



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 13, 2020

Via Electronic Filing

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

Re: Application of Aqua Pennsylvania Wasterwater Inc. pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority
Docket No. A-2019-3015173

I&E Letter in Support of the County of Delaware's Petition for Stay

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement ("I&E") is in receipt of the County of Delaware, Pennsylvania's ("County") Petition for a Stay of the above-referenced Section 1329 Application for Aqua's Acquisition of the Delaware County Regional Water Quality Control Authority's Wastewater System Assets ("DELCORA"), which was filed on August 7, 2020. The County's Petition indicates that an action is currently pending in the Court of Common Pleas of Delaware County which, *inter alia*, could result in the termination of DELCORA, the named seller in Aqua's Application.¹ According to the County's Petition, final hearings in the Delaware County case are not set to conclude until October 21, 2020; however, a Prehearing Conference for Aqua's instant application is set before Administrative Law Judge Angela T. Jones on September 2, 2020.² I&E anticipates that absent the Commission's grant of the County's Petition, it is likely that parties involved in Aqua's Application proceeding will be subject to engaging in discovery, serving written testimony, and litigating the merits of the Application prior to the conclusion of the Delaware County court case. The practical

¹ County of Delaware, Pennsylvania's Petition for a Stay of the above-referenced Section 1329 Application for Aqua's Acquisition of the Delaware County Regional Water Quality Authority's Wastewater System Assets ("County's Petition"), A-2019-3015173, ¶38.

² County's Petition, ¶¶26, 51.

impact of this reality appears to be that the parties, the ALJ, and the Commission will expend a great deal of time and resources in litigating and considering Aqua's Application without knowing for certain whether DELCORA has the legal authority to act as the seller of the assets at issue. I&E notes that Section 1329 defines a "Selling utility" as follows: "a water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller." Under the facts alleged in the County's Petition,³ DELCORA's status as a qualifying "selling utility" appears to be in dispute and is now the subject of active litigation.

Given the uncertainty of DELCORA's status, the uncertainty of its authority to convey the assets Aqua seeks to acquire, and the uncertainty of its authority to agree to the terms of the Asset Purchase Agreement that underlies Aqua's Application, I&E supports the County's Petition for Stay for two reasons. First, I&E acknowledges that a threshold question that the Commission must answer in the above-captioned case is whether granting Aqua's Application would affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way and be in the public interest.⁴ I&E submits that it is impossible to make these requisite determinations when both the seller's status and its authority to make the commitments that underly the Asset Purchase Agreement for which Aqua is seeking approval, are uncertain and subject to the outcome of pending litigation. I&E envisions a possibility whereby a Commission-determined public benefit of the transaction may be reversed by a subsequently-issued order of the Delaware County Court. Additionally, I&E agrees with the County that the Commission, the ALJ, and intervenors would be irreparably harmed if they were compelled to litigate Aqua's complex Application, complete with a voluminous record and a truncated statutory timeframe,⁵ subject to the risk of litigation pending in the Court of Common Pleas of Delaware County. Accordingly, I&E writes to convey its support for the County's Petition and respectfully requests that the Commission grant it for the reasons outlined in this letter.

³ County's Petition, ¶¶ 15, 21, 30, 38.

⁴ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972); 66 Pa. C.S. §1103(a).

⁵ I&E notes that 66 Pa. C.S. § 1329(d)(2) compels the Commission to issue a final order in a Section 1329 proceeding within 6 months of the filing date of an application meeting the requirements of 66 Pa. C.S. §1329 (d)(1). However, I&E submits that the Commission's 6-month obligation is not triggered in this case because DELCORA's status as a "selling utility" under 66 Pa. C.S. §1329 (d)(1) appears to be directly at issue in the pending litigation in the Court of Common Pleas of Delaware County. Accordingly, the threshold determination of whether DELCORA is a "selling utility" cannot yet be established as required to trigger the statutory timeframe.

Copies of this letter are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic Service.* Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. L. Miller', written in a cursive style.

Gina L. Miller
Prosecutor
PA Attorney ID No. 313863
(717) 787-8754
ginmiller@pa.gov

Erika L. McLain
Prosecutor
PA Attorney ID No. 320526
(717) 783-6170
ermclain@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

GLM/ac
Enclosure

cc: Honorable Angela T. Jones (*ALJ, PUC Philadelphia – via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater Inc. pursuant to Sections 507,	:	
1102 and 1329 of the Public Utility Code for	:	Docket No.: A-2019-3015173
Approval of its Acquisition of the	:	
Wastewater System Assets of the Delaware	:	
County Regional Water Quality Control	:	
Authority	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Letter** dated August 13, 2020, in the manner and upon the persons listed below.

Served via Electronic Mail Only

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com
Counsel for
Aqua Pennsylvania Wastewater, Inc.

Alexander R. Stahl, Esq.
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Thomas Wyatt, Esq.
Matthew S. Olesh, Esq.
Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102
thomas.wyatt@obermayer.com
matthew.olesh@obermayer.com
Counsel for DELCORA

Kenneth D. Kynett, Esq.
Charles G. Miller, Esq.
Petrikin, Wellman, Damico, Brown &
Petrosa
William Penn Building
109 Chesley Drive
Media, PA 19063
kdk@petrikin.com
cgm@petrikin.com
Counsel for
Edgmont Township, Delaware County

Adeolu A. Bakare, Esq.
Robert F. Young, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com
Counsel for Delaware County

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com
*Counsel for Southwest Delaware County
Municipal Authority, Lower Chichester
Township, and Upland Borough*

Erin K. Fure, Esq.
Daniel G. Asmus, Esq.
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101
efure@pa.gov
dasmus@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Harrison W. Breitman, Esq.
Santo G. Spataro, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
choover@paoca.org
egannon@paoca.org
hbreitman@paoca.org
sspataro@paoca.org



Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 313863