


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oa

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

August 14, 2020

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

Re: Application of Aqua Pennsylvania Wastewater, 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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief in Support of the
Petition of the County of Delaware, Pennsylvania for a Stay and Request for Commission Review and
Answer to a Material Question.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Enclosures:

cc: The Honorable Angela Jones (**email only**)
Certificate of Service

*294045

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Brief in Support of the Petition of the County of Delaware, Pennsylvania for a Stay and Request for Commission Review and Answer to a Material Question, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 14th day of August 2020.

SERVICE BY E-MAIL ONLY

Gina L. Miller, Esquire
Erika L. McLain, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street
Suite 302
Harrisburg, PA 17101

Thomas Wyatt, Esquire
Matthew S. Olesh, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102

Erin K. Fure, Esquire
Daniel G. Asmus, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

Alexander R. Stahl, Esquire
Kimberly A. Joyce, Esquire
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Kenneth D. Kynett, Esquire
Charles G. Miller, Esquire
Petrikin Wellman Damico Brown & Petrosa
The William Penn Building
109 Chesley Drive
Media, PA 19063

Adeolu A. Bakare, Esquire
Robert F. Young, Esquire
Kenneth R. Stark, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815

/s/ Harrison W. Breitman
Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Santo G. Spataro
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: August 14, 2020
*294044

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania Wastewater, Inc. :
for Approval of its Acquisition of Delaware County :
Regional Water Quality Control Authority's : A-2019-3015173
Wastewater Assets, inter alia, Pursuant to Sections :
507, 1102 and 1329 of the Public Utility Code :

BRIEF OF THE OFFICE OF CONSUMER ADVOCATE IN SUPPORT OF THE
PETITION OF THE COUNTY OF DELAWARE, PENNSYLVANIA FOR A STAY
AND REQUEST FOR COMMISSION REVIEW AND ANSWER TO A
MATERIAL QUESTION

On August 7, 2020, the County of Delaware, Pennsylvania (“Delaware County” or “County”) filed a Petition for Stay of the Section 1329 Application for Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) for the Acquisition of Delaware County Regional Water Control Authority’s (“DELCORA” or “Authority”) Wastewater System Assets (“Application”) and Request for Commission Review and Answer to a Material Question (“Petition for Stay” or “Petition”). The Petition provides the following material question and proposed answer:

Should Aqua's Application be stayed until there is a final determination in the pending Court of Common Pleas Action at Docket No. CV-2020-003185 regarding (1) the County's complaint against DELCORA's creation of a Rate Stabilization Trust; and (2) the County's Ordinance 2020-4 (providing for the orderly termination of DELCORA pursuant to the Municipality Authorities Act), each issue directly bearing on Aqua's PUC Application?

Proposed Answer: Yes.

Petition at 2. The Office of Consumer Advocate (“OCA”) supports the County’s request for a stay and answer to the material question in this matter and files this brief in support pursuant to 52 Pa. Code Section 5.302(b) as a party to the instant proceeding.

The OCA supports the proposed stay for the reasons set forth in Delaware County's Petition. The OCA submits that it will be difficult to properly evaluate the Application given the array of complex disputed legal issues that are currently being litigated before the Delaware County Court of Common Pleas. As noted in the Petition, when Aqua intervened in the Common Pleas proceeding, the Company asserted that Delaware County's complaint and the ordinance passed by Delaware County terminating the Authority were "a direct attack on the APA." Petition at ¶ 47. As further noted in the Petition, the Delaware County Court of Common Pleas issued an Order stating "[t]his court finds that the impact of this case on the agreement between Aqua and DELCORA will be direct, significant and real." Petition at ¶ 47. Additionally, as correctly noted by Delaware County, the Asset Purchase Agreement specifically establishes an outside date for closing following an unappealable resolution of any litigation concerning the proposed transaction. Petition at ¶ 33.

The Trust at issue in the Court of Common Pleas is a component of the Application. As part of the Application, the following testimony was submitted by Aqua:

Q. Please further describe the benefits of the Proposed Transaction.

A. The impact on bills for DELCORA's customers was one of the driving forces behind this transaction and is the primary benefit. The majority of the sale proceeds will be placed in an irrevocable trust for the benefit of DELCORA's customers. It is my understanding that this is a relatively unique feature for a transaction of this nature and provides a substantial benefit to our customers.

Aqua St. No. 5 at 11. As the Trust is being claimed as "the primary benefit" of the proposed transaction for customers and as a unique feature of the transaction, the disputed legality of the Trust before the Court of Common Pleas will impact the Application and could come into conflict with the Commission's determination in this proceeding.

The OCA submits that it will be difficult to move forward with the Application without resolving the issues that are raised in the Court of Common Pleas as identified in the Petition.

Moreover, approval of the Application without a resolution of the issues identified in the Petition could lead to irreparable harm for existing Aqua and DELCORA customers. The Court of Common Pleas proceeding encompasses the same Asset Purchase Agreement as the instant proceeding and includes many of the same parties in the instant case, including Aqua and DELCORA.¹ Regardless of the outcome of the Court of Common Pleas proceeding, a stay would promote judicial efficiency by lessening the time and expense that the Commission and parties will expend in litigating issues in this docket that are also subject to an ongoing Court of Common Pleas proceeding.

The issuance of a stay until the issues before the Court of Common Pleas are resolved would also promote settlement in the instant proceeding. During the pendency of an ongoing Court of Common Pleas proceeding, parties may be less inclined to settle as the issues being litigated in the Court of Common Pleas have not been resolved. Additionally, once a resolution is reached, any issues that may overlap between the Court of Common Pleas proceeding and the instant proceeding would be resolved, which would lead to more certainty between the parties and the Commission in determining whether a settlement is in the public interest.

The Commission and the parties will benefit from a determination in the Court of Common Pleas regarding the legality of the Trust and the issues surrounding the existence of DELCORA. For the reasons stated above and contained in Delaware County's Petition, the OCA supports Delaware County's Petition for Stay.

¹ The OCA is not a party to the Court of Common Pleas proceeding.

Respectfully submitted,

/s/ Harrison W. Breitman

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Santo G. Spataro
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

Dated: August 14, 2020
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