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*Attorneys and Counsellors at Law*

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December 6, 2021

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

In re: Docket No. I-2018-3001161  
Section 529 Investigation of North Heidelberg Sewer Company

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 Company's Prehearing Conference Memorandum in accordance with the Prehearing Conference Order of Administrative Law Judge Haas dated November 23, 2021. Copies of the Prehearing Conference Memorandum 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.)  
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**The Honorable Stephen K. Haas, Presiding**

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**Section 529 Investigation of** : **Docket No. I-2018-3001161**  
**North Heidelberg Sewer Company** :

**PREHEARING CONFERENCE MEMORANDUM OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”) and submits this Prehearing Conference Memorandum in connection with the Prehearing Conference scheduled to be held in the above captioned matter on December 8, 2021.

**I. BACKGROUND**

This proceeding concerns the Investigation of the Public Utility Commission (“Commission”) into whether it should order a capable public utility to acquire North Heidelberg Sewer Company (“NHSC”) pursuant to Section 529 of the Public Utility Code (“Code”), 66 Pa. C.S. § 529 (“Section 529”). The Commission instituted the Investigation as part of its Order entered February 9, 2018 in *Pa. P.U.C. v. North Heidelberg Sewer Company*, Docket No. M-2018-2645983 (“Order entered February 9”).

The Commission, in Ordering Paragraph 4 of the Order entered February 9, directed Aqua to act as Receiver for NHSC, pursuant to 66 Pa. C.S. § 529 (g), beginning March 5, 2018 and to continue to act as Receiver for NHSC during the pendency of the Section 529 proceeding. Aqua’s appointment as Receiver, pursuant to Section 529(g), is to “protect the interests of the customers” of NHSC. Aqua, in its own right, is also a “capable public utility” as defined in Section 529(m) of the Code, 66 Pa. C.S. § 529(m).

Administrative Law Judge Steven K. Haas was assigned to preside over the Section 529 Investigation. An Initial Prehearing Conference was held on July 27, 2018, and a litigation schedule was established. The litigation schedule was suspended by Order Granting Motion to Delay Procedural Schedule, issued February 1, 2019, following the death of Joseph M. Aichholz, Jr., the owner and Chief Executive Officer of NHSC. On January 30, 2020, counsel for NHSC filed a Status Report indicating that the matter should proceed.

By Order entered October 7, 2021 (“October 7 Order”), the Commission granted, as modified, a Petition of Aqua to Affirm and Clarify its receivership status, filed by Aqua following extensive storm damage to the NHSC system and facilities. The Commission, in that Order, also directed Aqua to continue to act as Receiver for NHSC during the pendency of this proceeding.

The Commission, in its October 7 Order, also directed the Office of Administrative Law Judge to move forward with the Section 529 Investigation and issue a Recommended Decision no later than June 30, 2022. The parties were directed to discuss implications of storm damage as it relates to NHSC’s technical, financial, and managerial fitness.

A further Prehearing Conference was noticed for December 8, 2021. Judge Haas issued a Prehearing Conference Order on November 23, 2021. Paragraph 7 of the Prehearing Conference Order directs each litigating party to file and serve a prehearing memorandum on or before 12:00 PM on Monday, December 6, 2021.

## **II. LITIGATION SCHEDULE**

Aqua will cooperate with Judge Haas and the litigating parties to arrive at a mutually acceptable litigation schedule. Aqua proposes the following:

Direct Testimony of the Bureau of Investigation and Enforcement – February 4, 2022<sup>1</sup>

Other Parties' Direct Testimony, including Testimony of Aqua as Receiver – February 25, 2022

Rebuttal Testimony of All Parties – March 16, 2022

Surrebuttal Testimony of All Parties – March 25, 2022

Outline of Oral Rejoinder Testimony of All Parties – April 4, 2022

Hearings – April 7 and 8, 2022

Main Brief – April 29, 2022

Reply Brief – May 13, 2022

### **III. LIST OF ISSUES AND AQUA'S POSITION IN REGARD TO THEM**

Section 529(a) presents a “general rule” list of several determinations for the Commission to address in a Section 529 investigation. In conjunction with Section 529(a), Section 529(c) identifies several “factors” for the Commission to consider in making a determination pursuant to Section 529(a). Those factors are:

- (1) The financial, managerial and technical ability of the small water or sewer utility.
- (2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.
- (3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.
- (4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.
- (5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable

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<sup>1</sup> Section 529(i) places the burden of proof on the Bureau of Investigation and Enforcement (“BI&E”) to establish a prima facie case that the acquisition of NHSC would be in the public interest and in compliance with Section 529.

statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

The Commission in Subparagraph 1q of Appendix A to the Order entered February 9 directed Aqua, as Receiver, to submit testimony regarding each “factor” delineated in Section 529(c). Aqua intends to submit testimony addressing each “factor,” which the Commission may then consider in its Section 529(a) determinations. It may also present direct testimony other than direct testimony concerning the Section 529(c) “factors.”

Aqua reserves the right to present testimony in rebuttal to direct testimony of BI&E or of other litigating parties. Aqua’s rebuttal to BI&E or other litigating parties may be presented as a “capable public utility” pursuant to Section 529(m) or as the appointed Receiver of NHSC pursuant to Section 529(g).

#### **IV. WITNESSES**

Aqua anticipates calling the following witnesses:

William C. Packer  
Vice President, Regulatory Accounting  
and Regional Controller  
Aqua Services, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010

Mark J. Bubel, Sr.  
Project Engineer, III  
Aqua Pennsylvania, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010

Mr. Packer will address financial matters. Mr. Bubel will address operational matters.

Aqua asks that any and all contact with Mr. Packer and/or Mr. Bubel be through counsel.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify Administrative Law Judge Haas and the parties promptly should Aqua determine that additional witnesses will be called.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER, INC.**

By 

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*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: December 6, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Section 529 Investigation of  
North Heidelberg Sewer Company**

**: Docket No. I-2018-3001161  
:**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 6<sup>th</sup> day of December, 2021, served a true and correct copy of the foregoing Prehearing Conference Memorandum of Aqua Pennsylvania Wastewater, Inc., upon the persons and in the manner set forth below:

**VIA ELECTRONIC MAIL BEFORE 12:00 PM**

The Honorable Steven K. Haas  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
sthaas@pa.gov

Carrie B. Wright, Prosecutor  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
carwright@pa.gov

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Interim Acting Consumer Advocate  
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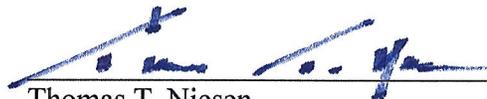
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