

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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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:

Enclosed for electronic filing please find the Office of Consumer Advocate's Notice to Plead and Expedited Motion for an Extension of the Statutory Suspension Period of the Application of Aqua Pennsylvania Wastewater, Inc.'s Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority Proceeding, in the above-referenced proceeding.

Please note that the Office of Consumer Advocate is respectfully requesting that the Chief Administrative Law Judge direct the Parties to file an Answer to the Motion within ten (10) days of service.

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 Charles E. Rainey, Jr. **(email only)**  
The Honorable Angela Jones **(email only)**  
Certificate of Service

\*294043

## 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 Notice to Plead and Expedited Motion for an Extension of the Statutory Suspension Period of the Application of Aqua Pennsylvania Wastewater Inc.'s Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority Proceeding, 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 14<sup>th</sup> day of August 2020.

### **SERVICE BY E-MAIL ONLY**

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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 Approval of its	:	Docket No. A-2019-3015173
Acquisition of the Wastewater System Assets	:	
of the Delaware County Regional Water Quality	:	
Control Authority	:	

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NOTICE TO PLEAD

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You are hereby advised to file a written response to the attached OCA's Expedited Motion for an Extension of the Statutory Suspension Period of Aqua Pennsylvania Wastewater Inc.'s Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority Proceeding within twenty (20) days after the date of service **or within a shorter period, if so directed by the Chief Administrative Law Judge**. If you do not file a written response to OCA's Expedited Motion, the Chief Administrative Law Judge may rule in favor of OCA on the attached Expedited Motion without a hearing.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

A copy should also be served on the undersigned counsel, the Presiding Officer and all other parties.

Respectfully submitted,

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Acting Consumer Advocate

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Dated: August 14, 2020  
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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 :

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THE OFFICE OF CONSUMER ADVOCATE'S EXPEDITED MOTION FOR AN  
EXTENSION OF THE STATUTORY SUSPENSION PERIOD FOR AQUA  
PENNSYLVANIA WASTEWATER COMPANY'S APPLICATION TO ACQUIRE  
DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY'S  
WASTEWATER SYSTEM ASSETS

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**I. INTRODUCTION**

As fully set forth below, pursuant to the authority issued in both the Pennsylvania Public Utility Commission's ("Commission") Emergency Order dated March 20, 2020<sup>1</sup>, and in Governor Tom Wolf's Disaster Proclamation attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19 ("Coronavirus" or "COVID"), the Office of Consumer Advocate respectfully requests that Chief Administrative Law Judge Charles E. Rainey, Jr. issue a Commission order extending the statutory suspension period arising under 66 Pa. C.S. Section 1329 for Aqua Pennsylvania Wastewater's ("Aqua" or "Company") application at Docket No. A-2019-3015173 by sixty (60) days.

The OCA respectfully requests expedited consideration of its Motion. An expedited resolution is necessary because the OCA's ability to conduct an adequate investigation of Aqua's

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<sup>1</sup> Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262, Emergency Order (Mar. 20, 2020) (Emergency Order).

application is at issue. Moreover, the OCA respectfully requests that the Chief Administrative Law Judge direct all other Parties to file an Answer to this Motion within ten days of the date it was served in order to resolve the motion expeditiously.

The OCA further notes that the schedule in this case will likely be set in early September, as the prehearing conference is scheduled for September 2, 2020. The OCA submits that the COVID-19 global pandemic is the type of extraordinary event that, despite the OCA's best efforts, warrants an extension of the statutory period in the interest of due process.

## **II. PROCEDURAL HISTORY**

On March 3, 2020, Aqua filed an application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Commission approval of the acquisition of the Delaware County Regional Water Quality Control Authority's ("DELCORA" or "Authority") wastewater system assets. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency in response to COVID-19. The Proclamation of Disaster Emergency recognized that the statutes and regulations that govern procedures for Commonwealth agency business may be suspended if strict compliance "would in any way prevent, hinder, or delay necessary action in coping with this emergency."<sup>2</sup>

Through its application, Aqua seeks Commission approval under Section 1329 to include the purchase price of \$276,500,000 for the Authority's system in its ratemaking rate base. According to the Prehearing Conference Order issued by the Administrative Law Judge, the

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<sup>2</sup> Commonwealth of Pennsylvania, Office of the Governor, Proclamation of Disaster Emergency (Mar. 6, 2020), available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (Proclamation of Disaster Emergency).

anticipated public meeting date for the Commission to determine whether to approve Aqua's application is January 14, 2021.

Aqua is a regulated public utility company, and furnishes wastewater service to approximately 35,000 customer accounts. DELCORA owns and operates sanitary and combined wastewater collection and treatment systems that provide sanitary combined wastewater service to retail and wholesale customers in parts of Delaware and Chester Counties, including direct retail service to approximately 16,000 customers. DELCORA provides wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities. To date, Formal Protests, Notices of Appearance, and Petitions to Intervene were submitted by the OCA, I&E, the Office of Small Business Advocate, DELCORA, Delaware County, Edgemont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, and Upland Borough.

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees beginning March 16, 2020, and the closing of all state offices in Dauphin County and the Capitol Complex.<sup>3</sup> The Commission's offices and the OCA's office in Harrisburg remain closed and all employees are to work from home, with limited exception.

On July 27, 2020, the Commission accepted Aqua's Application for filing. On August 3, 2020, the Administrative Law Judge issued a Prehearing Conference Order, which scheduled an Initial Prehearing Conference for September 2, 2020. On August 7, 2020, Delaware County filed a Petition for a Stay of the application. Delaware County's Petition for a Stay requests that the Commission stay the instant proceeding until there is a final determination in the pending

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<sup>3</sup> <https://www.governor.pa.gov/newsroom/gov-wolf-puts-statewide-covid-19-mitigation-efforts-in-effect-stresses-need-for-every-pennsylvanian-to-take-action-to-stop-the-spread>.



Delaware County Court of Common Pleas proceeding at Docket No. CV-2020-003185, which would resolve disputed issues that bear on Aqua's Application.<sup>4</sup>

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<sup>4</sup> The OCA's Motion should not be viewed as an alternative resolution to the issues raised in the Petition for Stay filed by the County of Delaware, Pennsylvania as the issues pending disposition in the Court of Common Pleas would not be resolved by granting the OCA's Motion.

### III. GROUNDS FOR REQUESTED RELIEF

#### A. Legal Authority

Section 1329 proceedings have a six-month statutory deadline.<sup>5</sup> The Public Utility Code also provides that Presiding Officers shall have the authority, subject to the Commission's Regulations, to regulate the course of the hearing, dispose of procedural requests or similar matters, and take any other action authorized by Commission rule.<sup>6</sup>

Aqua filed its Application under Section 1329 on March 3, 2020, which is approximately three days before the Commission issued its Emergency Order and Governor Wolf issued a Proclamation of Disaster Emergency. As noted *supra*, Governor Wolf determined that, due to the global pandemic's impact upon operations, statutes and regulations that govern procedures for Commonwealth business may need to be altered or waived.<sup>7</sup> Moreover, the Commission noted in its Emergency Order that the closure of the Commission's office "presents many challenges for the Commission, the regulated community, and the public."<sup>8</sup> The Emergency Order further stated as follows:

Given the unprecedented nature of this emergency, the Commission is aware that some deadlines or obligations may hinder the public service mission of the Commission and its affected stakeholders.<sup>9</sup>

As further noted in the Commission's Emergency Order, statutory deadlines prescribed by the Public Utility Code or applicable law may be waived, suspended, or extended. The Emergency Order states as follows:

**Suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines shall not exceed ninety (90) days except upon expedited**

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<sup>5</sup> 66 Pa. C.S. § 1329(d)(2).

<sup>6</sup> 66 Pa. C.S. § 331(d).

<sup>7</sup> Proclamation of Disaster Emergency at 2.

<sup>8</sup> Emergency Order at 1.

<sup>9</sup> Emergency Order at 2.

**certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.**

For example, in pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief Administrative Law Judge's decision would then be subject to review by the Commission. Similarly, in uncontested proceedings, e.g. the filing of an annual universal service report, the utility may request an extension of time to file the report. The Bureau Director is hereby authorized to grant a reasonable extension of time for the filing of that report subject to review by the Commission.<sup>10</sup>

As such, in recognition of the extraordinary circumstances which arose due to the COVID-19 pandemic, the Commission ordered as follows:

All statutory and regulatory deadlines may be suspended, extended, waived or changed during the pendency of the Proclamation of Disaster Emergency.<sup>11</sup>

The OCA submits that the Commission's ability to suspend, extend, or waive statutory deadlines is appropriate to apply to the instant proceedings. As discussed below, the filing of a Section 1329 application three days before the issuance of the Commission's Emergency Order and in the midst of an ongoing global pandemic is reasonable basis for the Commission to grant an extension.

B. Extension of the Statutory Suspension Period Is Necessary to Prevent a Limited Investigation and Review of Aqua's Application Filings and Uphold Due Process.

Given the current, extraordinary circumstances, the statutory suspension period will limit the ability of the OCA, and the other parties, to adequately investigate and analyze the Company's filings and will likely prevent public input hearings from being convened in a timely manner, thus preventing the development of a full and complete record. Under the currently effective deadlines contained in the Prehearing Conference Order, the Prehearing Conference will be held on

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<sup>10</sup> Emergency Order at 3 (emphasis in original).

<sup>11</sup> Emergency Order at 4.

September 2, 2020 and Reply Briefs are due on October 19, 2020. Effectively, this provides the parties with a month and a half to schedule and hold public input hearings, develop and respond to testimony, engage in settlement discussions, hold evidentiary hearings, and litigate the issues in main and responsive briefs. The OCA further notes that Aqua did not provide responses to the OCA's interrogatories, served over two months prior, until the Commission conditionally accepted Aqua's Application.<sup>12</sup> A month and a half long litigation schedule in the midst of these extraordinary circumstances does not promote due process or further the public interest.

Due to the ongoing COVID-19 pandemic, the OCA's office personnel are encouraged to work remotely. Accordingly, the OCA does not have its usual access to physical files, photocopying, U.S. mail, and support staff, among other services. As such, the COVID-19 pandemic impairs the OCA's ability to investigate Aqua's filing.

This proceeding further presents some particular challenges. Given the financial and economic impact of COVID-19 on Aqua's existing ratepayers and DELCORA's current ratepayers, the OCA submits that it is particularly important to ensure that the ratemaking rate base and the imposed conditions established in this proceeding for the Authority's system are reasonable and to determine whether the Application results in affirmative public benefits. The OCA further submits that projections contained in the Utility Valuation Expert's ("UVE") valuations may require additional adjustments as a result of the COVID-19 pandemic. Additionally, the OCA submits that the ongoing proceeding at the Delaware County Court of Common Pleas presents further challenges and complications in evaluating Aqua's Application. Providing additional time to analyze these issues will be critical going forward.

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<sup>12</sup> The OCA served interrogatory Sets I and II on May 5, 2020. The Commission conditionally accepted Aqua's Application on June 11. On July 10, 2020, partial responses were received in response to OCA Set II. On July 24, 2020, responses to Set I were provided. The remainder of responses to Set II were received on July 27, 2020.

Moreover, given the size of the proposed acquisition and the number of customers affected, the OCA will request that public input hearings be scheduled to provide customers the opportunity to speak on the record about how the potential rate increase resulting from the transaction will impact them. See OCA Protest at ¶ 6. This is particularly critical during this time as many customers will be experiencing financial hardship for an extended period of time and the Company's request will impact them significantly.

For these reasons, the OCA submits that the statutory suspension period should be extended to provide additional time for the parties to analyze the Company's filing and sufficient opportunity for customers to provide comments.

#### IV. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission grant the OCA's Expedited Motion for an Extension of the Statutory Suspension Period of Aqua's Application and extend the suspension period by sixty (60) days. This suspension is necessary to meet the mounting challenges resulting from the COVID-19 pandemic. It will also ensure that the OCA has sufficient time and resources to adequately investigate and support its position in this proceeding and develop a full and complete record for the Commission's consideration.

Respectfully submitted,

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Dated: August 14, 2020  
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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 Approval of its	:	Docket No. A-2019-3015173
Acquisition of the Wastewater System Assets	:	
of the Delaware County Regional Water Quality	:	
Control Authority	:	

VERIFICATION

I, Harrison W. Breitman, Assistant Consumer Advocate of the Office of Consumer Advocate, hereby state that the facts above set forth above 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).

DATED: August 14, 2020  
\*294042

Signature: /s/ Harrison W. Breitman  
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