

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. pursuant to Sections	:	
1102, 1329 and 507 of the Public	:	A-2019-3015173
Utility Code for approval of the acquisition	:	
by Aqua of the wastewater system assets	:	
of the Delaware County Regional Water	:	
Quality Control Authority	:	

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**REPLY TO NEW MATTER**

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TO ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY (ALJ Brady):

Pursuant to Section 5.63 of the Commission's Regulations, 52 Pa. Code § 5.63, the County of Delaware, Pennsylvania (the County) hereby files this Reply to New Matter to respond to new matter contained in the Answer of Aqua Pennsylvania Wastewater, Inc.'s ("Aqua") in Opposition to the Petition to Intervene of Michael Doweary, the Receiver for the City of Chester, Pennsylvania ("Aqua's Answer") in the above captioned application.

**I. INTRODUCTION**

The procedural history of this matter is well-documented in this proceeding, and need not be repeated in full. On March 30, 2021, the Commission entered an Order at the above-captioned docket ("March 30 Order") remanding the proceeding to the Office of Administrative Law Judge "for such further proceedings as deemed necessary and the issuance of a Recommended Decision on Remand consistent with this Opinion and Order."<sup>1</sup> On April 16, 2021, ALJ Brady issued an Order Staying Proceeding. On April 29, 2021, the County filed a Petition for Review of the March 30, 2021, Order with the Commonwealth Court. Subsequently, the Commission has accepted various filings in Docket No. A-2019-3015173. However, neither

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<sup>1</sup> March 30 Order at 16.

ALJ Brady nor the Commission have entered any substantive orders or held any hearings on remand.

Aqua's Answer asserts "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."<sup>2</sup> The County disputes this unsupported interpretation of the March 30 Order and avers that Aqua's claims as to the scope of remand proceedings constitutes a new matter to which the County has a right to reply.<sup>3</sup>

## **II. REPLY TO NEW MATTER**

In Paragraph 26, Aqua's Answer asserts "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." The County disputes these unfounded assertions, which are inconsistent with the March 30 Order.<sup>4</sup>

The March 30 Order reopened the evidentiary record and remanded this case for further proceedings as necessary:

At present, the recent filings and the averments contained in them are not part of the evidentiary record. Thus, there has been no opportunity for any of the Parties to present testimony subject to cross examination related to these purported evidentiary matters. Moreover, we highlight the County Appeal Notice Petition filed on January 29, 2021. This submission indicates that outstanding litigation remains which may need to be considered when evaluating this Application. Upon review, we find that it is in the public interest to reopen the

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<sup>2</sup> Aqua Answer at Para. 26 at 8.

<sup>3</sup> 52 Pa. Code § 5.63(a).

<sup>4</sup> The County also disputes similar assertions made elsewhere in Aqua's Answer, including but not limited to, Paragraphs 4 and 29.

record, as provided in Section 5.571(d)(2) of our Regulations, to consider the filings submitted after the close of the record outlined above because they may impact the Commission's ultimate evaluation of the Application.

On March 10, 2021, Aqua filed the Extension Letter by which it voluntarily waived the statutory deadline in this matter. Accordingly, it is not necessary to rule on the Exceptions at this time. Aqua's action in filing the Extension Letter allows the Commission the opportunity to reopen the record and remand the matter for further proceedings as necessary.

Thus, we shall vacate the Recommended Decision, reopen the record, and remand the proceeding to the OALJ for such further case. After conducting any further proceedings as deemed necessary, we direct the presiding officer to prepare a Recommended Decision on Remand evaluating and recommending the disposition of the entire Application.<sup>7</sup>

We acknowledge the ALJs' prior concerns about the outstanding issues present at the close of the evidentiary record and the concerns about issuing what would be tantamount to a hypothetical recommendation. See R.D. at 26. By directing the reopening of the record and remanding the proceeding, we are affording the Parties the opportunity to present appropriate evidence as deemed necessary in light of the recent developments so as to permit a full evaluation of the Application pursuant to Sections 1102, 1329, and 507 of the Code.

March 30 Order at 15 (emphasis added).

As evidenced by the above excerpt, the scope of the remand proceeding is not constrained in the manner claimed by Aqua's Answer. Aqua posits that the "[e]ven 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"<sup>5</sup> However, that statement is unsupported by the record. The March 30 Order vacated the entirety of the preceding Recommended Decision.<sup>6</sup> The Commission thus addressed the remand scope by stating "[a]fter conducting any further proceedings as deemed necessary, we direct the presiding officer to prepare a Recommended Decision on Remand

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<sup>5</sup> March 30 Order, at 8.

<sup>6</sup> *Id.* at 15. (emphasis added).

evaluating and recommending the disposition of the entire Application.”<sup>7</sup> Aqua’s comments with regard to the scope of the remand proceeding are premature, inconsistent with the Commission’s vacating of the Recommended Decision, and injurious to parties’ due process rights. The appropriate and necessary scope of the remand should be determined in the normal course of the remand proceedings pursuant to the March 30 Order.<sup>8</sup> Aqua’s interpretation of the scope of remand should be given no weight by the Commission in its disposition of the City of Chester’s Petition to Intervene.

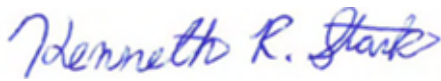
### III. CONCLUSION

For the foregoing reasons, the County of Delaware, Pennsylvania respectfully requests that the Commission deny the New Matter raised in 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.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

Dated: July 11, 2022

By 

Kenneth R. Stark (I.D. No. 312945)  
Adeolu A. Bakare (I.D. No. 208541)  
Robert F. Young (I.D. No. 55816)  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 260-1744  
kstark@mcneeslaw.com  
abakare@mcneeslaw.com

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<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> The March 30 Order may be unaffected if the Commonwealth Court quashes the County’s Petition for Review at 455 CD 2021. Alternatively, the March 30 Order could be affirmed, modified or reversed by the Commonwealth Court on the merits.

## CERTIFICATE OF SERVICE

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

### VIA E-MAIL

The Honorable F. Joseph Brady  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
[fbrady@pa.gov](mailto:fbrady@pa.gov)

Thomas T. Niesen, Esq.  
Thomas, Niesen & Thomas, LLC  
212 Locust Street, Suite 302  
Harrisburg, PA 17101  
[tniesen@tntlawfirm.com](mailto:tniesen@tntlawfirm.com)  
*Counsel to Aqua Pennsylvania*

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

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

Alexander R. Stahl, Esq.  
Aqua Pennsylvania, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
[astahl@aquaamerica.com](mailto:astahl@aquaamerica.com)

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

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

Christine Maloni Hoover, Esq.  
Erin L. Gannon, Esq.  
Harrison W. Breitman, Esq.  
Santo G. Spataro, Esq.  
Office of Consumer Advocate  
555 Walnut Street, Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
[OCADelcora@paoca.org](mailto:OCADelcora@paoca.org)

Steven Gray, Esq.  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

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Page 2

Justin G. Weber, Esq.  
Troutman Pepper Hamilton Sanders LLP  
100 Market Street, Ste. 200  
P.O. Box 1181  
Harrisburg, PA 17108-1181  
[justin.weber@troutman.com](mailto:justin.weber@troutman.com)  
*Counsel to Kimberly Clark Corp.*

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

Patricia Kozel  
15 Hazzard Run Road  
Lake Harmony, PA 18624  
[pattyk6@icloud.com](mailto:pattyk6@icloud.com)

Lawrence and Susan Potts  
11 Chestnut Street  
P.O. Box 522  
Lake Harmony, PA 18624  
[susie01213@aol.com](mailto:susie01213@aol.com)

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

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

Scott J. Rubin, Esq.  
4627 Chandlers Forde  
Sarasota, FL 34235-7118  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
*Counsel to Southwest Delaware County  
Municipal Authority*

Ross F. Schmucki  
218 Rutgers Avenue  
Swarthmore, PA 19081  
[rschmucki@gmail.com](mailto:rschmucki@gmail.com)

Edward Clark Jr.  
Treasure Lake Property Owners Association  
13 Treasure Lake  
DuBois, PA 15801  
[gm@treasurelake.us](mailto:gm@treasurelake.us)

Robert W. Scott, Esq.  
Robert W. Scott PC  
205 North Monroe Street  
P.O. Box 468  
Media, PA 19063  
[rscott@robertwscottpc.com](mailto:rscott@robertwscottpc.com)

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Page 3

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

John McLaughlin, Esq., (Pa. I.D. No.: 49765)  
Tiffany R. Allen, Esq., (Pa. I.D. No.: 323629)  
Benjamin Patchen, Esq., (Pa. I.D. No.: 316514)  
3 Campbell Durrant, P.C. One Belmont  
Avenue Suite 300 Bala Cynwyd, PA 19004  
Phone: (610) 227-2591  
[jmclaughlin@cdblawn.com](mailto:jmclaughlin@cdblawn.com)  
[tallen@cdblawn.com](mailto:tallen@cdblawn.com)  
[bpatchen@cdblawn.com](mailto:bpatchen@cdblawn.com)

*Attorneys for Receiver for City of Chester*



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Kenneth R. Stark

Counsel to the County of Delaware, Pennsylvania

Dated this 11<sup>th</sup> day of July, 2022, in Harrisburg, Pennsylvania