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June 7, 2018

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-2017-2605434
Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329
of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets
of Limerick Township

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 Joint Petition of Aqua Pennsylvania Wastewater, Inc., Limerick Township and the Office of Consumer Advocate for Resolution of Proceedings and Amendment of the Opinions and Orders entered November 29, 2017 and April 19, 2018. Copies of the Joint Petition are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
Office of Special Assistants (w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102 and 1329 of the Public Utility Code : Docket No. A-2017-2605434
for Approval of its Acquisition of the :
Wastewater System Assets of Limerick :
Township :**

**JOINT PETITION OF AQUA PENNSYLVANIA WASTEWATER, INC., LIMERICK
TOWNSHIP, AND THE OFFICE OF CONSUMER ADVOCATE FOR
RESOLUTION OF PROCEEDINGS AND AMENDMENT OF THE OPINIONS AND
ORDERS ENTERED NOVEMBER 29, 2017 AND APRIL 19, 2018**

AND NOW comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”), Limerick Township (the “Township”) and the Office of Consumer Advocate (“OCA”),¹ by their attorneys, and, pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), and 52 Pa. Code § 5.572(g), petition the Pennsylvania Public Utility Commission (“Commission”) for amendment of its Opinions and Orders entered November 29, 2017 and April 19, 2018. By this joint petition, Joint Petitioners propose a final resolution of all remaining issues in this Application proceeding. In support thereof, Joint Petitioners submit as follows:

I. INTRODUCTION

1. This matter concerns the Application of Aqua pursuant to Sections 1102 and 1329 of the Public Utility Code, 66 Pa. C.S. §1102 and §1329, filed with the Commission on May 19, 2017. The Application sought Commission approval of (a) Aqua’s acquisition of the wastewater

¹ Aqua, the Township, and the OCA are, hereinafter, referred to, collectively, as “Joint Petitioners.”

system assets of Limerick Township, Montgomery County; (b) the right of Aqua to provide wastewater service in portions of Limerick Township, Montgomery County; and (c) ratemaking rate base of \$75,100,000 for the Township wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code. The OCA filed a Protest to the Application on June 19, 2017 and actively opposed the Application.

2. By Opinion and Order entered November 29, 2017 (“Order entered November 29”), the Commission granted Aqua’s Application. The Commission approved: (a) Aqua’s acquisition of the Limerick wastewater system assets, (b) Aqua’s right to begin to offer, render, furnish and supply wastewater service to the public in portions of the Township, and (c) a ratemaking rate base of \$64,373,378 for the Limerick wastewater system assets to be incorporated in Aqua’s next base rate case pursuant to 66 Pa. C.S. § 1329(c)(2).

3. Aqua filed a petition, on December 14, 2017, asking the Commission to reconsider its Order entered November 29. The OCA filed an answer in opposition to the petition for reconsideration on December 22, 2017.

4. The Commission, by Order entered December 21, 2017, granted Aqua’s petition for reconsideration pending further of, and consideration on, the merits. Thereafter, by Opinion and Order entered April 19, 2018 (“Order entered April 19”), the Commission declined to exercise its discretion to reconsider the Order entered November 29 and denied Aqua’s petition for reconsideration.

5. Aqua is moving forward with its acquisition of the Limerick Township wastewater system and has not asked, and will not be asking, the Commonwealth Court to review either the Order entered November 29 or the Order entered April 19. The OCA filed a petition with the

Commonwealth Court on May 18, 2018 for review of the Order entered November 29. The OCA's petition for review has been assigned to No. 682 C.D. 2018.

6. Although Commonwealth Court review of the OCA petition is pending, Aqua and the OCA have discussed a resolution of the proceeding and have agreed to settlement terms, which, if approved by the Commission, would resolve all remaining issues and result in the withdrawal of the OCA's petition for review.

7. This Joint Petition presents the settlement terms as a proposed amendment of the Orders entered November 29 and April 19. If the Commission amends its prior Orders as set forth herein, Aqua will be able to close its acquisition of the Limerick wastewater system assets after the OCA withdraws its petition for review and the amending Order becomes final and unappealable.

II. LEGAL STANDARDS FOR AMENDMENT OF A COMMISSION ORDER

8. Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), gives the Commission the power, at any time, to amend any order made by it. Section 5.572(d) of Title 52 of the Pennsylvania Code explains that a petition for amendment may be filed at any time according to the requirements of Section 703(g) of the Code.

9. In respect to amendment of a final Order, the Commission, in *Application of Susquehanna Valley Limousine, Inc.*, 2014 WL 6386885 (Pa.P.U.C.) Docket Nos. A-2013-2395502 and A-00110765, Order entered November 13, 2014, explained that:

A petition to amend a final Commission Order may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that, while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time "[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the

same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

10. Joint Petitioners submit that the settlement terms proposed herein warrant the amendment of the Orders entered November 29 and April 19. The terms are new matters presented for Commission consideration in an effort to finally resolve this proceeding without further litigation. The terms, in point of fact, are not proposed to change any ordering paragraph from the Orders entered November 29 or April 19 but, rather, are proposed as additions to the existing ordering paragraphs.

III. SETTLEMENT TERMS AMENDING PRIOR ORDER

11. Joint Petitioners propose to settle the proceeding in accordance with the Ordering Paragraphs in the Orders entered November 29 and April 19, unless otherwise modified by the following which would appear as additional ordering paragraphs in an amended opinion and order:

- a. Ratemaking rate base remains at \$64,373,378 consistent with the November 29 Order.
- b. Aqua will not include Limerick in its base rate case anticipated to be filed in summer 2018.
- c. Aqua may file a separate rate case for Limerick which will not be filed prior to June 30, 2020. In this base rate case, Aqua will propose:
 - i. to move Limerick to its cost of service or 2.0x the current Limerick rate, whichever is lower, based on a separate cost of service study for Limerick. This provision is between OCA, Aqua, and Limerick.
 - ii. Current average Limerick rate is \$38.00 based on 4,000 gallons of usage.
- d. Limerick may be included in the next full consolidated water and wastewater rate case after Aqua Pennsylvania’s summer 2018 filing. In the first full consolidated water and wastewater base rate case in which Limerick is included, whether or not there has been a preceding separate Limerick rate case, Aqua agrees that it will

prepare a separate cost of service study and revenue requirement for Limerick. Aqua will propose the use of 66 Pa. C.S. § 1311(c) in the first full consolidated water and wastewater base rate case after Aqua Pennsylvania's summer 2018 filing. The OCA reserves the right to challenge such proposal under Section 1311(c).

- e. The parties agree to amend the asset purchase agreement (“APA”) in Section 7.05(b) so that a separate rate case can be filed after June 30, 2020. Notwithstanding the agreement to amend the APA, the parties reserve all rights to review and challenge any ratemaking claims regarding the financial commitments contained in the APA, except as specifically set forth herein. The parties further agree to the following:
 - i. Referencing First Amendment to APA, paragraph 4(c): If Aqua seeks to recover any costs associated with the monetary commitments by Aqua Wastewater and Aqua PA related to reimbursement of capital projects, it will make a claim for such recovery in a base rate case and specifically identify the claim in that filing. The parties reserve all rights to review and challenge such claim.
 - 1. Aqua will not claim AFUDC or deferred depreciation on any projects undertaken by Seller.
 - ii. Referencing First Amendment to APA, paragraphs 4(a) and (b): The commitments by Aqua Wastewater and Aqua PA related to the repayment of the General Obligation note for the Township Building and the anticipated loss of income will not be claimed or reflected in rates charged to water and wastewater customers.
 - iii. Referencing First Amendment to APA, paragraph 10(b): Any termination fee paid by Buyer to Seller is not recoverable in rates charged to water and wastewater customers.
- f. Limerick agrees to be a signatory to settlement.
- g. Aqua acknowledges that the OCA made adjustments to the Limerick appraisal and that the Commission adopted certain adjustments to the appraisals. Aqua agrees that in future Section 1329 filings, Aqua will support the following positions:
 - i. Market Approach:
 - 1. If “comparable acquisitions” are used as a factor in determining market value, the purchase price for each “comparable acquisition”

shall be based on the actual amount paid for the assets at the time of purchase and future capital improvements shall not be included;

2. If the number of customers is used as a factor in determining market value, the actual, unadjusted number of customers shall be used rather than projected future number of customers. This applies to the number of customers for both the system being acquired and any “comparable acquisitions” being used in the determination.
- ii. Income Approach: the rate base/rate of return methodology is not an appropriate methodology for calculating fair market value.
 - iii. Cost approach:
 1. If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified;
 2. Future capital projects shall not be considered in determining the cost approach result;
 3. The cost of land, if included, shall not be adjusted by the ENR index.
 - iv. The “going value,” “provision for erosion on return,” and “overhead cost” add-ons will not be adopted or included in the appraisals.

Aqua and the OCA reserve the right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings, including methodologies, inputs and assumptions that were present in this case but not challenged by the OCA or that were accepted by the Commission.
 - h. The OCA will withdraw its appeal of the Order entered November 29 within 5 business days after entry of a Commission order approving this settlement.
 - i. Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, the parties reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The OCA’s assent to this agreement should not be construed to operate as its preapproval of Aqua’s requests.
 - j. The Joint Petitioners acknowledge that the Commission retains ultimate authority as to setting rates.

IV. JUSTIFICATION FOR AMENDING THE PRIOR ORDERS

12. It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.² Settlements lessen the time and expense of litigating a case. This directly benefits all parties concerned. Although the Commission has issued Orders entered November 29 and April 19, those Orders are being contested by the OCA at Commonwealth Court. Commission policy favors a negotiated resolution of the contested review proceeding and a final resolution of all remaining issues in this Application proceeding.

13. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.³ The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest.⁴ Joint Petitioners recognize that their proposed resolution of this matter involves amendment of Commission Orders but submit that the proposed resolution and amendment of the Orders entered November 29 and April 19 are in the public interest.

14. Along with a final resolution of this contested Application proceeding, the settlement terms further the public interest by establishing a framework for consideration of the costs of the Limerick wastewater system and determination of Limerick system rates in a future Aqua rate proceeding, including a possible separate Limerick rate filing, and presentation of a separate cost of service study for the Limerick system. The settlement terms also address OCA concerns with the possible rate impact of the First Amendment to the Assets Purchase Agreement

² 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

³ *Pa. P.U.C. v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

⁴ *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa.P.U.C. v. CS Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991).

Amendment pending before the Commission for Section 507 registration at Docket No. U-2017-2635888.

15. The settlement terms also further the public interest through an acknowledgment that Aqua will not support certain identified valuation approaches in future Section 1329 filings. The identified approaches are those that had been challenged by the OCA and with which the Commission agreed with the OCA's position in its Orders entered November 29 and April 19. While Aqua will not support these approaches in future filings, the settlement terms allow Aqua and the OCA to present adjustments and oppose other methodologies, inputs and assumptions in future proceedings, including methodologies, inputs and assumptions that were part of this proceeding but not challenged by the OCA or that were accepted by the Commission.

16. Joint Petitioners recognize that the Orders entered November 29 and April 19 are on appeal by the OCA to the Commonwealth Court at No. 682 C.D. 2018. To avoid conflict with Pa. R.A.P. 1701 and consistent with the procedure recognized by the Commonwealth Court in *Tripps Park Civic Association v. Pa. P.U.C.*, 52 Pa. Cmwlth. 317, 415 A.2d 967 (1980), the proposed amendments to the Orders entered November 29 and April 19 will be contingent upon the withdrawal by the OCA of its appeal at No. 682 C.D. 2018. The modifications contained herein, upon approval by the Commission, will become effective after withdrawal by the OCA of its appeal at No. 682 C.D. 2018.

V. CONDITIONS OF SETTLEMENT

17. This Joint Petition is proposed to settle the instant matter and, except as set forth above, is made without any admission against or prejudice to any positions which any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by anyone of the Joint

Petitioners as provided below or closing does not occur on the sale of Limerick wastewater system assets. Except as set forth above, Joint Petitioners agree that this Joint Petition shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

18. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn upon written notice to the Commission and all parties within three (3) business days by either of the Joint Petitioners and, in such event, shall be of no force and effect. Regardless of whether this Settlement is approved or not, no adverse inference shall be drawn to any party in this or any other proceeding as a consequence of this Settlement.

WHEREFORE Aqua Pennsylvania Wastewater, Inc., Limerick Township, and the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission grant and approve the Joint Petition for Amendment of the Opinions and Orders entered November 29, 2017 and April 19, 2018.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER,
INC.**

By:  _____

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Counsel for Limerick Township

Dated: June 7, 2018


Respectfully submitted,

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Dated: June 7, 2018

Respectfully submitted,

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Counsel for Limerick Township

Dated: June 7, 2018

VERIFICATION

I, Marc A. Lucca, President of Aqua Pennsylvania Wastewater, Inc., hereby state that the facts set forth in the Joint Petition of Aqua Pennsylvania Wastewater, Inc., Limerick Township, and the Office of Consumer Advocate for Resolution of Proceedings and Amendment of the Opinions and Orders Entered November 29, 2017 and April 19, 2018 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).



Marc A. Lucca
President

Aqua Pennsylvania Wastewater, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102 and 1329 of the Public Utility Code : Docket No. A-2017-2605434
for Approval of its Acquisition of the :
Wastewater System Assets of Limerick :
Township :**

CERTIFICATE OF SERVICE

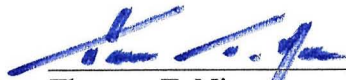
I hereby certify that I have this 7th day of June 2018, served a true and correct copy of the foregoing Joint Petition for Resolution of Proceedings and Amendment of the Opinions and Orders entered November 29, 2017 and April 19, 2018, upon the persons and in the manner set forth below:

VIA ELECTRONIC AND FIRST CLASS MAIL

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