

March 4, 2022

Via Electronic Filing

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

In re: Docket No. A-2021-3026132
Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329, 507
and 2102 of the Public Utility Code for Approval of its Acquisition of the Wastewater
System Assets of East Whiteland Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above referenced matter and are submitting, via electronic filing with this letter, the Company's Petition for Protective Order. Copies of the 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.)
Alexander R. Stahl, Esquire (via electronic mail, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl, Presiding

**Application of Aqua Pennsylvania Wastewater, Inc., for : Docket No. A-2021-3026132
Approval of its Acquisition of the Wastewater System :
Assets of East Whiteland Township Pursuant to Sections :
1102, 1329, 507 and 2102 of the Public Utility Code :**

**PETITION OF AQUA PENNSYLVANIA WASTEWATER, INC.
FOR PROTECTIVE ORDER**

AND NOW comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), by its attorneys, and, pursuant to 52 Pa. Code § 5.365, petitions the Pennsylvania Public Utility Commission (“Commission”) for entry of a Protective Order. In support thereof, Aqua submits as follows:

1. This proceeding concerns the Application of Aqua, filed July 23, 2021, for approval of its acquisition of the East Whiteland Township (“Township”) wastewater system assets pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code.
2. By Secretarial Letter dated February 4, 2022, the Commission, *inter alia*, acknowledged receipt of the Application and advised that notice of its filing would be published in the *Pennsylvania Bulletin* on February 19, 2022.
3. Materials which Aqua has furnished in this proceeding and materials which Aqua and other parties will be furnishing pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination or as a courtesy to parties contain information and will contain information that the producing party considers confidential or proprietary.

4. The issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to be confidential or proprietary would serve administrative economy and efficiency by obviating the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

5. The proposed protective order included with this Petition is in the usual accepted form, consistent with due process rights and evidentiary burdens. It allows parties to retain the right to question or challenge the confidential or proprietary nature of information; to challenge the admissibility of confidential or proprietary information; to refuse or object to the production of confidential or proprietary information on any proper ground; to seek disclosure of confidential or proprietary information beyond that allowed in the Protective Order; and to seek additional measures of protection beyond those provided in the Protective Order. The Protective Order also provides that the party claiming that the information is confidential or proprietary retains the burden of demonstrating that such designation is necessary and appropriate.

6. Counsel for Aqua has contacted Counsel for the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and East Whiteland Township and they advise that they do not object to the entry of the proposed protective order.

WHEREFORE Aqua Pennsylvania Wastewater, Inc. requests that Administrative Law Judge Guhl and the Pennsylvania Public Utility Commission enter the Protective Order included with this Petition.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Counsel for Aqua Pennsylvania Wastewater, Inc

Date: March 4, 2022

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc., for : Docket No. A-2021-3026132
Approval of its Acquisition of the Wastewater System :
Assets of East Whiteland Township Pursuant to Sections :
1102, 1329, 507 and 2102 of the Public Utility Code :

ORDER GRANTING PETITION FOR PROTECTIVE ORDER

On July 23, 2021, the Applicant, Aqua Pennsylvania Wastewater, Inc. (“Aqua”), filed an application with the Pennsylvania Public Utility Commission (“Commission”) by which it is seeking approval, *inter alia*, of: (1) the acquisition, by Aqua, of the East Whiteland Township wastewater system assets (“Township”), (2) the right of Aqua to begin to offer, render, furnish or supply wastewater service to the public in portions of East Whiteland Township, Chester County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Township wastewater system assets pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code. Receipt of the completed application was acknowledged by the Commission by Secretarial Letter dated February 4, 2022.

The following Order is adopted:

ORDER

THEREFORE,

IT IS ORDERED:

1. That a Protective Order is granted with respect to all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Such materials will be referred to below as “Proprietary Information.” When

a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

2. This Protective Order applies to the following categories of materials: (a) the producing party may designate as “CONFIDENTIAL” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; (b) the producing party may designate as “HIGHLY CONFIDENTIAL” protected material those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The producing party shall endeavor to limit their designation of information as HIGHLY CONFIDENTIAL protected material.

3. Proprietary Information shall be made available to counsel for a Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, counsel for a Party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

4. Information deemed as “CONFIDENTIAL” may be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

- (a) An attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8, or a counsel who has entered an appearance in this proceeding for a party;
- (b) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (a);

- (c) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or
- (d) Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket.

With regard to I&E, information deemed as "CONFIDENTIAL" shall be made available to I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the CONFIDENTIAL information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to CONFIDENTIAL information only to I&E's experts, without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors' execution of a Non-Disclosure Certificate.

With regard to the OCA and OSBA, counsel for the OCA and OSBA may afford access to CONFIDENTIAL information to the Consumer Advocate and Small Business Advocate, respectively, without the need for execution of a Non-Disclosure Certificate. The Consumer Advocate and Small Business Advocate are bound by all of the provisions of the Protective Order Protective Order by virtue of the OCA counsel's and OSBA counsel's execution of a Non-Disclosure Certificate.

5. Information deemed as "HIGHLY CONFIDENTIAL" protected material shall be made available to counsel for all active parties represented by counsel. Counsel may make such information available to their experts who are designated and qualified as Reviewing Representatives.

6. For purposes of this Protective Order, a Reviewing Representative may not be a "Restricted Person."

(a) A "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services, or if the employee of such entity's duties involve strategic business decisions and activities in which the use of Proprietary Information could be reasonably expected to cause competitive harm to the parties; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for a party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate

those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

7. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 4(a) through 4(d) above, or a person that is a Restricted Person under Paragraph 6, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

8. A qualified "Reviewing Representative" for "CONFIDENTIAL" information may review and discuss "CONFIDENTIAL" information with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person", but may not share with or permit the client or entity to review the "CONFIDENTIAL" information. Such discussions must be general in nature and not disclose specific "CONFIDENTIAL" information. Counsel for I&E, OCA and OSBA may share "CONFIDENTIAL" information with the I&E Director and the I&E Deputy Chief Prosecutor, Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of this Protective Order.

9. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage.

10. Reviewing Representatives shall execute a Non-Disclosure Certificate:

(a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so, nor do Commission employees assisting I&E as noted above in Paragraphs 4 and 5. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Parties asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

11. None of the Parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

12. The Parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the Parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information. The Proprietary Information shall be served upon the Parties hereto only in an envelope (or through electronic service) separate from the nonproprietary materials, and the envelope (or electronic service) shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material.

13. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa.C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the non-producing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

14. Any public reference to Proprietary Information by a Party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

15. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to

discovery, and including reference thereto as mentioned in Paragraph 14 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

16. The Parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

17. The Parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

18. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the Parties, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Dated: _____, 2022

Marta Guhl
Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge Marta Guhl, Presiding

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Approval of its Acquisition of the Wastewater System :
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1102, 1329, 507 and 2102 of the Public Utility Code :

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of
_____ (the receiving party). The undersigned has
read and understands the Protective Order and the required treatment of Proprietary Information.
The undersigned agrees to be bound by and comply with the terms and conditions of said Protective
Order.

SIGNATURE

NAME (Printed)

ADDRESS

EMPLOYER

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CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of March 2022 served a true and correct copy of the Petition of Aqua Pennsylvania Wastewater, Inc. for a Protective Order, upon the persons and in the manner indicated below:

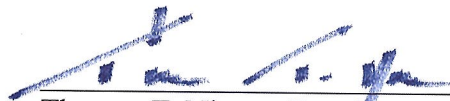
VIA ELECTRONIC MAIL

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