

May 24, 2018

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P. O. Box 3265  
Harrisburg, PA 17105-3265

In re: Docket No. U-2017-2635888  
First Amendment to Asset Purchase Agreement  
Between Aqua Pennsylvania Wastewater, Inc. and Limerick Township

Dear Secretary Chiavetta:

We are counsel for Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, with this letter via electronic filing, the Company's responses to the Bureau of Technical Utility Services Data Request Set 1, Nos. U-1 through U-5. Please contact me with any questions.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Paul Zander (via email, w/encl.)  
Alexander R. Stahl, Esquire (via email, w/encl.)  
Thomas S. Wyatt, Esquire (w/encl.)  
Office of Consumer Advocate (w/encl.)  
Bureau of Investigation and Enforcement (w/encl.)  
Office of Small Business Advocate (w/encl.)

Respondent: Marc A. Lucca  
Title: President  
Date: 05/24/2018

**FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT BETWEEN AQUA  
PENNSYLVANIA WASTEWATER, INC. AND LIMERICK TOWNSHIP**

**DOCKET NO. U-2017-2635888**

**RESPONSES TO  
BUREAU OF TECHNICAL UTILITY SERVICES**

**DATA REQUEST 1**

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**U-1** Please provide a separate justification for each section of the changes proposed in the First Amendment to Asset Purchase Agreement (Amended APA).

**RESPONSE**

The First Amendment to the Asset Purchase Agreement is an arms' length negotiation between two unaffiliated parties for the purpose of extending the Outside Date of the transaction to allow time for a possible appeal of the Commission's Orders. The parties desired to extend the outside date and remain committed to the transaction. The provisions are part of an overall negotiation and establishes consideration for any possible delay in closing. For particular sections, please see below:

1. Defined terms – this provision is a standard contract provision that speaks for itself.
2. Definition of "Outside Date" – please see the response to U-3.
3. Operation and Management of the System – this ensures that during the period of the extension provided in this First Amendment, the system is operated as it previously has been, and no substantial changes will be made to operations. It ensures that no significant changes are made to the system.
4. Reimbursement by Buyer of Certain Expenses of Seller – this provision provides for certain payments to be credited to the purchase price up to March 31, 2019, and thereafter will be in addition to the purchase price. Additionally, the provision will provide for payment of certain capital expenditures necessary for the system. This provision is to cover certain losses of the Township due to the extension of the transaction closing. The provision was a mutually agreed to term for extension of the outside date to prevent termination by either party.

5. Limited Joinder and Guaranty of Aqua Pennsylvania, Inc. – this provision ensures payment of Section 10(b) by Aqua Pennsylvania Wastewater, or its parent company.
6. Substantiation of Amounts; Right to Audit – this provision allows Aqua to review and verify any payment information regarding the general obligation note of the Township or the Township’s capital expenditures. The provision is required for substantiation of payments to Aqua’s satisfaction.
7. Definition of “Final Order” – this provision replaces the definition of Final Order and provides that if an appeal does not go to the central nature of the acquisition – that the transaction is in the public interest or the issuances of certificates of public convenience – that an order may be considered final. As such closing could still occur if the nature of the transaction is not challenged.
8. Closing Date – this provision allows more time for closing, if required, after all required approvals are received.
9. Events of Termination – this provision updates the provision that would allow termination after the amended outside date in the First Amendment. This allows the provision of the amended outside date to have effect.
10. Effect of Termination of Agreement – this provision provides for refund of payments made by Aqua to the Township if the agreement is terminated by mutual consent, if closing does not occur by the outside date, or if by Buyer if there is a material breach. It also provides payment to Township if the agreement is terminated by Seller if Buyer is in material breach of any covenant or agreement.
11. Entire Agreement – this provision is a standard contract provision that speaks for itself stating that the agreement is the entire agreement.
12. Counterparts; Facsimile Execution – this provision is a standard contract provision that speaks for itself stating that the agreement may be executed in counterparts and may be deemed executed by facsimile delivery.
13. Ratification – this provision is a standard contract provision that speaks for itself stating that the agreement is ratified and confirmed in its entirety.

Respondent: William C. Packer  
Title: Vice President – Controller  
Date: 05/24/2018

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**U-2** Please provide either the Commission-approved affiliated interest agreement that would permit a limited joinder and guaranty of Aqua Pennsylvania, Inc., or a justification for why Section 5 of the Amended APA is exempt from 66 Pa. C.S. §§ 2101-2107.

**RESPONSE**

The Company submits that Section 5 of the First Amendment to the APA is exempt from 66 Pa. C.S. §§ 2101-2107 because the guaranty of Aqua Pennsylvania, Inc., if triggered, will be satisfied through an intercompany transaction in the form of a capital contribution that does not required affiliated interest or security certificate approval. Such capital contributions between Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. have not required affiliate approval, and as stated in Exhibit U of Aqua Pennsylvania Wastewater, Inc.'s Application in Docket No. A-2017-2605434 Aqua Pennsylvania Wastewater, Inc. has access to all of Aqua Pennsylvania, Inc.'s financing capabilities.

Respondent: Marc A. Lucca  
Title: President  
Date: 05/24/2018

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U-3            Please explain why the Amended APA's revised outside date definition includes a range extending to March 31, 2021.

**RESPONSE**

The outside date of March 31, 2021, serves as a date past which either party could terminate the Assets Purchase Agreement if closing has not occurred as of that date. To extend the Assets Purchase Agreement to allow for closing and to provide additional time to cover a possible appeal of the Commission's Opinions and Orders entered November 29, 2017 and April 19, 2018, the outside date needed to be extended. The range exists so that if the parties to the proceeding come to a settlement on the issues, it provides a date certain by which closing should occur.

Respondent: Marc A. Lucca  
Title: President  
Date: 05/24/2018

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**U-4** Please state when Aqua Pennsylvania Wastewater, Inc. anticipates closing on the transaction.

**RESPONSE**

Aqua wants to close the transaction as soon as possible. Aqua, however, anticipates that closing will occur by December 31, 2018.

Respondent: Marc A. Lucca  
Title: President  
Date: 05/24/2018

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**U-5** Please state the anticipated effective date of the agreement.

**RESPONSE**

The First Amendment is effective upon Commission approval. Payments of \$96,666.67 have been made to date consistent with the First Amendment provisions.

## VERIFICATION

I, Marc A. Lucca, President of Aqua Pennsylvania, Inc., hereby state that the facts set forth in my responses to the Bureau of Technical Utility Services Data Request 1 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).



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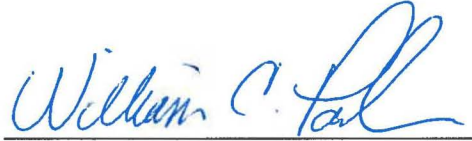
Marc A. Lucca  
President  
Aqua Pennsylvania, Inc.

Dated: May 24, 2018



## VERIFICATION

I, William C. Packer, Vice President – Controller of Aqua Pennsylvania, Inc., hereby state that the facts set forth in my responses to the Bureau of Technical Utility Services Data Request 1 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).



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William C. Packer  
Vice President - Controller  
Aqua Pennsylvania, Inc.

Dated: May 24, 2018