that Protest. The only "change" resulting from the filing of the Notice of Withdrawal and supporting Joint Stipulation is to remove by amicable resolution a perceived impediment to approval of the Application – something strongly encouraged by the Commission's regulations.⁵

6. As indicated in the supporting Joint Stipulation, DELCORA and Edgmont have amended their Service Agreement in effect at the time this proceeding was filed with the Commission as Exhibit F81. Unlike the great majority of DELCORA's service agreements with municipalities that were filed with the Commission as part of the Application, the proposal to assign the Service Agreement to Aqua resulted in the filing of a Protest. Aqua and DELCORA are not attempting to evade any Commission review of the Amended Service Agreement. The supporting Joint Stipulation makes it clear that the Amended Service Agreement will be filed with the Commission for review at least thirty (30) days prior to any closing of the Proposed Transaction, the standard review period required by Section 507 of the Public Utility Code ("Code"), 66 Pa.C.S. § 507.

7. Contrary to Delco's assertion, Aqua is *not* seeking at this time to have the Commission approve Exhibit F81, the Service Agreement included in the initial Application

⁵ See, 52 Pa. Code §5.231(a).

filing.⁶ The Exhibit F81 Service Agreement has been supplanted by the Amended Service Agreement which will be submitted to the Commission at least thirty days prior to its effective date. Delco has not even attempted to explain why the Amended Service Agreement constitutes a “material” change to Aqua’s Application.⁷ The only issues raised in this proceeding relating to the DELCORA-Edgmont Service Agreement have been its assignment to Aqua and Edgmont’s option to acquire the DELCORA collection system in the Township. The Notice of Withdrawal and the supporting Joint Stipulation remove those issues from this proceeding, thereby obviating the need for their adjudication by the Commission.

8. There is no need at this time for the Commission or the parties to this proceeding to review the Amended Service Agreement pursuant to Section 507 of the Code, which only requires agreements between public utilities and municipalities to be filed 30 days before being effective. Aqua’s Section 507 obligation relative to the Amended Service Agreement is not triggered until two future events occur: 1) the Commission has approved the Application, and 2) closing of the Proposed Transaction occurs, which is when the Amended Service Agreement will be assigned to Aqua. The Joint Stipulation makes it clear that at least 30 days before Closing, the Amended Service Agreement will be filed with the Commission and, at that time, any party with a legitimate concern with the agreement can have its views considered by the Commission. Therefore, no procedural or substantive rights held by Delco, or any other party, are adversely affected by the filing of the Notice of Withdrawal of the Township’s Protest. Delco’s Objection No. 1 should be disregarded or denied.

⁶ Objections p. 5.

⁷ *Id.*

III. RESPONSE TO OBJECTION NO. 2

9. Delco objects to Aqua's alleged failure to submit the supporting Joint Stipulation as an Amendment to the Application or to Petition for a reopening of the evidentiary record.⁸

10. Aqua has neither amended its Application by joining in the supporting Joint Stipulation, nor sought to admit new evidence into the evidentiary record. The Service Agreement that was part of the Application filing as Exhibit F81 and was the subject of the Township's Protest has provisions that could be ultimately assigned to Aqua, but has been updated by the Amended Service Agreement. Moreover, as noted above, it is not necessary or appropriate for the Commission to review the Amended Service Agreement for purposes of an approval under Section 507 of the Code at this time.

11. The Amended Service Agreement was not effective (and was not even in existence) when the Application was filed, and that agreement is not relevant to Aqua unless and until the Commission approves the Application, which then positions the Amended Service Agreement to be assigned to Aqua at Closing. Aqua is neither seeking to reopen the evidentiary record nor use Edgmont's filing of the Notice of Withdrawal and supporting Joint Stipulation as evidence against another party to this proceeding, which makes Delco's objections on these two bases irrelevant and meritless. It is not unusual for agreements between public utilities and municipalities subject to Section 507 of the Code to be submitted to the Commission after PaPUC approval of the transaction and before closing occurs.⁹ As indicated in the supporting Joint Stipulation, if the Application is approved by the Commission, the Township has agreed to the assignment of the

⁸ Objections p. 6. Although three Parties filed the Joint Stipulation, Delco focuses only on Aqua's conduct.

⁹ *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton for Approval of (1) the transfer, by sale, of substantially all of the Sewer Authority of the City of Scranton's Sewer System and Sewage Treatment Works assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Scranton and the Borough of Dunmore, Lackawanna County, Pennsylvania*, Docket No. A-2016-2537209, Opinion and Order entered October 19, 2016 at 94-96.

Amended Service Agreement to Aqua and to not exercise its right to acquire DELCORA's collection system in the Township.

12. If the Commission approves the Application, Aqua and DELCORA will file the Amended Service Agreement seeking Section 507 approval on the timetable provided for in that Section of the Code – allowing at least 30 days for review of the Amended Service Agreement. At that time, any party that believes it is not in the public interest for the Amended Service Agreement to be approved and whose interests would be adversely affected by such approval, can raise their concerns with the Commission. Accordingly, Objection No. 2 should be disregarded or denied.

IV. RESPONSE TO OBJECTION NO. 3

13. In Objection No. 3, Delco raises due process concerns and contends it needs to see the Amended Service Agreement at this time in order to assess its impact on 1) revenue requirement, 2) the allocation of rate increases, 3) other customers' rates and 4) to comment on what it characterizes as material amendments to Aqua's Application.¹⁰

14. As explained above, the supporting Joint Stipulation is neither new evidence nor an amendment to Aqua's Application. There is no action with respect to the supporting Joint Stipulation that the Commission needs to take at this time, other than to observe that it was the basis for the Township's withdrawal of its Protest.

15. Delco's bold assertions of speculative impacts are a poor substitute for a substantiated legitimate interest in the Amended Service Agreement. Delco has failed to explain why it will be impacted by the withdrawal of the Township's Protest, which is the sole purpose of the Notice of Withdrawal and supporting Joint Stipulation. It is clear that Delco therefore has no

¹⁰ Objections p. 5.

standing to challenge this resolution and withdrawal of the Township's Protest. Delco's stated interests in this proceeding, per its filed Protest, include the price of the Proposed Transaction, whether affirmative benefits are present, the Rate Stabilization Trust and the ability of DELCORA to handle the costs of future capital projects. *See* Attachment 1 – Delco Protest. The Joint Stipulation does not affect any of the issues raised and litigated by Delco in this proceeding and Delco therefore has no standing to object to the Joint Stipulation and the Township's withdrawal of its Protest. This lack of standing also substantiates that the filing of the Joint Stipulation did not violate the due process right of Delco or any other party in this proceeding.

16. There is irony in Delco's current expression of concern about the rate impact of the supporting Joint Stipulation on customers. Part of Delco's position in this case is that Aqua's purchase price of DELCORA is too low.¹¹ However, a higher purchase price would ultimately increase Aqua's rate base and resulting revenue requirement that must be paid by customers. This position makes Delco's alleged rate concerns suspect. Moreover, to date, Delco's interest in the disputes between protesting municipalities (like Edgmont) and Aqua has been limited to 1) the uncertainty these disputes pose to the availability of the assets being purchased by Aqua due to the right of first refusal parties such as Edgmont possessed with respect to the DELCORA collection system, and 2) the uncertainty due to the existence of the municipalities' litigation on their contract rights in the Delaware County Court of Common Pleas.¹² However, both of these uncertainties *have been eliminated* by the Notice of Withdrawal and supporting Joint Stipulation. The only Court related litigation remaining at this time, Delco's appeal to Commonwealth Court of its

¹¹Delco MB p. 3.

¹²Delco MB p. 51 ("Aqua's failure to demonstrate that it has legal access to certain assets it proposes to acquire in its Application, including wastewater facilities and contract rights of the Municipal Protestants, confirms that Aqua cannot meet the necessary requirements of a certificate of public convenience to serve the DELCORA customers."); Delco RB p. 23 ("Closing on the transaction cannot occur until the civil litigation dockets, including the Court of Common Pleas of Delaware County at No. CV-2020-003185 and any appeals thereto, are concluded.).

unsuccessful claims against the Proposed Transaction in the Delaware County Court of Common Pleas, is of Delco's own making and is part of the County's attempt to self-fulfill its false theme that the Proposed Transaction has too many uncertainties to approve. In fact, the claimed uncertainties have significantly declined since the record closed in this proceeding, as five municipal Protestants and one industrial customer Protestant have withdrawn their Protests of the Application.

17. While the bulk of Delco's concerns in Objection No. 3 are rate-related, it fails to acknowledge that this Section 1329 Application is not a rate proceeding and no rates will be set herein. In fact, pursuant to Section 1329(d)(v) of the Code, Aqua will charge "a rate equal to the existing rates" of DELCORA at closing. Neither assignment of the Amended Service Agreement nor its approval by the Commission as part of a Code Section 507 review, will affect the rates of any other Aqua customer. Moreover, Aqua has proposed to maintain DELCORA's rates for all former DELCORA customers until it files and completes a post-Closing rate case.¹³ That rate case is the appropriate proceeding for any party to address the proper allocation of costs to all customers on the Aqua system. Delco Objection No. 3 should be disregarded or denied.

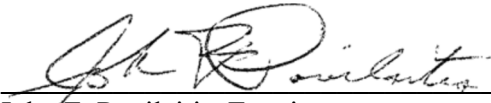
¹³ Aqua St. No. 2.

V. CONCLUSION

WHEREFORE, Aqua Pennsylvania Wastewater, Inc. requests that the Commission disregard or deny the County of Delaware's Objections to the supporting Joint Stipulation and grant such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By: 

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Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: March 10, 2021

Attachment 1



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August 31, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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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 for filing with the Pennsylvania Public Utility Commission in the above-referenced proceeding is the Protest of the County of Delaware.

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

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to the County of Delaware, Pennsylvania

c: Administrative Law Judge Angela T. Jones
Certificate of Service

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

Page 2

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Adeolu A. Bakare

Counsel to the County of Delaware,
Pennsylvania

Dated this 31st day of August, 2020, in Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PROTEST OF
THE COUNTY OF DELAWARE, PENNSYLVANIA**

Pursuant to Section 5.51 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code § 5.51, the County of Delaware, Pennsylvania (the "County" or "Protestant"), hereby files this Protest ("Protest") in the above-captioned proceeding concerning the Application ("Application") of Aqua Pennsylvania Wastewater, Inc. ("Aqua"), seeking Commission approval for the acquisition of the Wastewater System Assets ("System") of the Delaware County Regional Water Quality Control Authority ("DELCORA" or "Authority"), and the right of Aqua to provide wastewater service to the areas served by the Authority. In support of this Protest, the County states as follows.

I. INTRODUCTION AND BACKGROUND

1. Delaware County is a political subdivision of the Commonwealth of Pennsylvania, with administrative offices located at Government Center, 226A, 201 W. Front Street, Media, Pennsylvania, 19063. The County is the incorporating municipality of DELCORA and is also a DELCORA customer.¹

¹ DELCORA is a municipal authority created by the County under the Municipality Authorities Act of 1945 (now codified in the Municipality Authorities Act, 53 Pa. C.S. §5601 et seq.) ("Authorities Act").

2. The names and address of the County's attorneys are:

Adeolu A. Bakare (I.D. No. 208541)
Robert F. Young (I.D. No. 55816)
Kenneth R. Stark (I.D. No. 312945)
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3. On December 30, 2019, the Commission established Docket No. A-2019-3015173 for document management purposes only when it acknowledged receipt of Aqua's Letter/Notice of Licensed Engineer and Utility Valuation Expert Engagement regarding the proposed acquisition.

4. On March 3, 2020, Aqua filed an Application seeking Commission approval to acquire DELCORA and provide wastewater service to areas served by DELCORA.

5. Through the Application, Aqua sought PUC approval of the ratemaking rate base of the assets used to serve DELCORA's 16,000 customer connections and numerous wholesale customers pursuant to Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329. Application at ¶ 8. In total, DELCORA collects, conveys and treats approximately 197,000 Equivalent Dwelling Units for retail, wholesale, municipal, commercial, and industrial rate classes. Aqua Statement No. 5 (Direct Testimony of Robert Willert) at 4. Aqua also requested Commission approval of the Asset Purchase Agreement ("APA") between Aqua and the Authority pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507. Application at ¶ 3. Aqua further requested approval to apply disbursements from a Rate Stabilization Trust ("Trust") to customers acquired from DELCORA through Aqua's billing process. *See*

Application at ¶ 36; Aqua Statement No. 2 (Direct Testimony of William C. Packer), Appendix B.

6. On May 18, 2020, the County filed a Petition to Intervene in this proceeding.

7. On June 11, 2020, the Commission issued a Secretarial Letter ("June 11 Secretarial Letter") conditionally accepting Aqua's Application, subject to Aqua's completion of the notifications and conditions established in the June 11 Secretarial Letter. The June 11 Secretarial Letter expressly stated it was a staff determination subject to reconsideration by the Commission by a petition made pursuant to Section 5.44 of the Commission's procedural regulations.

8. On June 23, 2020, the County filed a Petition for Reconsideration of Staff Action requesting that the Commission rescind staff's conditional acceptance of Aqua's Application. The County asked the Commission to reissue the June 11 Secretarial Letter with this additional condition placed upon Aqua: that Aqua comply with Section 1329(d)(1)(v) of the Public Utility Code and amend its Application to include all relevant documents related to the rate stabilization plan (referenced in Paragraph 36 of the Application and in various direct testimony statements²). The County explained that DELCORA's formation of the Trust and the associated plan to stabilize post-transaction rates through Trust disbursements to Aqua was a "rate stabilization plan" *required* to be included in an application made pursuant to Section 1329 of the Public Utility Code. The County asserted that the failure to identify and document the rate stabilization plan renders the Application deficient under Section 1329.

9. On July 9, 2020, Aqua filed an Answer ("July 9 Answer") to the County's June 23 Petition. In its Answer, Aqua claimed that its Application does not propose a rate stabilization

² See, e.g., Aqua Statement No. 2 (Direct Testimony of William C. Packer) and Aqua Statement No. 3 (Direct Testimony of Erin M. Feeney).

plan and argued that DELCORA's plan to "stabilize" rates through the Trust is not a PUC-jurisdictional rate stabilization plan within the context of Section 1329. July 9 Answer at 4.

10. On July 14, 2020, the Commission issued a Secretarial Letter ("July 14 Secretarial Letter") stating that the instant docket "is currently inactive pending the satisfaction of the conditions established by the Commission in its June 11, 2020 Secretarial Letter..." and "[i]f Aqua satisfies all of these conditions and Docket No. A-2019-3015173 becomes active as a result of the satisfaction of the conditions, the Petition for Reconsideration of Staff Action filed by the County of Delaware, Pennsylvania, and any responsive filings thereto, will be accepted into the docket and assigned for formal action and disposition." (footnote omitted).

11. On July 14, 2020, the County filed an Answer and Reply to a New Matter raised in Aqua's July 9 Answer to the County's June 23 Petition ("July 14 Reply").

12. On July 23, 2020, Aqua filed a letter with the Commission asserting that Aqua has satisfied the conditions identified in the June 11 Secretarial Letter and requesting the Commission "finaliz[e] acceptance of the Application by July 27, 2020, at the latest, and publish notice of the filing of the Application in the Pennsylvania Bulletin on August 15, 2020...."

13. On July 27, 2020, the Commission issued a Secretarial Letter ("July 27 Secretarial Letter") accepting Aqua's Application without addressing the County's Petition for Reconsideration. The July 27 Secretarial Letter accepted the Application and activated the above-captioned docket.³

14. Also, on July 27, 2020, the Commission issued a hearing notice, which reflected the assignment of the docket to the Commission's Office of Administrative Law Judge before Administrative Law Judge Angela Jones.

³ The July 27 Secretarial Letter also noted that the Commission will publish notice of the Application in the August 15, 2020, edition of the *Pennsylvania Bulletin* with a protest deadline of August 31, 2020.

15. On August 7, 2020, the County filed a Petition for a Stay ("Petition for Stay") requesting that the Commission stay all substantive proceedings in the above-referenced docket until there is a final determination in the pending Court of Common Pleas Action resolving disputed issues regarding the Trust and/or the County's termination of DELCORA.

16. On August 13, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a letter in support of the County's Petition for Stay. I&E asserted that a stay is warranted given the uncertainty in DELCORA's status, authority to convey the assets Aqua seeks to acquire, and authority to agree to the terms of the Asset Purchase Agreement that underlies Aqua's Application.

17. On August 14, 2020, the Office of Consumer Advocate ("OCA") filed a brief in support of the County's Petition for Stay. OCA asserted that a stay would promote judicial efficiency by reducing the time and expense of litigating the PUC proceeding in light of the ongoing Court of Common Pleas proceeding. OCA also filed a motion requesting the Chief Administrative Law Judge grant a 60-day extension of the Section 1329 six-month consideration period pursuant to the Commission's COVID-19 Emergency Order issued on March 20, 2020 at Docket No. M-2020-3019262.

18. Notice of Aqua's Application was published in the *Pennsylvania Bulletin* on August 15, 2020. 50 Pa.B. 4220 (Aug. 15, 2020). The Notice established a deadline of August 31, 2020, for the filing of protests. *Id.*

19. On August 27, 2020, the Commission entered an Order denying the County's Petition for Reconsideration and confirming the Petition for Stay remains under consideration.

20. On August 31, 2020, the Commission's Chief Administrative Law Judge issued an Order granting OCA's Motion to Extend.

II. PROTEST

Legal Standards

21. Parties objecting to the approval of an application filed with the Commission may file a protest to the application. 52 Pa. Code § 5.51(a). A protest to an application must: (1) set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined; (2) state the grounds of the protest; and (3) set forth the facts establishing the protestant's standing to protest. 52 Pa. Code § 5.52(a).

22. As the only incorporating municipality of DELCORA, the County has standing to file this Protest to protect its interests and rights.

23. Per Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), Aqua bears the burden to demonstrate that the application is in the public interest and should be approved under Sections 507, 1102, 1103, and 1329 of the Public Utility Code, 66 Pa. C.S. §§ 507, 1102, 1103, and 1329.

24. The Commission will only grant a certificate under Section 1103 if it finds that doing so is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103. The applicant must show it is technically, legally, and financially fit to provide the additional services by virtue of the transaction. *Id.*

25. Per the longstanding precedent in *City of York v. PUC*, the applicant seeking to acquire utility facilities must demonstrate that the proposed transaction will "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." *City of York v. PUC*, 295 A.2d 825, 828 (1972).

26. Per Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, contracts or agreements between a public utility and a municipal corporation must be filed with the PUC at

least 30 days prior to the effective date of the agreement. The PUC will consider the reasonableness, legality, and any other matter affecting the validity of the agreement.⁴

27. Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, addresses a voluntary process to determine the fair market value of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities. If the parties agree to use the Section 1329 process, an "acquiring public utility" and the seller of the municipal system each select a utility valuation expert (UVE) from a list of experts maintained by the Commission. Per Sections 1329(a) and (b), fair market value is determined by the results of two separate, independent appraisals conducted by utility valuation experts. The appraisals are then averaged to determine the fair market value. 66 Pa. C.S. § 1329(g). The fair market value is the value the acquiring utility will use as the rate base for the acquired assets in its next base rate case. 66 Pa. C.S. § 1329(c)(2).

28. Section 1329(g) of the Code defines an "acquiring public utility" as a water or wastewater public utility subject to regulation under the Code "that is acquiring a selling utility as the result of a voluntary arm's-length transaction between the buyer and seller." 66 Pa. C.S. § 1329(g). A "selling utility" is defined "[a] water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller." *Id.* Accordingly, the selling utility, DELCORA, must have clear legal authority to sell its assets and must do so through an arm's-length transaction.

29. Sections 1329 and 1102 of the Public Utility Code, when read together, require an applicant to show not only that no harm will come from the proposed transaction, but also

⁴ See *Joint Application of PAWC and City of Scranton et al.*, Docket No. A-2016-2437209, at p. 12 (Order issued Oct. 6, 2016) (hereinafter "Scranton Order"); see also *Aqua Application for approval of Limerick Township assets*, Docket No. A-2017-2605434 (Order entered Nov. 29, 2017).

establish that substantial affirmative benefits flow to ratepayers. *McCloskey v. PUC*, 195 A.3d 1055, 1064 (Pa. Cmwlth. Ct. 2018).

Grounds for the Protest

30. Aqua has not met its burden to show approval of the application is in the public interest. Accordingly, the Commission should deny the Application as unjust, unreasonable, unlawful, and not in the interest of the DELCORA ratepayers, Aqua ratepayers, and the general public. At minimum, the Commission should schedule hearings on the Application to develop a record of the various deficiencies raised below.

31. As a threshold matter, Commission review of Aqua's Application would be premature at this time. As indicated above, the County filed a Petition for Stay requesting that the Commission stay all substantive proceedings at this docket pending resolution of the Delaware County Court of Common Pleas proceedings concerning the legality of the Trust and Aqua's attempts to enjoin the County from enforcing its Ordinance terminating DELCORA prior to closing on the proposed transaction. As the Application relies on the Trust as a principle affirmative benefit and presumes the continued existence of DELCORA, the Commission cannot weigh the applicable affirmative benefits until the courts resolve these disputed issues. *See* Aqua Statement No. 5 (Direct Testimony of Robert Willert) at page 11, lines 13-17.

32. With regards to the substantive transaction, the County is concerned that the circumstances of the proposed transaction run contrary to the public interest. Viewing the proposed \$276 million purchase price in the context of the respective \$308 and \$409 million valuations commissioned by DELCORA and Aqua suggests that the proposed transaction was not conducted at arm's length as required under Section 1329 of the Public Utility Code. This concern is further amplified by the lack of any competitive bidding process preceding

negotiations between Aqua and DELCORA. In this case, the purchase price is tens of millions of dollars below both parties' valuations and 22% lower than the average of the two valuations. While competitive bidding is not an explicit condition of Section 1329, the Commission's public interest analysis should require that some assurance of a competitive or market-based bidding process was employed when the sale of a public asset is at issue.

33. The County's concerns regarding the relationship between Aqua and DELCORA extend to the Rate Stabilization Trust and the related rate stabilization plan discussed in Aqua's Application. While the County is litigating the Trust issues before the Court of Common Pleas, this matter may impact the Commission's review of Aqua's Application to the extent Aqua and DELCORA claim rate stabilization is a benefit of the transaction and DELCORA intends to continue operating as an administrator of the Trust following closing of the transaction. As discussed above and detailed in the County's Petition for Reconsideration, the Application documents lack detail as to the guidelines of the rate stabilization plan and the discretion reserved by Aqua or DELCORA to make decisions impacting the timing and amount of rate stabilization funding provided to former DELCORA customers. It is not entirely clear whether the rate stabilization, if approved, would be administered by Aqua Wastewater, Inc. or an unregulated affiliate. These uncertainties raise serious questions regarding the benefits of the proposed rate stabilization plan.

34. The County also questions other affirmative benefits cited by Aqua and DELCORA. Aqua and DELCORA consistently present the proposed transaction as an inevitable and necessary response to meet rising capital costs. The Application indicates that DELCORA faces future capital expenses ranging from \$405 million to \$606 million to either expand DELCORA's treatment capacity or pay for necessary capital costs for maintaining capacity in

Philadelphia Water Department's treatment system. See Aqua Statement No. 5 at pp 7-10 (Direct Testimony of Robert Willert). However, the Application fails to demonstrate any inability on the part of DELCORA to access financing necessary to complete these capital projects.

35. The matter of access to capital is particularly relevant where Aqua seeks to acquire a wastewater system of DELCORA's size. Unlike prior transactions through which regulated public utilities acquired small, frequently financially and operationally troubled, municipal sewer systems under Section 1329, DELCORA is a large and sophisticated municipal utility system comparable in size to Aqua's main division for wastewater operations. See Aqua Statement No. 2 at 11 (Direct Testimony of William C. Packer). As such, the economies of scale generally observed as affirmative benefits in other municipal transactions may not apply here.

36. For the foregoing reasons, the Application is not in the public interest, violates the Public Utility Code and the Municipality Authorities Act, and should be denied by the Commission.

37. In the alternative, the County requests that the Commission assign the Application to the Office of Administrative Law Judge for development of a record and evidentiary hearings on the issues identified by the County and any other matters relevant to the Application.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the County of Delaware, Pennsylvania, respectfully requests that the Pennsylvania Public Utility Commission grant this Protest, deny the Application, and grant any other relief as it deems necessary.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the County of Delaware,
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Dated: August 31, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. pursuant to Sections 1102,	:	
1329 and 507 of the Public Utility Code for	:	Docket No. A-2019-3015173
approval of the acquisition by Aqua of the	:	
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.

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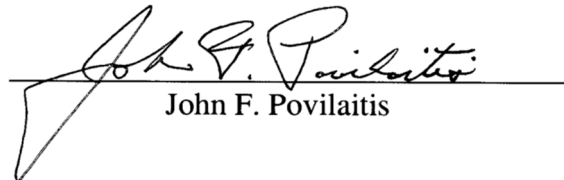
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