

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Application of Aqua Pennsylvania</b>	:	
<b>Wastewater, Inc. Pursuant to Sections 1102</b>	:	
<b>and 1329 of the Public Utility Code, for</b>	:	
<b>Approval of the Acquisition by Aqua of the</b>	:	<b>Docket No. A-2023-3041695</b>
<b>Wastewater System Assets of the Greenville</b>	:	
<b>Sanitary Authority Situated within the</b>	:	
<b>Borough of Greenville, Hempfield</b>	:	
<b>Township, and West Salem Township,</b>	:	
<b>Mercer County, Pennsylvania</b>	:	

**ORDER GRANTING PETITION FOR PROTECTIVE ORDER**

On November 17, 2023, 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 wastewater system assets of the Greenville Sanitary Authority (“GSA”); (2) the right of Aqua to begin to offer, render, furnish or supply wastewater service to the public in the requested territory<sup>1</sup>; (3) an order approving the acquisition that includes the ratemaking rate base of the GSA wastewater system assets pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code (the “Code”); and (4) approval of certain municipal contracts, pursuant to Section 507 of the Code. The Application was accepted by the Commission by Secretarial Letter dated June 21, 2024.

On July 12, 2024, Aqua filed a Petition for Protective Order. Aqua indicated in its Petition that no party objected to the Petition.

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<sup>1</sup> A map of the Requested Territory of service was attached to the Application as Exhibit A.

Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, Presiding Officers may issue a Protective Order to limit or prohibit disclosure of Proprietary Information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the Proprietary Information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

After review of the Petition, the relevant provisions of the Commission's regulations, and upon considering that no party has indicated that it opposed the Protective Order, Aqua's Petition for Protective Order will be granted.

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 4(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 the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("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 Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"), counsel for the OCA and OSBA may afford access to CONFIDENTIAL information to the Consumer Advocate, Deputy Consumer Advocate, and Small Business Advocate, respectively, without the need for execution of a Non-Disclosure Certificate. The Consumer Advocate, Deputy Consumer Advocate, and Small Business Advocate are bound by all of the provisions of the 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 (excluding ownership interests where the expert has no direct knowledge of such interest, or control over investment or business decisions, such as a mutual fund) 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 Judges 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, Deputy 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: July 18, 2024

\_\_\_\_\_/s/  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

\_\_\_\_\_/s/  
Alphonso Arnold III  
Administrative Law Judge

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<b>Sanitary Authority Situated within the</b>	:	
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<b>Township, and West Salem Township,</b>	:	
<b>Mercer County, Pennsylvania</b>	:	

**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

**A-2023-3041695 - APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.  
PURSUANT TO SECTIONS 1102 AND 1329 OF THE PUBLIC UTILITY CODE FOR:  
APPROVAL OF THE ACQUISITION BY AQUA OF THE WASTEWATER SYSTEM  
ASSETS OF THE GREENVILLE SANITARY AUTHORITY (“GSA”) SITUATED  
WITHIN THE BOROUGH OF GREENVILLE, HEMPFIELD TOWNSHIP, AND WEST  
SALEM TOWNSHIP, MERCER COUNTY, PENNSYLVANIA**

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