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November 21, 2012

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

**VIA ELECTRONIC FILING**

**RE: Joint Application of Aqua Pennsylvania, Inc. and Total Environmental Solutions. Inc.;**  
**Docket Nos. A-2012-2322416 and A-2012-2322501**

**Joint Application of Little Washington Wastewater Company d/b/a Suburban**  
**Water Company and Total Environmental Solutions, Inc.;**  
**Docket Nos. A-2012-2322448 and A-2012-2322509**

Dear Secretary Chiavetta:

Enclosed please find for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply to Answer and New Matter in response to the Answer of Aqua Pennsylvania, Inc., Little Washington Wastewater Company d/b/a Suburban Water Company and Total Environmental Solutions, Inc. to the Request of the City of DuBois – Water Bureau for Consideration of its Protest Nunc Pro Tunc in the above-referenced proceeding.

As shown on the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Adeolu A. Bakare

Counsel to the City of DuBois – Water Bureau

Enclosure

cc: Mr. John F. Suplizio (via e-mail)  
Ms. Toni Cherry (via e-mail)  
Robert F. Powelson, Chairman (via Hand Delivery)  
John F. Coleman, Vice Chairman (via Hand Delivery)  
Wayne E. Gardner, Commissioner (via Hand Delivery)  
James H. Cawley, Commissioner (via Hand Delivery)  
Pamela A. Witmer, Commissioner (via Hand Delivery)

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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DuBois, PA 15801

Clearfield County Planning Commission  
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Clearfield, PA 16830

Sandy Township Board of Supervisors  
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DuBois, PA 15801

Sandy Township Planning Commission  
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Clearfield County Commissioners  
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Chris Corcoran, President  
Treasure Lake Property  
Owners Association, Inc.  
13 Treasure Lake  
DuBois PA 15801

Certificate of Service

Docket Nos. A-2012-2322416, A-2012-2322501, A-2012-2322448 and A-2012-2322509

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Nels Taber, Regional Director  
PA Department of Environmental Protection  
Northcentral Regional Office  
208 West Third Street, Suite 101  
Williamsport, PA 17701



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Adcolu A. Bakare

Dated this 21<sup>st</sup> day of November, 2012, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re Joint Application of Aqua Pennsylvania, Inc. :  
(hereinafter referred to as "Aqua") and Total :  
Environmental Solutions, Inc. (hereinafter referred :  
to as "TESI") for approval of: (1) the acquisition :  
by Aqua of the water system assets of TESI situated :  
in a portion of Sandy Township, Clearfield County, : Docket Nos. A-2012-2322416  
Pennsylvania; (2) the right of Aqua to begin to : A-2012-2322501  
offer, render, furnish and supply water service to :  
the public in a portion of Sandy Township, :  
Clearfield County, Pennsylvania; and (3) the :  
abandonment by TESI of public water service and :  
its franchise in a portion of Sandy Township, :  
Clearfield County, Pennsylvania :

In re Joint Application of Little Washington :  
Wastewater Company d/b/a Suburban Water :  
Company (hereinafter referred to as "LWWC") and :  
Total Environmental Solutions, Inc. (hereinafter :  
referred to as "TESI") for approval of: (1) :  
the acquisition by LWWC of the wastewater system : Docket Nos. A-2012-2322448  
assets of TESI situated in a portion of Sandy : A-2012-2322509  
Township, Clearfield County, Pennsylvania: (2) the :  
right of LWWC to begin to offer, render, furnish :  
and supply wastewater service to the public in a :  
portion of Sandy Township, Clearfield County, :  
Pennsylvania and (3) the abandonment by TESI of :  
public wastewater service and its franchise in a :  
portion of Sandy Township, Clearfield County, :  
Pennsylvania :

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**REPLY TO ANSWER AND NEW MATTER OF  
THE CITY OF DUBOIS – WATER BUREAU**

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The City of DuBois – Water Bureau ("City Water Bureau"), by and through its undersigned attorneys, hereby files, pursuant to 52 Pa. Code §§ 1.2, 1.15, 5.62, this Reply to Answer and New Matter in response to the Answer of Aqua Pennsylvania, Inc., Little

Washington Wastewater Company d/b/a Suburban Water Company (collectively, "Aqua"), and Total Environmental Solutions, Inc. ("TESI") (collectively, the "Joint Applicants") to the Request of the City of DuBois – Water Bureau for Consideration of its Protest Nunc Pro Tunc ("Answer").

### **INTRODUCTION**

1. On October 31, 2012 the City Water Bureau filed a Protest Nunc Pro Tunc ("Protest") with the Pennsylvania Public Utility Commission ("PUC" or "Commission") to the Joint Applications for Aqua to acquire TESI's Treasure Lake water and wastewater systems located in Sandy Township, Clearfield County, Pennsylvania ("Joint Applications" or "Applications"). Service was provided via e-mail to both Aqua and TESI. On November 9, 2012, the Joint Applicants e-filed the above-referenced Answer with the PUC. The Joint Applicants served the Answer upon the City Water Bureau and its attorneys via USPS First Class Mail, which was received on November 13, 2012. The City Water Bureau hereby responds as follows:

#### **Reply to Answer**

2. The Answer includes several incorrect allegations regarding potential impacts of the Protest upon the Commission's review of the Applications. Accordingly, the City Water Bureau requests that the Commission exercise its discretion to permit consideration of this Reply to the Answer of Aqua and TESI.

3. The Commission's Regulations do not specifically authorize Replies to an Answer. However, the Commission has previously exercised its discretionary authority to consider Replies to Answers in various circumstances. *See Re Emporium Water Company*, Docket No. R-00005050, 2003 WL 23201655, \*6 (Pa. P.U.C. Sept. 8, 2003) (considering

Answer and Response filed by petitioner); *Re Columbia Gas of Pennsylvania*, Docket No. P-00001834, 2001 WL 468551, \*2 (Pa. P.U.C. Mar. 8, 2001) (considering Answer in Response filed by petitioner); and *Re National Gas Fuel Gas Distribution Corporation*, Docket No. P-00021945, 2002 WL 31097469, \*5 (Pa. P.U.C. Mar. 28, 2002) (considering Reply to Responses filed by petitioner). The Commission's acceptance of additional responses to pleadings is consistent with the Commission's discretion to apply liberal construction to extend filing deadlines. 52 Pa. Code §§ 1.2, 1.15. The City Water Bureau submits that consideration of this Reply to Answer is warranted to clarify several statements in the Joint Applicants' Answer.

4. Joint Applicants aver that granting the Protest may extend the proceeding beyond the requested March 1, 2013 Closing date and therefore create a substantial delay. As acknowledged by the Joint Applicants, the Applications are currently under review by the Commission's Bureau of Technical Utility Services ("TUS"). Answer, p. 8. Because no Protests were filed prior to October 1, 2012, the Joint Applicants presume that assigning the proceeding to the Commission's Office of Administrative Law Judge ("OALJ") would "only prolong the disposition of these matters and waste valuable time and resources of the Commission and its Administrative Law Judges." *Id.* However, the Applications remained subject to extended or "prolonged" proceedings before the filing of the City Water Bureau's Protest.

a. First, the Commission's Regulations clearly state that the Commission's Bureau of Investigation & Enforcement ("I&E"), Office of Consumer Advocate ("OCA"), or Office of Small Business Advocate ("OSBA") may intervene in Application proceedings following expiration of any protest or intervention period. 52 Pa. Code § 5.74(4). Indeed, at the time the Joint Applicants filed the Answer, OCA had already filed a Petition to Intervene ("OCA Petition") stating its intention to "work to ensure that the Application is adjudicated in

accordance with the relevant provisions of the Public Utility Code." OCA Petition, p. 1.

Although OCA intervened after the City Water Bureau filed its Protest, the fact remains that OCA, I&E, or OSBA could have filed such a petition at any time following expiration of the protest period published in the *Pennsylvania Bulletin*.

b. Additionally, while TUS may recommend that the Commission simply deny or approve the Applications, TUS may also recommend that the Commission refer the proceeding to OALJ for hearings. Application of Three-Lane Utilities, Inc. Docket No. A-210116F0002, 2007 WL 7230408 (Pa.P.U.C. Nov. 29, 2007) (hereinafter "Three-Lane Utilities"). The following excerpt from Three-Lane Utilities demonstrates that TUS may recommended that the Commission assign this proceeding to hearings following receipt of a late-filed Protest:

On August 24, 2006, Matamoras Municipal Authority (Authority) filed a Late-Filed Petition to Intervene in the proceeding for additional territory at A-210117F0002. Three-Lane filed an Answer to Late-Filed Petition to Intervene on September 14, 2006. On October 2, 2006, the Authority filed a Reply to New Matter. In light of the above, the Bureau of Fixed Utility Services (FUS) requested that the Application for additional territory be assigned to the Office of Administrative Law Judge (OALJ) for appropriate adjudication.

*Three-Lane Utilities*, p. 2.<sup>1</sup> As evidenced by *Three-Lane Utilities*, referral of a proceeding to TUS does not foreclose all susceptibility to evidentiary hearings. Particularly as I&E, OCA, or OSBA are specifically authorized to intervene in Application proceedings following expiration of a protest period. 52 Pa. Code § 5.74(4). Therefore, approving the Protest may extend the proceeding beyond March 1, 2013, but would not prolong or delay the Commission's review beyond the timeframe anticipated by the regulatory process.

c. Finally, as to the contention that referring the proceeding to the OALJ would "waste valuable time and resources of the Commission and its Administrative Law

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<sup>1</sup> FUS is the precedent Commission Bureau responsible for the duties presently administered by TUS.

Judges," the City Water Bureau disagrees vigorously with the Joint Applicants' characterization. *See Answer*, p. 8. The Joint Applicants respond as if Commission approval of the proposed acquisition were a *fait accompli*, rather than currently under consideration. The City Water Bureau respectfully submits that the Commission is authorized to weigh any procedural delay necessary for evidentiary hearings against the public interest benefits of a fully developed record.

5. The Joint Applicants also aver that approval of the Protest would significantly broaden the present scope of the proceedings. This contention is unfounded. The Applications and the Protest correctly identify the issue before the Commission as whether approval of the Applications is in the public interest. Applications, p. 4; Protest, p. 5. As evidenced by the TUS data requests, examining the public interest benefits involves reviewing the reasonableness of rates and services proposed by Aqua and determining whether Aqua is positioned to furnish safe and reliable water and wastewater service. *See Protest*, pp. 6-7. These issues would remain unchanged following approval of the Protest. Approval of the Protest would expand only the evidence available for the Commission's consideration.

#### **Reply to New Matter**

6. The Answer makes several allegations beyond denying or accepting averments in the Protest. Therefore, the City Water Bureau requests that the Commission consider this Reply to New Matters raised in the Joint Applicants' Answer.

7. In addition to denying the City Water Bureau's claim that the protest period established by the *Pennsylvania Bulletin* was inadequate, the Joint Applicants further characterize the City Water Bureau's request as "disingenuous." Answer, p. 6. This allegation unjustifiably suggests that the City Water Bureau acted in bad faith in filing the Protest.

8. To support the claim of disingenuous intent by the City Water Bureau, the Joint Applicants reiterate that the Applications were noticed in the *Pennsylvania Bulletin* and served upon the City Water Bureau. *Id.* However, these facts were clearly disclosed in the Protest itself. Protest, pp. 8-9. The Protest provided a candid and straightforward account of the underlying facts, including the procedural obstacles of the City Water Bureau's administrative processes. While the Answer indicates that the City Water Bureau provided no evidence of procedural obstacles, the City Water Bureau plainly informed the Commission that the spacing of City Council meetings somewhat encumbers the responsive process, but also acknowledged that the City Council convened for one meeting within the protest period. Protest, p. 9. More importantly, the City Water Bureau provided additional evidence supporting approval of the Protest Nunc Pro Tunc.

9. As referenced in the Protest, additional developments following expiration of the protest period contributed to the City Water Bureau's ultimate decision to request Nunc Pro Tunc authority to participate in hearings on the Applications.

a. The Protest referenced responses to TUS data requests provided by the Applicants on October 15, 2012, just over two weeks after the protest period expired and one week after the City Water Bureau's October 8, 2012 City Council meeting. Protest, pp. 6, 8. The discovery responses revealed several apparent inconsistencies with the Applications and raise material issues of fact concerning the benefits of regionalization, capital improvements, and customer needs referenced in the Applications. Considering the additional information made publicly available following expiration of the protest period, the City Water Bureau respectfully observes that a 60-day protest period would have afforded parties a more appropriate opportunity to evaluate the necessity for participation in the proceeding. *See* Protest, p. 9.

b. The additional information provided in discovery is materially inconsistent with the Applications. The Applications represented that "the public interest will be served by allowing larger and better capitalized Aqua, in lieu of TESI, to provide water service in the Requested Territory and to address future regulatory requirements, capital expenditures, and supply and demand..." Applications, p. 5. The Applications also indicated that expansion of Aqua's service territory would "further benefits of regionalization and economies of scale." Applications, p. 5. However, as summarized in the Protest, the Joint Applicants' responses to TUS data requests revealed that Aqua has not yet identified a Certified Operator for the TESI systems and expects to service the systems remotely, out of its Shenango Operations Center.<sup>2</sup> Protest, p. 6. The responses also indicate that the Joint Applicants have not developed cost projections for improving TESI's system. *Id.*

c. Finally, although the Joint Applications represent that Aqua is well-positioned to meet customer needs, the discovery responses show that Aqua has not obtained letters of support for the proposed acquisition from Sandy Township or Clearfield County.<sup>3</sup> Protest, p. 9. It is not clear whether Aqua has attempted to obtain letters of support from Sandy Township or Clearfield County. Aqua notes only that no protests were filed prior to October 1, 2012. Despite the absence of filed protests, the City Water Bureau has received many comments and complaints from customers affected by Aqua's proposed acquisition. Multiple TESI customers have contacted the City Water Bureau to express concern regarding Aqua's proposed acquisition and request service from the City Water Bureau's local facilities. This apparent lack of local support for Aqua's proposed acquisition, made further evident by Aqua's October 15,

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<sup>2</sup> While the precise location of Aqua's Shenango Operations Center is unknown, Shenango Township, in Lawrence County, Pennsylvania, is approximately 100 miles from TESI's water and wastewater systems.

<sup>3</sup> Data Request A-6 refers to "Sandy Lake Township" which is presumably an intended reference to Sandy Township. Aqua Response to TUS Discovery Set I, Data Request A-6.

2012 discovery responses, prompted the City Water Bureau's ultimate determination that evidentiary hearings would be necessary to conclusively determine whether Aqua's proposed acquisition is in the public interest.

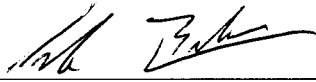
10. The City Water Bureau filed the Protest to notify the Commission of issues of material fact concerning the representations of the Joint Applicants and the City Water Bureau's availability to provide water and wastewater service to the affected ratepayers in TESI's service territory. Therefore, the City Water Bureau respectfully requests that the Commission issue a ruling on the procedural and legal issues concerning the City Water Bureau's requested relief, and disregard any misplaced assertions of disingenuous or bad faith intent.

11. The Applications also mischaracterized the City Water Bureau's request for relief. The Joint Applicants claim that the City Water Bureau "is attempting to use the regulatory process to leverage an acquisition of TESI's water and wastewater system assets by it instead of by Aqua and LWWC." Answer, p. 9. This statement is baseless and grossly inaccurate. The Joint Applicants appear to misunderstand the Protest, which in no way suggested that the Commission summarily dismiss the Applications and order TESI to transfer its water and wastewater assets to the City Water Bureau. The Protest only requested that the Commission hold evidentiary hearings on the Applications and "deny the Joint Applications if they are not in the public interest." Protest, p. 11 [Emphasis added]. The City Water Bureau is not attempting to "use" the regulatory process for any ulterior purpose other than to determine whether the proposed acquisition is in the public interest.

**WHEREFORE**, for all the reasons set forth above, the City Water Bureau hereby respectfully requests that the Commission (a) consider the Reply to Answer and New Matter; (b) grant the Protest Nunc Pro Tunc filed by the City Water Bureau; (c) hold hearings on the Joint Applications; (d) deny the Joint Applications if they are not in the public interest; and (e) grant any other relief that is deemed to be reasonable and appropriate.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the City of DuBois – Water Bureau

Dated: November 21, 2012

**VERIFICATION**

I, John F. Suplizio, City Manager of the City of DuBois, hereby state that the facts contained in the foregoing document are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

11-20-2012

Date

John F. Suplizio  
Signature