



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166  
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare  
Direct Dial: 717.237.5290  
Direct Fax: 717.260.1744  
abakare@mcneeslaw.com

October 12, 2022

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

**VIA ELECTRONIC FILING**

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

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission in the above-referenced proceeding is the Further Prehearing Memorandum of the County of Delaware.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Adeolu A. Bakare

Counsel to the County of Delaware, Pennsylvania

c: Administrative Law Judge F. Joseph Brady  
Certificate of Service

**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	:	

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**FURTHER PREHEARING MEMORANDUM OF  
THE COUNTY OF DELAWARE, PENNSYLVANIA**

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Pursuant to Administrative Law Judge (“ALJ”) F. Joseph Brady’s Prehearing Conference Remand Order dated July 29, 2022 (“Prehearing Remand Order”) and in light of the second prehearing conference scheduled for October 12, 2022, the County of Delaware, Pennsylvania (the “County”) hereby submits this Prehearing Memorandum to provide the County’s perspective on an appropriate hearing schedule and other matters raised by the Further Prehearing Memorandum of Aqua Wastewater Pennsylvania, Inc. (“Aqua”) that Aqua filed on October 11, 2022.

**Procedural Schedule**

On the afternoon of October 10, 2022, a PUC holiday, Aqua proposed a procedural schedule to the parties. The County, along with the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Commission’s Bureau of Investigation & Enforcement (“I&E”), Sunoco Partners Marketing & Terminals L.P. (“Sunoco”), informed Aqua that the intervening parties had already reached consensus on a schedule. Further discussion did not yield a consensus schedule among all parties, with Aqua and DELCORA supporting the schedule proposed in Aqua’s Further Prehearing Memorandum. The County hereby submits this

Further Prehearing Memorandum presenting the schedule proposed by Sunoco and supported by the County, I&E, OCA, and OSBA, as set forth below:

Other Parties Direct – December 12, 2022  
Rebuttal – January 16, 2023  
Surrebuttal – February 6, 2023  
Written Rejoinder – February 20, 2023  
Hearings – Week of March 6, 2023  
Main Brief – March 29, 2023  
Reply Brief – April 12, 2023

The County believes this schedule reflects the unique procedural posture of this proceeding and the proper scope of this remand proceeding. The Commission’s March 30, 2021, Order in the above-captioned docket (“March 30 Order”) vacated the entirety of the prior Recommended Decision and remanded the case to the presiding ALJ “for such further proceedings as may be appropriate in light of the new developments in the case” before issuing a new Recommended Decision on Remand. March 30 Order at 15. The efforts by Aqua to characterize the Recommended Decision on Remand as a limited or narrow remand must be flatly rejected.

The Commission has historically been very specific when intending to narrowly limit the scope of remand proceedings. For example, *In Application of West Penn Power Company for approval: (1) to locate, construct, operate and maintain certain high voltage electric transmission line facilities; and, (2) to exercise the power of eminent domain to construct and install the proposed aerial electric transmission line facilities along the proposed route*, Pa. PUC Docket No. A-2009-2086954, (Order entered May 26, 2010) (“West Penn Remand Order”), the Commission remanded an application for siting transmission line facilities back to the ALJ. In this Order, the Commission specified that “[t]hat this matter is remanded to the Office of Administrative Law Judge for expedited proceedings consistent with this Opinion and Order on

*the issues of the existing right-of-way and the allocation of the costs of the Pursley Line.”* (Emphasis added). West Penn Remand Order at 15. The Commission applied similarly restrictive language in directing the ALJ to issue a Supplemental Initial Decision on Remand in *Core Communication, Inc. v. Verizon Pennsylvania Inc. and Verizon North, LLC*, Pa. PUC Docket No. C-2011-2253750, (Order entered May 28, 2015) (“Core Remand Order”). Here, the Commission limited the scope of the remand by advising parties that “[i]n light of the changed circumstances, we are of the opinion that a limited remand of this proceeding is necessary so that [Federal Communications Commission’s] *VoIP Symmetry Order*, at a minimum, may be reviewed to determine its impact on the intercarrier compensation issues in the matter before us and subsequently addressed in a Supplemental Initial Decision on Remand.” Core Remand Order at 10.

By way of contrast, the Commission’s March 30 Order in the above-captioned docket did not similarly narrow the scope of this remand. To the contrary, the Commission was clear that the ALJ is to rule on the Application in its totality, stating “we shall vacate the Recommended Decision, reopen the record, and remand the proceeding to the OALJ for such further proceedings as may be appropriate in light of the new developments in the 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.” March 30 Order at 15. The outcome of this proceeding will not be a Supplemental Recommended Decision on Remand but rather a complete Recommended Decision on the entirety of Aqua’s Application under the statutory requirements of Sections 1329, 1102, and 507 of the Public Utility Code. 66 Pa. C.S. §§ 1329, 1102, 507. Accordingly, the scope of the proceedings that “may be appropriate in light of new developments in the case”

must also include proceedings on the impact of new developments and the passage of time on the prior record. Otherwise, the parties would be foreclosed from presenting the ALJ with a thorough record upon which a complete Recommended Decision on Remand could be issued.

To that end, the County submits that it would have been preferable for Aqua to submit more comprehensive record updates than the 33-pages of remand testimony on limited updates from only two witnesses. The Company's decision to present only limited record and testimony updates in its remand presentation leaves the parties with the complicated task of reviewing the prior record and testimony statements to determine what additional revenue projections, capital improvement plans, rate projections, or other new developments should be addressed. Notwithstanding these complexities, the majority of the intervenors have reached consensus on a procedural schedule, which demonstrates progress from the initial Prehearing Conference where parties had not yet had an opportunity to secure expert witnesses or propound sufficient discovery to begin contemplating the appropriate timeframe for development of a record in this proceeding.

The County further submits that this proceeding is not restrained by the 6-month timeframe for Section 1329 proceedings. As set forth in the Commission's March 30 Order, Aqua unilaterally and without consulting other parties "filed the Extension Letter by which it voluntarily waived the statutory deadline in this matter." March 30 Order at 15. However, even with consideration of the traditional Section 1329 proceedings, the intervenors' proposal remains reasonable. Under a traditional Section 1329 proceeding, parties are afforded several months from the initial filing of the Application to propound informal and formal discovery and secure expert witnesses while the Application remains pending with the Commission's Technical Utility Services Bureau before it is formally accepted and subjected to the 6-month statutory deadline.

For example, Aqua filed its Application on March 3, 2020. The Commission formally accepted the Application on July 27, 2020 and a suspension period ending March 26, 2021 was subsequently established. In other words, the initial review of Aqua's Application occurred over a full calendar year, meaning any claims that the intervenors proposed schedule for the remand proceedings exceeds the timeframe afforded for review of the initial Application are not credible. The procedural schedule supported by the County, I&E, OCA, OSBA, and Sunoco reasonably reflects this unusual procedural posture of this proceeding and the practical realities of contending with a remand of a complex litigation matter.

**Need for additional public input hearings.**


Given the passage of time and lack of public notice to customers concerning the remand proceeding, the County submits that additional public input hearings may be prudent, appropriate, and in the public interest. Aqua has not demonstrated that public input hearings are unnecessary.

## CONCLUSION

For the foregoing reasons, the County of Delaware recommends that Your Honor adopt the procedural schedule proposed by Sunoco and supported by the County, I&E, OCA, and OSBA.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare (I.D. No. 208541)  
Robert F. Young (I.D. No. 55816)  
Kenneth R. Stark (I.D. No. 312945)  
McNEES WALLACE & NURICK LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
abakare@mcneeslaw.com  
ryoung@mcneeslaw.com  
kstark@mcneeslaw.com

Counsel to the County of Delaware,  
Pennsylvania

Dated: October 12, 2022

## 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

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*

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)

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*

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)

Alexander R. Stahl, Esq.  
Aqua Pennsylvania, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
[astahl@aquaamerica.com](mailto:astahl@aquaamerica.com)  
Steven Gray, Esq.  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

Samantha L. Newell, Esq.  
Patrick F. Seymour, Esq.  
Michael P. Clarke, Esq.  
Rudolph Clarke, LLC  
Seven Neshaminy Interplex, Suite 200  
Trevose, PA 19053  
[snewell@rudolphclarke.com](mailto:snewell@rudolphclarke.com)  
[pseymour@rudolphclarke.com](mailto:pseymour@rudolphclarke.com)  
[mclarke@rudolphclarke.com](mailto:mclarke@rudolphclarke.com)  
*Counsel to Delaware County Regional Water  
Quality Control Authority*

Joseph L. Vulllo, ESq.  
Burke Vullo Reilly Roberts  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
[jlvullo@bvrrlaw.com](mailto:jlvullo@bvrrlaw.com)  
*Counsel to Southwest Delaware County  
Municipal Authority*



Thomas J. Sniscak, Esq.  
Whitney E. Snyder, Esq.  
Kevin J. McKeon, Esq.  
Philip Demanchick, 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)  
[PDDemanchick@hmslegal.com](mailto:PDDemanchick@hmslegal.com)  
*Counsel to Sunoco Partners Marketing*



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Adeolu A. Bakare

Counsel to the County of Delaware, Pennsylvania

Dated this 12<sup>th</sup> day of October, 2022, in Harrisburg, Pennsylvania