

John F. Povilaitis
717 237 4825
john.povilaitis@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852

July 21, 2022

VIA EFILING

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

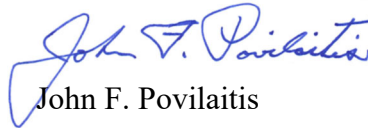
Re: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102,
1329 and 507 of the Public Utility Code for approval of the acquisition by Aqua
of the wastewater system assets of the Delaware County Regional Water Quality
Control Authority;
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed please find the Motion to Strike Reply to New Matter and Notice to Plead of
Aqua Pennsylvania Wastewater, Inc., filed in the above-referenced proceeding.

These documents are 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**

Administrative Law Judge
F. Joseph Brady

**Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102, 1329, and 507 of the Public Utility : Docket No. A-2019-3015173
Code for Approval of its Acquisition of :
the Wastewater System Assets of the :
Delaware County Regional Water :
Quality Control Authority :**

NOTICE TO PLEAD

TO: Adeolu A. Bakare, Esq.
Robert F. Young, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17101

You are hereby notified to file a written Answer to the enclosed Motion to Strike Reply to New Matter ("Motion") within twenty (20) days from service of this Notice. If you do not file a written Answer to the enclosed Motion, the presiding Administrative Law Judge may rule on this Motion without further input.

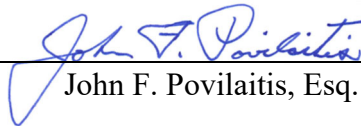
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

John F. Povilaitis
Alan M. Seltzer
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101

Dated: July 21, 2022



John F. Povilaitis, Esq.

**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 :**

MOTION TO STRIKE REPLY TO NEW MATTER

TO THE HONORABLE F. JOSEPH BRADY, PRESIDING ADMINISTRATIVE LAW JUDGE:

I. INTRODUCTION

Pursuant to Sections 5.1(a)(6) and 5.103(b) of the Pennsylvania Public Utility Commission’s (“Commission”) Regulations, 52 Pa. Code §§ 5.1(a)(6), 5.103(b), Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) moves to strike the County of Delaware’s (“County” or “Delco”) July 11, 2022 Reply to purported New Matter, contained in Aqua’s June 21, 2022 Answer in Opposition to the Petition (“Answer”) to Intervene of Michael Dowearry, Receiver for the City of Chester, Pennsylvania. As explained in greater detail in the balance of this Motion, the County’s Reply to New Matter should be stricken and disregarded by the Administrative Law Judge (“ALJ”) and the Pennsylvania Public Utility Commission (“Commission”) in adjudicating the Receiver’s Petition to Intervene. In connection with this Motion, Aqua represents as follows:

1. The County is not entitled to respond to any assertion in Aqua’s Answer since no New Matter was pled in that pleading. The alleged New Matter was merely Aqua’s characterization of the scope of the remand directed by the Commission in its order of March 30, 2021 Order (“March 30 Order”). Aqua’s interpretation of the March 30 Order in its Answer was made in the context of the Commission’s regulation on interventions that specifies interventions

are not permitted once hearings in a proceeding have concluded. 52 Pa. Code § 5.74(c). The extent to which hearings have concluded and the extent to which additional hearings may be needed is relevant to the intervention request and the standards by which it should be adjudicated. Aqua's legal interpretation of the scope of the remand directed by the March 30 Order was neither a *de jure* nor a *de facto* new matter that justifies any "Reply" from the County in this proceeding. The County has not pled that it has any legal interest in the issue of whether the Receiver of the City of Chester is allowed to intervene in this proceeding at this time, and Delco's intrusion into the pleadings submitted on this issue should be disregarded.

2. In addition, the substantive position set forth by the County in its Reply to New Matter is erroneous. The County claims that Aqua's view that the scope of the remand proceeding is limited adversely affects its interests and justifies a response. County Answer pp. 2-4. Delco bases its view that the scope of the remand is not constrained on the use of the words "remand the matter for further proceedings as necessary" in the March 30 Order, that the March 30 Order vacated the Presiding Officers' Recommended Decision ("RD") in its entirety. County Answer p. 3. Neither element of the March 30 Order supports the County's interpretation.

3. The March 30 Order was specific on why a remand of the proceeding was necessary. The Commission directed the remand (i) to provide the Parties an opportunity to review and respond to material filed with the Commission by various Municipal Protestants after the close of the evidentiary record and (ii) to allow Aqua's and DELCORA's position on returning Trust proceeds to customers as articulated in Exceptions to be addressed on the record. March 30 Order at 14-15.

4. While Delco claims that the words remanding a matter "for further proceedings as necessary" materially expands the scope of the proceeding well beyond the specific issues

referenced in the March 30 Order, the fact is that such standard language is frequently added by the Commission to an order when it remands a proceeding for further consideration of specific, limited issues. This “further proceedings as necessary” language merely confirms to a Presiding Officer that while the issues the remand must address may have been specifically stated by the Commission in its order, the ALJ still has some discretion to decide if additional matters may be addressed in the remand. That language is certainly not a blanket authorization for the ALJ to schedule a re-litigation of every issue in the case, as erroneously suggested by Delco.

5. Between 2006 and 2022, nine Commission orders identified specific, limited issues that were to be addressed on remand, and those orders also included the words “and further proceedings as necessary.” This is standard language in a remand order and not a direction to the ALJ to conduct a full re-litigation of the proceeding. *Myesha Brown v. PECO*, Docket No. C-2019-3009, 2021 WL 3840878 (2021) (Customer complaint case remanded to provide Complainant an opportunity to explain why she wanted to pursue her complaint, and for further proceedings as necessary.); *Application of Discount Cab Service, LLC*, Docket Nos. A-6310309, A-2010-2195541 (2014) (Call or Demand Application remanded at Applicant’s request to address change in financial status, and for further proceedings as necessary.); *Kessler v. PECO*, Docket No. C-2017-2630792, 2019 WL 365665 (2019) (Case remanded to resolve factual dispute regarding basis for Complainant withdrawing Complaint and for further proceedings as necessary.); *Energy Efficiency and Conservation Program*, Docket Nos. M-2008-2069887, M-2012-2289411, 2014 WL 1266188 (2014) (Case referred for BI&E consideration of West Penn’s compliance with the May 31, 2011 1% consumption reduction target and further proceedings as necessary.); *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864, 2022 WL 1719050 (2022) (Case referred for BI&E investigation of peak demand reduction compliance

and further proceedings as necessary.); *Pa.P.U.C. v. Columbia of PA*, Docket No. M-2021-3005572, 2022 WL 1719060 (2022) (Remand to address what facilities required replacement, Columbia’s ability to recover/seek recovery of the cost of replacement facilities and extent of damage to customer property due to over-pressurization events, and further proceedings as deemed necessary.); *Application of Penn Estates Utilities, Inc. of Pennsylvania*, Docket No. A-210072F0003, A-230063F0003, A-230013F0004, A-210093F0002, 2006 WL 1070907 (2006) (Remand to consider ten specific issues (the “Penn Estate” issues), and further proceedings as deemed necessary.); *Pa.P.U.C. v. Ronald E. Norris, Jr., t/a Get On the Bus*, Docket No.A-00115999, A-00115999C0401, 2009 WL 2135877 (2009) (Remand to consider seven specifically enumerated questions, such evidentiary hearings as deemed necessary, but expressly stating that the ALJ was not limited to addressing the Commission’s questions.); *Cozart v. PGW*, Docket No. C-2018-2646671, 2018 WL 4636863 (2018) (Remand to address the extent and impact of bedbug infestation, to determine how PGW calculates household income, to determine if Complainant’s CRP payment amount is consistent with PGW’s approved USECP and other rules and precedent, and for further proceedings as necessary.). The Commission routinely uses the phrase “for further proceedings as necessary” in cases remanded to address specific, limited issues.

6. The County’s contention on pages 3 and 4 of its Reply to New Matter that by vacating the RD the Commission significantly broadened the scope of evidentiary hearings needed to complete the evidentiary record of this case is also erroneous. At the time the vacated RD was issued, only one of the Municipal Protests had been withdrawn. Therefore, the RD had to be vacated because the previously outstanding, but now withdrawn, litigation in the Delaware County Court of Common Pleas by the Municipal Parties impacted the ALJs’ view that the Application could not be approved because the full scope of the assets to be acquired by Aqua from DELCORA

was subject to litigation. RD at 21. The withdrawal of the Municipal Protests, after the evidentiary record had closed, eliminated that perceived threshold obstacle, and would allow the ALJ in the remand to address many issues in the proceeding not reached by the initial RD. In short, given the legal domino effect of the withdrawal of the Municipal Protests, vacating the RD was appropriate.

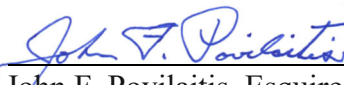
7. The scope of the remand proceeding should be determined by the ALJ, consistent with the direction provided by the Commission in the March 30 Order. The County will not be aggrieved by any determination made on the Petition of the Receiver of the City of Chester to Intervene, and there was no new matter raised by Aqua that entitled the County to file a Reply. Therefore, the County's Reply to New Matter should be stricken and disregarded.

II. CONCLUSION

For the foregoing reasons, Aqua respectfully requests that the Reply to New Matter of the County of Delaware, Pennsylvania be stricken from the record.

BUCHANAN INGERSOLL & ROONEY PC

Dated: July 21, 2022

By: 

John F. Povilaitis, Esquire
Alan M. Seltzer, Esquire
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
john.povilaitis@bipc.com
alan.seltzer@bipc.com

Counsel for Aqua Pennsylvania Wastewater, Inc.

**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

Adeolu A. Bakare, Esq.
Robert F. Young, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com

Alexander R. Stahl
Aqua America
Regulatory Counsel
762 W. Lancaster Ave.
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Christine Maloni Hoover
Erin L. Gannon
Senior Assistant Consumer Advocates
Harrison G. Breitman
Assistant Consumer Advocates
OCADELCORA@paoca.org

Gina L. Miller, Prosecutor
Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ginmiller@pa.gov
ermclain@pa.gov

Kenneth D. Kynett, Esq.
Charles G. Miller, Esq.
Petrikin, Wellman, Damico, Brown & Petrosa
kdk@petrikin.com
cgm@petrikin.com

Thomas Wyatt, Esq.
Matthew S. Olesh, Esq.
Obermayer Rebmann Maxwell & Hippe LLP
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Melissa A. Chapaska
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com
machapaska@hmslegal.com

Justin Weber
Michelle M. Skholdal
Jason T. Ketelson
Marc Machlin
Troutman Pepper Hamilton Saunders LLP
100 Market Street, Suite 200
Po Box 1181
Harrisburg, PA 17108
justin.weber@troutman.com
michelle.skjoldal@troutman.com
jason.ketelsen@troutman.com
marc.machlin@troutman.com

Scott J. Rubin, Esq.
4627 Chandlers Forde
Sarasota, FL 34235-7118
scott.j.rubin@gmail.com

Cynthia Pantages
C&L Rental Properties, LLC
cyndipantages@gmail.com

Joseph L. Vullo
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@bvrllaw.com

Robert W. Scott
rscott@robertwscottpc.com

Lawrence and Susan Potts
susie01213@aol.com

Samantha Newell
Patrick F. Seymour
Michael P. Clarke
Rudolph Clarke, LLC
Seven Neshaminy Interplex, Suite 200
Trevose, PA 19053
snewell@rudolphclarke.com
pseymour@rudolphclarke.com
mclarke@rudolphclarke.com

Ross Schmucki
218 Rutgers Ave.
Swarthmore, PA 19081
rschmucki@gmail.com

Edward Clark Jr.
Treasure Lake Property Owners Association
13 Treasure Lake
Dubois, PA 15801
gm@treasurelake.us

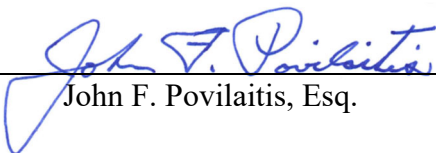
Thomas Niesen
Thomas Niesen & Thomas LLC
212 Locust Street Suite 302
Harrisburg PA 17101
tniesen@tntlawfirm.com

John McLaughlin
Tiffany R. Allen
Benjamin Patchen
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
jmclaughlin@cdblawn.com
tallen@cdblawn.com
bpatchen@cdblawn.com

Patricia Kozel
Pattyk6@icloud.com

Peter Ginoplus
pete@kiddertax.com

Date: July 21, 2022



John F. Povilaitis, Esq.