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June 21, 2022

VIA EFILING

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

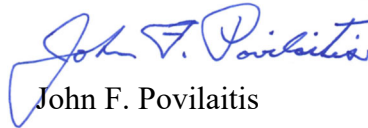
Re: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority;
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed please find the Answer of Aqua Pennsylvania Wastewater, Inc. in Opposition to the Petition to Intervene of Michael Doweary, the Receiver for the City of Chester, Pennsylvania 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: The Honorable F. Joseph Brady
Certificate of Service

**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 its Acquisition of the :
Wastewater System Assets of the Delaware :
County Regional Water Quality Control :
Authority :**

**ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC. IN OPPOSITION
TO THE PETITION TO INTERVENE OF MICHAEL DOWEARY, THE
RECEIVER FOR THE CITY OF CHESTER, PENNSYLVANIA**

AND NOW comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) and, pursuant to 52 Pa. Code § 5.66, answers the Petition to Intervene of Michael Doweary, the Receiver for the City of Chester, Pennsylvania¹ (“Petition”) as follows:

I. HISTORY OF PROCEEDING

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

2. The Application proceeding (“Application Proceeding”) asks the Commission to approve, *inter alia*, Aqua's acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”) and the assignment of certain contracts to Aqua, including a contract between the City of Chester (“City”) and DELCORA dated February 12, 1973, which is Exhibit F119 to Aqua’s Application (“City

¹ After reasonable investigation, Aqua lacks knowledge or information sufficient to form a belief about the truth or accuracy of all averments in the Petition regarding the (i) identity, authority to act, appointment and related matters about the Receiver and its relationship to the City and (ii) all averments relating to or about the City and demands proof thereof, if relevant, at any hearing held in this matter.

Agreement”).

3. DELCORA uses the wastewater system assets to provide retail wastewater service to approximately 16,000 customers in parts of Delaware and Chester Counties and wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities. Application pp. 2-3.

4. The Application Proceeding before the Commission has been largely litigated and briefed, and is the subject of a Commission Order entered March 30, 2021 (“March 30 Order”). The March 30 Order remanded the Application Proceeding to the presiding Administrative Law Judge for, among other things, the conduct of limited further hearings on specific settlements with municipal entities regarding the inclusion of certain of their claimed assets in the proposed acquisition of the wastewater system assets of DELCORA. March 30 Order at 13-15.

5. At no time prior to the entry of the March 30 Order did either the City or Michael Dowearry, the City’s Receiver (“Receiver”) file any pleadings with the Commission in connection with the Application Proceeding, such as a Protest or Petition to Intervene.

6. Until the Receiver’s filing of a Petition to Intervene (“Petition”) in the Application Proceeding on June 2, 2022, neither the City nor the Receiver participated in any aspect of the proceeding.

7. The Commission’s standards governing late filed intervention are those it expressed in *Re Pennsylvania-American Water Company*, Docket Nos. A-212285F0096, A-230073F0004, 97 Pa.P.U.C. 157, 2002 WL 1723685 (2002): 1) whether the Petitioner has a reasonable excuse for missing the protest due date, 2) whether the proceeding is contested at the time of the filing of a petition for intervention, 3) whether a grant of intervention will delay the orderly progress of the case, and 4) whether the grant of intervention will broaden significantly the issues, or shift the

burden of proof. Citing *Re STS Motor Freight, Inc.*, 54 Pa.P.U.C. 343 (1980). In addition, pursuant to Section 5.74(c) of the Commission’s regulations, 52 Pa. Code § 5.74(c), “[e]xcept with regard to statutory advocates under subsection (b)(4), intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.”

II. THE PETITION

8. As the purported representative of the City, the Receiver filed the Petition with the Commission on June 2, 2022, some fourteen (14) months *after* the entry by the Commission of the March 30 Order and the completion of all process leading up to that order, *i.e.*, the submission of multiple rounds of testimony, the conduct of public input hearings and evidentiary hearings, the filing of main and reply briefs, exceptions and replies to exceptions, etc.

9. The Petition seeks late intervention in the Application Proceeding for the following primary reasons: (i) “... that Aqua has no interest in resolving the issue [reversionary interest in the City’s agreement with DELCORA] without court intervention (Petition, ¶37); (ii) “... to advance the City’s interest in the DELCORA Agreement (Petition, ¶39); (iii) “Aqua’s application violated the City’s rights under the Chester/DELCORA Agreement because the City did not waive its reversionary interest” (Petition, ¶41); and (iv) “... to preserve and protect the City’s interest and the value of its system.” (Petition, ¶44).

10. As described further below, none of the purported justifications for the Petition actually support the Receiver’s late filed intervention and participation in this proceeding.

III. THE PETITION SHOULD BE DENIED

A. *The Petition is Tardy and no Reasonable Justification for the Late Filing Has Been Provided*

11. The City, the Receiver’s principal, was directly served with the Application on July 17, 2020 at the express direction of the Commission. In addition, Aqua complied with the

Commission direction to submit proof of newspaper publication in order to provide notice to interested parties. *See*, Exhibit A. Aqua's service of the Application included a copy of the Notice published in The Daily Times, a local newspaper of general circulation in Delaware County. That Notice advised that protests and petitions to intervene must be filed on or before August 31, 2020. Additionally, in the Notice provided to the City, as a customer of DELCORA, the City also was advised that protests and petitions to intervene must be filed on or before August 31, 2020.

12. As noted above and in the Application itself, the City Agreement (Exhibit F119) to be assigned as part of the purchase and sale transaction between Aqua and DELCORA was specifically referenced in the Application. Accordingly, the City had direct notice of the Application and the specific relief sought therein as early as July 2020, including the proposed disposition of the City Agreement.

13. While the Receiver asserts it only became aware of the August 31, 2020 deadline to file petitions to intervene or protests in the Application Proceeding after that deadline elapsed (Petition, ¶45(a)(i)), it never explains (i) when it did have notice of the Application Proceeding and/or the relevant deadline and (ii) why it filed nothing in this proceeding until June 2, 2022. This lack of explanation for the obvious delay in taking any action despite its principal having actual notice of the Application filing from July 17, 2020 is unreasonable and inexcusable.

14. While the Receiver notes that it did not learn of the City Agreement until after the evidentiary hearings were held in the Application Proceeding (Petition, 45(a)(ii)), it still never explains why it delayed the Petition filing until June 2, 2022, well after the evidentiary hearings concluded.

15. Based on reasonable equitable principles and applicable Commission precedent, this unexplainable delay is sufficient by itself to deny the Petition at this advanced stage of the

Application Proceeding. The Receiver has simply waited too long to Petition to Intervene. *See Pa.P.U.C. v. West Penn Power Company*, Docket No. P-000723349, R-00072753, R-00072754, 103 Pa.P.U.C. 354, 2008 WL 4614215 (2008).

B. *None of the Reasons Cited by the Receiver for Granting Late Intervention Support Such Relief*

16. None of the reasons specified in the Petition and referenced in Paragraph 9 above support granting the Receiver the right to intervene at this point in the Application Proceeding.

17. First, contrary to the Receiver's assertions otherwise, Aqua desires to resolve all issues with respect to the City Agreement without resorting to litigation – before this Commission or otherwise – as it has done with all of the other major municipal agreements, including those agreements between DELCORA and Trainer Borough, Edgmont Township, Borough of Upland, Lower Chichester Township and the Southwest Delaware County Municipal Authority.

18. Indeed, before the filing of the Petition, Aqua was in direct communication with the Receiver via a letter dated May 2, 2022, regarding the City Agreement, and specifically requested the Receiver to provide a list of assets it believes are covered by the claimed reversionary interest under that agreement and advised the Receiver there was no need to file a Protest in the Application Proceeding. *See*, Exhibit B. The Receiver did not substantively respond to Aqua's request for information needed to resolve the Receiver's concerns. On May 25, 2022, Aqua sent a second letter to the Receiver, reiterating its request for information needed to address the Receiver's concerns. *See*, Exhibit C. The Receiver's response was not to provide the requested information, but to file this Petition with the Commission.

19. As noted in the Petition, in the letter dated May 2, 2022 Aqua responded to the Receiver's *ex parte* letter of April 11, 2022 filed in the Application Proceeding. (Petition, ¶¶34-36). Among other things, in that correspondence, Aqua specifically requested that the Receiver

identify the assets it believed were covered by the claimed reversionary interest provision in the City Agreement. However, before electing to provide Aqua with the list of assets the Receiver believes are covered by the reversionary interest in the City Agreement, the Receiver filed the Petition, thereby instituting the very type of litigation Aqua was seeking to avoid in resolving issues under the City Agreement.

20. As stated, both in prior correspondence with the Receiver and again in this Answer, Aqua very much desires to completely and timely resolve any issues under the City Agreement unencumbered by any proceedings in the civil courts or even in this Application Proceeding. In this regard, Aqua notes that neither the City nor the Receiver has filed a Protest to the Application or the relief requested therein, allowing for a resolution of the City Agreement outside of litigation, *if* the Receiver is willing to do so and provides information to Aqua about the specific assets it claims are covered by the reversionary interest – something the Receiver has failed to do after two separate requests from Aqua.

21. Second, the Receiver alleges that it filed the Petition “... to advance the City’s interest in the DELCORA Agreement” (Petition, ¶39) and “... to preserve and protect the City’s interest and the value of its system.” (Petition, ¶44). But the Receiver fails to indicate how its participation in the Application Proceeding at this advanced stage will provide any protection to it and/or the City. The short answer is that this proceeding will *not* do anything to enforce or protect the Receiver’s interest in the City’s assets or the City Agreement beyond what that agreement already provides. The Receiver recognizes this fact by its assertion in the Petition that “[t]he City’s reversionary interest exists regardless of this proceeding and that interest is automatic and self-effectuating.” (Petition, ¶45(c)(i)). The Commission is not a forum where the City’s alleged rights under the City Agreement can be determined and enforced.

22. The Receiver/City does not need this Application Proceeding to enforce and protect its contractual rights, if any, under the City Agreement. Therefore, there is no reason for the relief requested in the Petition to be granted.

23. Finally, the Petition asserts that the Receiver's intervention in the Application Proceeding is warranted because "Aqua's application violated the City's rights under the Chester/DELCORA Agreement because the City did not waive its reversionary interest" (Petition, ¶41). The Receiver cites to no provision of the City Agreement that was violated by Aqua by filing the Application at issue in this proceeding because there is none. The mere filing of the Application by Aqua was not intended to and did not violate the terms of the City Agreement or any alleged rights of the City/Receiver thereunder. Any reversionary interests in previously conveyed assets to DELCORA remain subject to the terms of the City Agreement without modification.

24. However, just as it has done with other municipalities having contracts with DELCORA regarding certain assets long since sold and conveyed to DELCORA, including contracts with similar provisions regarding reversionary interests, Aqua intends to resolve any of these contractual issues with the relevant stakeholders *outside of the context of the Application Proceeding or the civil courts*. It is not necessary for the Receiver to participate in any manner in this proceeding to enforce any reversionary rights it or the City may have under the City Agreement, which all parties agree is self-executing and outside of the Commission's jurisdiction to enforce.²

² In fact, Aqua and DELCORA anticipated the possibility of a non-assigning municipality in Section 2.06 of the Asset Purchase Agreement. The Section provides that in the event the assignment of a contract is not obtained prior to Closing then DELCORA and Aqua shall use commercially reasonable efforts to obtain an assignment and, until an assignment is made, Aqua shall, as agent or subcontractor, pay, perform and discharge the liabilities and obligations of DELCORA. Under Section 2.06 of the Asset Purchase Agreement, if a municipality like the City does not agree to an assignment of its contract by Closing or elect to have the system transferred to itself, legal ownership of its system would continue with DELCORA, but Aqua would obtain economic/beneficial ownership of

C. *The Petition Fails to Satisfy the Legal Standards Applicable to Late-Filed Petitions to Intervene*

25. In Paragraph 45 of the Petition, the Receiver cites what it believes to be the relevant standards necessary to be satisfied before late intervention will be permitted in a Commission proceeding. As noted above, those standards are 1) whether the Petitioner has a reasonable excuse for missing the protest due date, 2) whether the proceeding is contested at the time of the filing of a petition for intervention, 3) whether a grant of intervention will delay the orderly progress of the case, and 4) whether the grant of intervention will broaden significantly the issues, or shift the burden of proof. Aside from the fact that the Receiver has failed to even satisfy those criteria, it has neither acknowledged nor even attempted to meet the Commission's specific requirement with respect to intervention *after an evidentiary hearing has been concluded*.

26. 52 Pa. Code § 5.74(c) specifically provides that “[e]xcept with regard to statutory advocates under subsection (b)(4), intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.” As noted above, the substantial majority of the litigation of the Application Proceeding has terminated and the evidentiary hearings have concluded. And, while a remand hearing may be held shortly, the clear terms of the March 30 Order have limited the scope of the remand. Even with respect to the municipal protests that are part of the remand, the issue is not the merits of the withdrawn protests, but the opportunity of existing Parties to address the Joint Stipulations associated with the withdrawn Protests. Thus, in order to have any right to intervene at this advanced stage of the Application Proceeding, the Receiver was required to show “extraordinary circumstances” existed to support intervention. It has completely failed to acknowledge that standard let alone attempt to meet it.

these Non-assignable Assets at Closing and operate the wastewater system as DELCORA's agent/subcontractor. All of this would happen outside of any participation of the Receiver in the Application Proceeding.

27. Further, the Receiver has not satisfied the standards it claims are applicable to late filed intervention under the Commission's order in *West Penn*. The Receiver does not have a reasonable excuse for waiting so long to seek to intervene in the Application Proceeding, even if it did not learn of the protest and petition to intervene deadline until after the evidentiary hearings were held. No explanation at all has been provided in the Petition for the extended delay to seek intervention.

28. Given the large number of settlements and withdrawal of Protests already achieved with municipalities situated similarly to the City, it is fair to state that at the time of the filing of the Petition, there are no pending protests against the relief sought in the Application from entities like the City that previously sold municipal wastewater assets to DELCORA and allegedly retained some rights in those assets upon a future sale or disposition thereof.

29. Given the limited remand anticipated in the Application Proceeding and the municipal settlements already completed, addressing the Receiver's substantive issues could have a detrimental impact on the timely completion of the proceeding, which has already been substantially delayed since the Application was filed with the Commission in March 2020. Further, the issues under the City Agreement are private and contractual in nature, self-effectuating, are not enforceable by the Commission and therefore can and should be resolved by the relevant parties *outside of this or any court litigation*. Thus, allowing the Receiver to intervene now would most assuredly delay the orderly progress of the Application Proceeding.

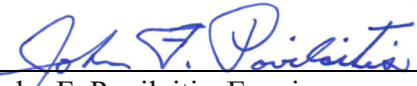
IV. CONCLUSION

30. For the reasons specified above, the Petition should be denied and the Receiver should not be permitted to intervene in the Application Proceeding for any reason.

WHEREFORE, for the reasons specified herein, Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Petition to Intervene of Michael Doweary, the Receiver for the City of Chester, Pennsylvania, be denied and dismissed with prejudice and that Aqua Pennsylvania Wastewater, Inc. be granted such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

BUCNANAN INGERSOLL & ROONEY

By: 

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*Counsel for Aqua Pennsylvania Wastewater,
Inc.*

Date: June 21, 2022

Exhibit A

July 22, 2020

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the following items in accordance with your letter of June 11, 2020:

- (1) A certificate verifying service of the Application upon designated entities: and
- (2) The proofs of publication in *The Daily Local News* on June 25, 2020 and July 2, 2020 and *The Daily Times* on June 25, 2020 and July 2, 2020.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By



Thomas T. Niesen

cc: Gina L. Miller, Esq. (via email, w/encl.)
Christine Maloni Hoover, Esq. (via email, w/encl.)
Erin K. Fure, Esq. (via email, w/encl.)
Adeolu A. Bakare, Esq. (via email, w/encl.)
Kenneth D. Kynett, Esq. (via email, w/encl.)
Scott J. Rubin, Esq. (via email, w/encl.)
Alexander R. Stahl, Esq. (via email, w/encl.)
Thomas S. Wyatt, Esq. (via email, w/encl.)

PHILADELPHIA GROUP

AFFIDAVIT OF PUBLICATION
307 Derstine Avenue • Lansdale, PA 19446**THOMAS NIESEN & THOMAS LLC**
212 LOCUST STREET**STE 302****HARRISBURG, PA 17101**
Attention:**STATE OF PENNSYLVANIA,**
COUNTY OF MONTGOMERY

The undersigned *Maureen Schmid*, being duly sworn the he/she is the principal clerk of Daily Local News, Daily Local News Digital, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

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Daily Local News	06/25/20
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COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MAUREEN SCHMID, Notary Public
Lansdale Boro., Montgomery County
My Commission Expires March 31, 2021

Sworn to the subscribed before me this 7/9/2020.

Maureen Schmid
Notary Public, State of Pennsylvania
Acting in County of Montgomery

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania Wastewater, Inc. ("Aqua") pursuant to Sections 1102 and 1329 of the Public Utility Code for: (1) Approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority ("DELCORA") situated within Delaware and Chester Counties, Pennsylvania; (2) Approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of Delaware and Chester Counties, Pennsylvania; and (3) An order approving the acquisition that includes the ratemaking rate base of the DELCORA wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code. Request for Approval of Contracts, including Assignments of Contracts, between Aqua and DELCORA Pursuant to Section 507 of the Public Utility Code. Docket Number: A-2019-3015173.

Formal protests and petitions to intervene must be filed in accordance with Title 52 of the Pennsylvania Code, on or before August 31, 2020. All filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the Applicant. The documents filed in support of the Application are available for inspection and copying at the Office of the Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, on the Commission's website at www.puc.pa.gov, and at the Applicant's business address.

Applicant:

Aqua Pennsylvania Wastewater, Inc.

Through and By Counsel:Thomas T. Niesen, Esq.
Thomas, Niesen and Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
DLN 6/25, 7/2; 1a**Advertisement Information**

Client Id: 885300

Ad Id: 2018292

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Sales Person: 018303



PHILADELPHIA GROUP - PUBLISHERS OF:

The Delaware County Daily Times, a newspaper of general circulation, established September 7, 1876

AFFIDAVIT OF PUBLICATION
639 S. Chester Rd. • Swarthmore, PA 19081**THOMAS NIESEN & THOMAS LLC**
212 LOCUST STREET

STE 302

HARRISBURG, PA 17101

**STATE OF PENNSYLVANIA,
COUNTY OF DELAWARE**

The undersigned Mary Lynn Wisniewski, being duly sworn the he/she is the principal clerk of Daily Times and Sunday Times, Daily & Sunday Times Digital, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

THOMAS NIESEN & THOMAS LLC**Published in the following edition(s):**

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Daily Times and Sunday Times	07/02/20
Daily & Sunday Times Digital	06/25/20
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Affiant further deposes that she/he is not interested in the subject matter of the aforesaid notice of advertisement, and that all allegations in the foregoing statements as to time, place and character of publication are true:

Sworn to the subscribed before me this July 2, 2020.

Dianne McCormick
Notary Public, State of Pennsylvania
Acting in County of Delaware

Notary Public, State of Pennsylvania
Acting in County of Delaware

Commonwealth of Pennsylvania - Notary Seal
Dianne McCormick, Notary Public
Delaware County
My commission expires April 20, 2024
Commission number 1297770
Member, Pennsylvania Association of Notaries

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania Wastewater, Inc. ("Aqua") pursuant to Sections 1102 and 1329 of the Public Utility Code for: (1) Approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority ("DELCORA") situated within Delaware and Chester Counties, Pennsylvania; (2) Approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of Delaware and Chester Counties, Pennsylvania; and (3) An order approving the acquisition that includes the ratemaking rate base of the DELCORA wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code. Request for Approval of Contracts, including Assignments of Contracts, between Aqua and DELCORA Pursuant to Section 507 of the Public Utility Code. Docket Number: A-2019-3015173.

Formal protests and petitions to intervene must be filed in accordance with Title 52 of the Pennsylvania Code, on or before August 31, 2020. All filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the Applicant. The documents filed in support of the Application are available for inspection and copying at the Office of the Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, on the Commission's website at www.puc.pa.gov, and at the Applicant's business address.

Applicant: Aqua Pennsylvania Wastewater, Inc.

Through and By Counsel:

Thomas T. Niesen, Esq.
Thomas, Niesen and Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101

DCT, June 25, July 2, a-1

Advertisement Information

Client Id: 885300

Ad Id: 2018319

PO:

Sales Person: 066305

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2019-3015173
Wastewater, Inc. (hereinafter referred to as :
“Aqua” or “Applicant”) pursuant to Sections :
1102 and 1329 of the Public Utility Code for: :

(1) approval of the acquisition by Aqua of :
the wastewater system assets of the Delaware :
County Regional Water Quality Control :
Authority (“DELCORA”) situated within :
Delaware and Chester Counties, :
Pennsylvania; :

(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in portions :
of Delaware and Chester Counties, :
Pennsylvania; and :

(3) an order approving the acquisition :
that includes the ratemaking rate base of the :
DELCORA wastewater system assets :
pursuant to Section 1329(c)(2) of the Public :
Utility Code. :

Request for Approval of Contracts, :
including Assignments of Contracts, between :
Aqua and DELCORA, Pursuant to Section :
507 of the Public Utility Code :

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above referenced Application of Aqua Pennsylvania Wastewater, Inc. was served upon the persons on the date and in the manner listed below:

Hand Delivery on March 3, 2020

Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Certified Mail, Return Receipt Requested on July 17, 2020

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Joseph McColgan
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Glenolden, PA 19036

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1410 Market Street
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Michael Manerchia
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Ridley Park, PA 19078

Edmond J. Pisani
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Folsom, PA 19033

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Rose Valley, PA 19065

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Sharon Hill, PA 19079

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Springfield Township
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Springfield, PA 19064

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Swarthmore, PA 19081

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Tinicum Township
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Essington, PA 19029

Trainer Borough
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Trainer, PA 19061

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Upland Borough
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Upland, PA 19015

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Prospect Park, PA 19076

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Ridley Park Borough Planning Commission
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Essington, PA 19029

Trainer Borough Planning Commission
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Trainer, PA 19061

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Gregory C. Lebold
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Media, PA 19063

Sally Slook
Willistown Township
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Malvern, PA 19355

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Chester County
313 W. Market Street, Suite 6202
West Chester, PA 19380

Marianne Grace
Delaware County
201 West Front Street
Media, PA 19063

Valerie Hoxter, Manager
Chadds Ford Township Sewer Authority
10 Ring Road
Chadds Ford, PA 19317

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Darby Creek Joint Authority
100 East 5th Street
Chester, PA 19013

Dennis O'Mahanoy, Secretary
Muckinipates Authority
962 Grant Road
Folcroft, PA 19016-1722

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Radnor-Haverford-Marple Sewer Authority
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Havertown, PA 19083

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Upper Providence Township Planning
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Rita E. Reves
Willistown Township Planning Commission
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West Chester, PA 19380

William Payne
Delaware County Planning Commission
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Media, PA 19063

James Kern, Secretary
Central Delaware County Authority
212-B Unity Terrace
Rutledge, PA 19070

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Middletown Township, Delaware County
Sewer Authority
Post Office Box 9
Lima, PA 19037

Rich Lafiata, Finance Manager
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Municipal Authority
209 Bishop Hollow Road
Newtown Square, PA 19073-3298

Linda Lamberto, Office Manager
Southern Delaware County Authority
101 Beech Street
Marcus Hook, PA 19061-4062

Cecelia Nelson, Administrator
Southwest Delaware County Municipal
Authority
Post Office Box 2466
Aston, PA 19014-0466

Patricia Hall, Secretary
Upper Providence Township Sewer Authority
935 North Providence Road
Media, PA 19063

Patrick Patterson, Regional Director
PA Department of Environmental Protection
2 E. Main Street
Norristown, PA 19401-4915


Christine M.T. Mason
Colwyn Borough
221 Spruce Street
Colwyn, PA 19023

James Martin, Chairman
Tinicum Township, Delaware County Sewage
Auth.
629 N. Governor Printz Boulevard
Essington, PA 19029

Robert A. Judge, Sr., Executive Manager
Chester Water Authority
415 Welsh Street
Chester, PA 19016-0467

Patrick McDonnell, Secretary
PA Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Honorable Josh Shapiro
Attorney General
Pennsylvania Office of Attorney General
Strawberry Square
3rd and Walnut Streets
Harrisburg, PA 17120



Thomas T. Niesen
PA ID No. 31379

Dated this 22nd day of July, 2020

July 17, 2020

VIA CERTIFIED MAIL

Ronald Starr, Chief of Staff
City of Chester
Chester City Hall
1 Fourth Street
Chester, PA 19013

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

Dear Mr. Starr:

We are regulatory counsel to Aqua Pennsylvania Wastewater, Inc. At the direction of the Pennsylvania Public Utility Commission, we are serving the City of Chester with a copy of Aqua's above referenced Application for PaPUC approval of its acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority. The copy is in electronic format on the enclosed USB drive, with the Application, each of its many Exhibits, and supplemental information presented as separate files. In paper form, the Application, Exhibits and supplemental information total more than 20,000 pages. If you would like a paper copy of the Application/Exhibits/supplemental information, please contact me at 717.255.7641 to discuss the logistics of providing a paper copy to you. Additionally, please be aware that the Application and supporting detail includes information, which is Confidential and Proprietary and which was filed with the Pennsylvania Public Utility Commission under seal. The Confidential and Proprietary Information is not included on the USB drive.

Also enclosed is a copy of the Notice which was published in a newspaper having general circulation in the area.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Alexander R. Stahl, Esquire (via email, w/o encl.)
Thomas S. Wyatt, Esquire (via email, w/o encl.)

Exhibit B



An  Essential Utilities Company

Marc A. Lucca, President

O: 610.645.1059 • F: 610.527.7527 • E: MALucca@aquaamerica.com

May 2, 2022

VIA ELECTRONIC AND FIRST CLASS MAIL

Michael T. Doweary
The City of Chester
419 Avenue of the States, Suite 401
Chester, PA 19013
Email: mdoweary@pa.gov

Re: City of Chester's Claimed Reversionary Interest

Dear Receiver Doweary:

We are in receipt of your letters dated April 7, 2022 to the Secretary of the Pennsylvania Public Utility Commission ("PaPUC") and counsel for Aqua Pennsylvania Wastewater, Inc. ("Aqua"), regarding the Agreement of Sale and Service between the City of Chester (the "City") and DELCORA, dated February 12, 1973, and amended on January 21, 1986 (the "Agreement"). This correspondence responds to those letters.

We do not believe it will be necessary for the City to file a formal protest in the application proceeding before the PaPUC to resolve the City's concerns. As you are aware, Aqua is a party to a fully executed contract with DELCORA for the purchase of DELCORA's assets, which the Commonwealth Court recently held is binding and enforceable.

While we acknowledge that Paragraph 15.7 of the Agreement pertains to a reversionary interest to the City, the scope of that reversionary interest is quite limited. As such, and as you recognize, under no circumstances will this be an impediment to consummating the underlying transaction between Aqua and DELCORA.

The operative portion of the Agreement states as follows:

15.7 If at any time in the future during the term of this Section 15 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real Property, other than the Treatment Plant and those facilities in the Collection System described in Section 2(d) shall revert to Seller's ownership rather than to the County of Delaware or any other agency.

The Agreement itself does not clearly define the scope of the assets covered by the reversionary interest. Moreover, the Agreement does not contain a list of specific assets that were acquired from the City at the time the Agreement was executed. As a result, the scope of assets covered by the reversionary interest are even less clear.

The Agreement simply defines the scope of the assets subject to the reversionary interest as the "fixed assets" and the "Real Property." The term "fixed assets" is not defined and there was no list of "fixed assets" attached to the original Agreement, as amended, but the only reasonable interpretation of that provision would be those assets that were acquired by DELCORA from the city in 1973, excluding any assets acquired by DELCORA – inside or outside the City – after closing. Because most, if not all, of these assets have been replaced since 1973 due to old age, the City's reversionary interest in "fixed assets" likely has little-to-no value at this time. Does the City have a list of the "fixed assets" over which it believes it has a reversionary interest? If so, please forward the list for our review.

The term "Real Property" includes all interests in real estate (fee, easements, rights of way) conveyed to DELCORA at Closing. However, the reversionary interest provision expressly excludes: (1) the "Treatment Plant" and (2) any portion of the "Collection System used to transport in combination sewage from within the City limits of Seller and sewage from outside..." The term "Treatment Plant" is defined in Section 1(b) as the 23.9 acre tract specifically defined legally at Exhibit B to the Agreement, the improvements on it (i.e., the plant itself) and all "Personal Property" on that tract. "Personal Property" is defined, essentially, as anything located at the tract. The exclusion of a portion of the "Collection System" means that the only portion of the Collection System covered by the reversionary interest is the portion of the collection and conveyance system contained completely within the City limits and does not accept wastewater from any customer outside of the City. Again, if the City has a list of the Real Property that it contends is subject to the reversionary interest, and the value of those assets, we will consider that information.

If you have any additional questions, please feel free to reach out.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc A. Lucca", with a stylized flourish at the end.

Marc A. Lucca

Exhibit C



May 25, 2022

Michael T. Doweary
The City of Chester
419 Avenue of the States, Suite 401
Chester, PA 19013
[Email: mdoweary@pa.gov](mailto:mdoweary@pa.gov)

Re: City of Chester's Claimed Reversionary Interest

Dear Receiver Doweary:

We are in receipt of the letter dated May 5, 2022, from John P. McLaughlin to John Povilaitis advising that you disagree with our position regarding the existence of the City's claimed reversionary interests set forth in Paragraph 15.7 of the Agreement, as well as the scope of assets.

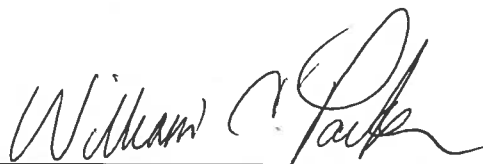
As the City continues to assert its perceived rights under paragraph 15.7, we again ask that the City provide a list of Real Property and the value of those assets that it contends is subject to the reversionary interest. We would like to come to a resolution and meet to discuss our respective positions.

Sincerely,

Marc A. Lucca
President, Aqua Pennsylvania

VERIFICATION

I, William C. Packer, certify that I am Vice President, Regulatory Accounting & Regional Controller, for Aqua Pennsylvania Wastewater, Inc., and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Aqua Pennsylvania Wastewater, Inc., expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

A handwritten signature in black ink, appearing to read "William C. Packer", written over a horizontal line.

William C. Packer
Vice President, Regulatory Accounting &
Regional Controller

DATED: June 21, 2022

**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.

Via Email:

The Honorable F. Joseph Brady
Administrative Law Judge
Pennsylvania Public Utility Commission
fbrady@pa.gov

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

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Kenneth R. Stark, Esq.
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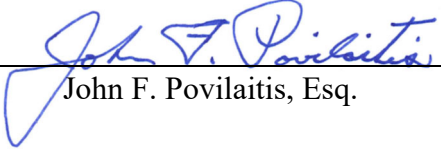
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Peter Ginoplus
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Date: June 21, 2022


John F. Povilaitis, Esq.