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August 17, 2020

VIA ELECTRONIC FILING

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

**Re: Docket No. A-2019-3015173; Application of Aqua Pennsylvania
Wastewater, Inc. – Delaware County Regional Water Quality Control
Authority**

Dear Secretary Chiavetta:

Tom Wyatt and I are counsel for the Delaware County Regional Water Quality Control Authority ("DELCORA") in this matter. Attached please find DELCORA's brief in opposition to the County of Delaware, Pennsylvania's petition for a stay of this proceeding.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "M. Olesh".

Matthew S. Olesh

cc: The Honorable Angela T. Jones (via email)
All parties (via email as indicated on Certificate of Service)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Application of Aqua Pennsylvania Wastewater,
Inc. Pursuant to Sections 1102, 1329 and 507 of
the Public Utility Code for Approval of its
Acquisition of the Wastewater System Assets of
the Delaware County Regional Water Quality
Control Authority**

A-2019-3015173

**BRIEF OF THE DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL AUTHORITY IN OPPOSITION TO THE
PETITION OF THE COUNTY OF DELAWARE FOR A STAY, REQUEST
FOR COMMISSION REVIEW AND ANSWER TO A MATERIAL QUESTION**

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Dated: August 17, 2020

I. Introduction

“Issues related to the legality of the Trust and the termination of DELCORA can be litigated without prejudice to whatever rights Aqua has under the [Asset Purchase Agreement (“APA”)] – which, once again, says nothing about rate stabilization, rate caps, or the creation or funding of the Trust.”

“There is no reason why the County cannot proceed with the termination process while the PUC considers the issues within its jurisdiction.”

“Issues related to the APA will be determined by the PUC in the first instance.”

“The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.”

“The Amended Complaint and the Ordinance do not expressly purport to challenge or attack the enforceability of the APA.”

“The Court could invalidate the Trust and require DELCORA's cooperation in winding up its affairs without prejudicing Aqua's claimed rights under the APA.”

These are not arguments that the Delaware County Regional Water Quality Control Authority (“DELCORA”) makes in opposition to the petition (the “Petition”) of the County of Delaware, Pennsylvania (the “County”) that it filed in order to flout the mandatory statutory six-month review period that governs the application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) that is at issue in this proceeding. These are the County's *own admissions*, taken *verbatim* from its filings and discovery in the pending civil litigation in the Court of Common Pleas of Delaware County that the County initiated against DELCORA (the “Common Pleas Action”). The County contends that its claims in the Common Pleas Action provide justification for the Commission to stay the instant action. *The County's own words, however, undercut every argument made in its Petition and show the true, disingenuous nature of the County's actions.* They are dispositive of the issue in favor of DELCORA, and serve as proof that no stay is appropriate and that the Petition should be denied.¹

¹ The aforementioned quotes are taken from, respectively: (1) the County's Amended Answer with New Matter to the Petition for Leave to Intervene filed by Aqua Pennsylvania Wastewater, Inc. (“Aqua”), attached as Exhibit A, ¶ 22; (2) the County's Brief in Opposition to Aqua's Preliminary Injunction in the Common Pleas Action, attached as Exhibit B, p. 18; (3) the County's Responses to Aqua's First Set of

There are two issues in the Common Pleas Action: (1) whether the creation of the Trust was a valid exercise of DELCORA's authority and (2) whether the County may legally terminate DELCORA under the Municipality Authorities Act by way of an ordinance passed by the County Council in early June, 2020. Neither has anything to do with the issue of whether the transaction contemplated by Aqua's application is in the public interest.

In fact, the County has been unequivocal that ***it is not challenging the Asset Purchase Agreement between DELCORA and Aqua (the "APA") or the sale of assets from DELCORA to Aqua as part of the Common Pleas Action.*** See Exhibit D, ¶¶ 27, 51, 52. Moreover, the County has insisted that this Commission must determine "***in the first instance***" whether to approve the sale of DELCORA's assets to Aqua. See Exhibit C, Response Nos. 3, 6, 7. ***The County's request for a stay here is not just inconsistent with these contentions – it is blatantly disingenuous.*** The County seems to have spun so many conflicting arguments and in so many venues that it has now made even itself dizzy. Its Petition is without any legal basis, as the issues being litigated in the Common Pleas Action have no bearing on the issues before this Commission.

The creation of the Trust is only relevant to this proceeding in the sense that it determines what happens with the transaction proceeds. However, since Aqua is not a party to the Trust, the Trust itself is non-jurisdictional to the Commission. The Trust is a mere vehicle designed to ensure that the sale proceeds from this transaction will be used for the benefit of DELCORA's ratepayers in the form of customer assistance payments applied to offset future wastewater rate increases.

The County is misrepresenting the purpose and function of the Trust in an attempt to obtain a judicial declaration invalidating its creation so that it can obtain the sale proceeds for itself. Whether or not the Trust is valid has nothing to do with whether this transaction should be approved by the

Interrogatories in the Common Pleas Action, attached as Exhibit C, Response No. 6; (4) *Id.*, Response No. 7; (5) the County's Answer to Aqua's Petition for Preliminary Injunction in the Common Pleas Action, attached as Exhibit D, ¶ 27; and (6) Exhibit A, ¶ 31.

Commission – it is merely a question of how DELCORA (not Aqua) handles the transaction proceeds. Separate and apart from the standard here for transaction approval, DELCORA committed itself to use the proceeds from the transaction to benefit its ratepayers. Just because it did so and chose what it saw as the best vehicle to accomplish it does not put it before the Commission.

Similarly, the question of whether the County has the ability to terminate DELCORA prior to the closing of the transaction is irrelevant to these proceedings. In fact, it is *the County* that just last week stated in a filing in the Common Pleas Action that “[t]here is no reason why the County cannot proceed with the termination process while the PUC considers the issues within its jurisdiction.” See Exhibit B, p. 18. The County’s audacity in making such a statement while concurrently seeking a stay of this proceeding is beyond belief. The County is simply trying to delay a transaction that provides benefits to customers from going forward. While it is unclear if the County will ever be able to actually terminate DELCORA – as it has conceded that it will take at least “several months to remove all impediments to termination,” if they can ever be removed (*see id.*, p. 22) – the County is correct only in that there is no reason why the Commission cannot proceed to consider the issues within its jurisdiction.

Ultimately, this proceeding is governed by the six-month time period proscribed by the Public Utility Code. There is no basis to violate this statutory provision and stay this proceeding. DELCORA respectfully requests that the County’s Petition be denied.

II. Proposed Answer to Material Question

DELCORA respectfully submits that the Commission should deny the County’s Petition and not stay these proceedings.

III. Factual/Procedural Background

A. Proceedings Before the PUC

This proceeding arises from Aqua’s March 3, 2020 application (the “Application”) for approval of its proposed acquisition of DELCORA’s wastewater conveyance and treatment system

(the “System”). Aqua and DELCORA are parties to the September 17, 2019 APA, pursuant to which DELCORA agreed to sell Aqua the System for \$276.5 million.

The proceeds from the transaction are to be used for the benefit of DELCORA’s ratepayers. DELCORA proposes that this occur by way of a customer trust (the “Trust”) formed on December 27, 2019. The Trust will hold the transaction proceeds (and any of DELCORA’s cash on hand at closing), and will make customer assistance payments using that money to benefit ratepayers. Payments will be made to the extent that ratepayers are subject to any rate increases in excess of 3% per year to offset any such increases. In order to reduce administrative expenses, the payments will be placed on the bills for the benefit of the ratepayers. ***The Trust is a mechanism to handle the proceeds of the transaction, not something inherent to the transaction itself.***

The Commission accepted Aqua’s Application on July 27, 2020. All parties and proposed interveners – including the County – have been active participants in this docket.

B. The Common Pleas Action

The County initiated the Common Pleas Action on May 14, 2020. Initially, the County included four causes of action in its complaint, each of which challenged the formation of the Trust. Meanwhile, on May 20, 2020, the County introduced Ordinance 2020-4 (the “Ordinance”), which seeks to terminate DELCORA pursuant to the Municipality Authorities Act, 53 Pa.C.S. § 5601 *et seq.* (the “MAA”), for a first reading. As a result, DELCORA filed a petition in the Common Pleas Action seeking a preliminary injunction of enforcement of the Ordinance on June 1, 2020. The Ordinance was given a second reading and passed County Council on June 4, 2020.

Also on June 4, 2020, the Delaware County Court of Common Pleas issued an order that there will be no change in the operation, management and governance of DELCORA until a hearing is held on the issue in DELCORA’s petition for a preliminary injunction (or upon further order of the Court). These restrictions have remained in place since by agreement of the County. On June 15, 2020, the County filed an Amended Complaint in the Common Pleas Action that maintained its four

causes of action challenging the Trust, but added a count for mandamus that seeks to compel DELCORA to comply with the Ordinance.

C. The Instant Petition to Stay

The County filed its Petition seeking a stay of this proceeding on August 7, 2020, approximately (a) 2.5 months after the County filed its petition to intervene in this proceeding and the County initiated the Common Pleas Action and (b) approximately 2 months after the County passed its Ordinance. The County has not explained its delay in seeking a stay here.

IV. Argument

A. The Six-Month Period Proscribed By The Public Utility Code For Review Of Aqua's Application Is Mandatory.

1. The Law Requires That the Commission Cannot Ignore 66 Pa.C.S.A § 1329(d)(2).

As the Commission is well aware, 66 Pa.C.S.A § 1329(d)(2) governs with respect to acquisitions by a public utility and provides that “[t]he commission shall issue a final order on an application submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1).” There are no exceptions to this statutory requirement in either the Public Utility Code or in case law. It is a statutory provision that must be adhered to by the Commission.

The County concedes this point by relegating the entirety of its argument relating to this unambiguous provision to a footnote and citing to a case that does not address this issue. The County’s argument attempts to rely on the distinction drawn in case law between “mandatory” and “directory” statutory provisions, with violation of “directory” provisions held by the Commonwealth Court to not render proceedings void. *W. Penn Power Co. v. Pa. Pub. Util. Com.*, 521 A.2d 75, 78 (Pa. Commw. 1987).

The fatal flaw of the County’s argument is that it ignores the well-established case law holding that the distinctions between “mandatory” and “directory” statutory provisions in the context

of deadlines are drawn only in the context of determining the consequence of missing such a deadline – not whether a deadline can be blatantly disregarded at the start of an administrative proceeding, as the County improperly proposes in its Petition. As the Commonwealth Court dictates:

To hold that a provision is directory, rather than mandatory, does not mean that it is optional – to be ignored at will. Both mandatory and directory provisions of the legislature are meant to be followed. It is only in the effect of non-compliance that a distinction arises.

In re Condemnation by the Commonwealth of Pa., 131 A.3d 625, 631-32 (Pa. Commw. Ct. 2016) (citing *In re: Sale of Real Estate by Lackawanna County Tax Claim Bureau*, 22 A.3d 308 (Pa. Commw. Ct. 2011), *appeal denied*, 613 Pa. 648, 32 A.3d 1279 (Pa. 2011)).

There is thus no basis for the Commission to ignore the six-month period for review of the transaction set forth in 66 Pa.C.S.A § 1329(d)(2) by granting a stay. This is particularly the case now, when acceptance occurred three weeks ago and all parties – including the County – have been actively engaged in discovery. Granting a stay would both be unprecedented and violate these clear legal principles, violate 66 Pa.C.S.A § 1329(d)(2), and set a dangerous precedent for applications before the Commission. As there is no legal basis for doing so, the Commission should deny the County’s Petition.²

2. The Idea That the Six-Month Statutory Review Period Mandated By 66 Pa.C.S.A § 1329(d)(2) Has Not Yet Begun is Preposterous.

Although not raised directly by the County, DELCORA wishes to respond to the notion raised by the Bureau of Investigation and Enforcement (“I&E”) that the six-month statutory obligation has not been triggered 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 [Common Pleas Action].” *See* August 13, 2020 letter from I&E. Respectfully, this novel legal argument is without any foundation in the law.

² DELCORA also rejects the suggestion of the Office of the Consumer Advocate that a stay would facilitate a potential settlement. If anything would do so, it is the development of a record in this proceeding. In any event, this not a permissible reason to ignore 66 Pa.C.S.A § 1329(d)(2).

66 Pa.C.S. § 1329 makes no such provision or exception. Rather, it is clear that once an application is accepted – as is the case here – the six-month time limitation starts to run.

There is no question that DELCORA is a selling utility as of the date of this submission, and as demonstrated below, there will always continue to be a selling utility as a counterparty to Aqua in the APA. There is no basis whatsoever for the contention that the six-month period has not yet begun.

B. Even If The Commission Were to Disregard the Statutory Mandate of 66 Pa.C.S.A § 1329(d)(2), A Stay Is Still Not Warranted.

The six-month requirement set forth in 66 Pa.C.S.A § 1329(d)(2) is dispositive of the County's Petition. However, even if this was not the case, the nature of the claims in the Common Pleas Action does not justify the grant of a stay in this action because the Commission's review of the transaction at issue here is in no way dependent on the disposition of any issues in that civil case.

1. The APA is a Valid, Enforceable Agreement, and the County Concedes That the Common Pleas Action Will Not Change That.

The County has been explicit in the Common Pleas Action, even after this Petition was filed, that “*the [County's] Amended Complaint does not challenge the APA*” and “[*t]he Amended Complaint does not challenge the sale of assets from DELCORA to Aqua.*” See Exhibit D, ¶¶ 51, 52 (filed on August 11, 2020).³

There can thus be no question that the issues before the Commission here – the APA and the sale of assets from DELCORA to Aqua – are *distinct and severable* from those at issue in the Common Pleas Action. The County concedes that it cannot challenge the APA or sale in the Common Pleas Action because no such challenge is viable. The APA was validly executed by both DELCORA and Aqua, and it was well within DELCORA's legal authority to do so. See 53 Pa.C.S. §

³ In fact, every document from which DELCORA quotes on page 1 of this brief was filed *after* the County submitted its instant Petition.

5607(d)(13). In short, there is no dispute from any party that the scope of the issues presently before the Commission is distinct from those issues in the Common Pleas Action.⁴

2. The County's Attempt to Terminate DELCORA Does Not Prevent the Commission From Reviewing the Instant Transaction with Aqua.

Just as there is no dispute or challenge as to the APA's validity, there is no dispute under applicable law that it would proceed to closing if approved by the Commission regardless of whether DELCORA still exists. Under the MAA, for the County to be able to terminate DELCORA, it must *first* assume its obligations under the APA. Since the County has made it clear that it is not challenging the APA or sale as part of the Common Pleas Action, there is no scenario where the issue of DELCORA's termination in the Common Pleas Action alters this proceeding.

One of the County's two issues in the Common Pleas Action is its attempt to terminate DELCORA and take possession of its System pursuant to the MAA. By law, the County may only do so if it fulfills certain conditions by removing the statutorily enumerated impediments to DELCORA's termination. These impediments include, among other things, the assumption of all of DELCORA's obligations, including its contractual obligations. 53 Pa.C.S. §§ 5619, 5622.⁵

The APA is a binding contract that constitutes an obligation of DELCORA. Thus, even if the County were to be successful in removing all of the impediments to DELCORA's termination, the result would be that it could *only* terminate DELCORA upon assumption of the APA and the obligations inherent thereto. 53 Pa.C.S. § 5622(a).

⁴ See also Transcript of June 30, 2020 hearing in the Common Pleas Action, attached as Exhibit E, pp. 27:25-28:2 (counsel for the County conceding that "[t]he enforceability of [the APA] is not before this Court in any way, shape or form.").

⁵ Other impediments include (a) the payment and discharge of DELCORA's outstanding bonds, (b) the settlement of DELCORA's outstanding claims, (c) the County substituting itself for DELCORA in the federal Consent Decree between DELCORA, the United States Environmental Protection Agency and the Pennsylvania Department of Environmental Protection, (d) DELCORA's National Pollutant Discharge Elimination System permit being transferred to the County, and (e) the County obtaining the requisite permission from this Commission to serve DELCORA's extra-territorial customers. It is unclear that the County will ever be able to address these impediments and be able to proceed with DELCORA's termination.

Thus, the issue before the Court in the Common Pleas Action of DELCORA's termination and whether the County may proceed with it is irrelevant to this proceeding. If the County is unable to terminate DELCORA before these proceedings have completed, DELCORA will remain party to the APA, and the County will be able to continue with its ill-advised quest to terminate DELCORA after the closing of the transaction. If the County is somehow able to do so, it will necessarily step into DELCORA's shoes as party to the APA and related documents, assuming all of DELCORA's obligations inherent in those documents.⁶ Either way, the issue does not impact the Commission's review.⁷ The County has plainly acknowledged this, stating in the Common Pleas Action in no uncertain terms that "[t]here is no reason why the County cannot proceed with the termination process while the PUC considers the issues within its jurisdiction." See Exhibit B, p. 18.⁸

The clear law set forth in the MAA states that the County can *only* terminate DELCORA after its assumption of DELCORA's obligations under the APA. As those obligations survive DELCORA's termination, the consideration of DELCORA's termination in the Common Pleas Action has no bearing here, and does not support the issuance of a stay of this proceeding. The County's Petition should be denied as a result.

3. While the Trust Will Provide a Significant Benefit for DELCORA's Ratepayers, There Is No Basis to Stay These Proceedings While the County Attempts to Challenge Its Lawful Establishment.

Similarly, the outcome of the County's challenge to the legality of the Trust – the mechanism by which DELCORA's ratepayers will benefit from the transaction proceeds – also in no way impairs or impacts the Commission's review here. This is because the County's contention that "the

⁶ These obligations include, among other things, a contractual requirement to support the transaction and advocate in favor of it before the Commission.

⁷ Again, in this respect, the concerns expressed by I&E that DELCORA may not be a "selling utility" are misplaced. Either DELCORA or the County, as its successor in interest if DELCORA is terminated, will be party to the APA, and each is or would be a "selling utility" when party to that agreement.

⁸ See also Exhibit E, p. 27:23-25 (counsel for the County stating that "[the County] will assume all obligations of DELCORA, including the APA.").

rate stabilization to be provided by Aqua in the form of ‘customer assistance payments’ is contingent on distributions from the Trust” (*see* Petition, ¶ 29) is flat-out wrong.

DELCORA has committed that the proceeds of the transaction will be used to benefit its ratepayers. The trust mechanism contemplated by the transaction was put in place at DELCORA’s insistence to accomplish that. However, the fact that this mechanism is currently being challenged by the County in the Common Pleas Action is ultimately irrelevant to the proceedings before the Commission because the transaction here is not in any way conditioned on the Trust’s validity. If the Trust is held to be invalid – which DELCORA is confident will not happen, since (as discussed below) the County’s legal challenge to the Trust is grounded in distortions, if not misrepresentations, of its plain language and actual operation – the reality is that the transaction can go forward with or without the Trust component.

Aqua’s involvement with the Trust is only to assist in ensuring that the Trust funds are distributed for the benefit of the ratepayers in the most optimal fashion for ratepayers: i.e, to apply proceeds as a line item on customer bills to offset any subsequent rate increases. In this sense, Aqua has committed to being a willing participant in providing DELCORA with the information it needs to administer the Trust and effectuate this goal. This is precisely what is described in the testimony of William C. Packer cited by the County. *See* Petition, ¶ 29.

The County’s efforts to distort this into the Trust somehow being “integral” to the transaction are disingenuous and wrong. Absent the Trust, the money paid to DELCORA will still be available for its ratepayers’ benefit, and will still be used for that purpose in another way that will similarly not require Commission jurisdiction. Simply put, nothing about the County’s challenge to the Trust provides a legal basis for the Commission to stay this proceeding.

C. Even If the *Process Gas* Stay Test Applies Here – Which It Does Not – the County Fails to Satisfy It.

The use of the factors in *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) to determine whether a stay is appropriate in a proceeding of the nature of this one is without legal precedent. DELCORA respectfully submits that the use of this test is not warranted. However, even if it were, it is clear that the County has not satisfied it.

1. The County Has Not Made a “Strong Showing” That It Is Likely To Succeed on the Merits.

The County has not made the requisite “strong showing” of likelihood of success on the merits. Its Petition contains nothing more than bald legal conclusions that it is entitled to the relief it seeks in the Common Pleas Action. *See* Petition, ¶¶ 30, 38. These conclusory averments are insufficient to satisfy the “success on the merits” prong of the *Process Gas* test.

Even if the merits are considered, it is clear that the County cannot make such a showing, much less a “strong” one. Regarding the Trust, the County’s allegations in the Common Pleas Action are that (a) the Trust violates DELCORA’s articles of incorporation, (b) the Trust is an invalid governmental entity, (c) the Trust violates the MAA, and (d) the Trust violates Pennsylvania’s Uniform Trust Act. *See* the County’s Amended Complaint, in the Common Pleas Action, attached as Exhibit F, ¶¶ 56-77. None of these theories have merit.

First, the Trust does not violate DELCORA’s articles of incorporation. The articles state that DELCORA is authorized to “establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale.” *See* amendment to DELCORA’s articles of incorporation, attached as Exhibit G. The Trust, by its plain language, does this, as it functions to make distributions to offset amounts the ratepayers would otherwise pay on their utility bill. *See* Trust Agreement, attached as Exhibit H. Nothing about how the Trust operates violates DELCORA’s articles.

Second, the Trust is not a governmental entity, rendering the County's argument on this point specious. By its plain terms, the trust agreement states that the Trust is intended to be *treated like* a government entity for state and local tax purposes *only*. See Exhibit H, § 9.9. There is a clear legal distinction between the two that the County blatantly ignores. There is no basis for invalidating the Trust on the grounds that it is a governmental entity because it is not.

Third, the Trust does not violate the MAA. The County contends that the Trust violates 53 Pa.C.S. § 5612 (a.1), which prohibits the expenditure of funds “for any purpose other than a service or project directly related to the mission or purpose of the authority.” 53 Pa.C.S. § 5612 (a.1)(1). This is nonsense. The proceeds of the Trust will be used for the benefit of DELCORA's ratepayers in the form of customer assistance payments to mitigate against rate increases. This purpose is directly related to and consistent with DELCORA's mission – the provision of wastewater conveyance and treatment services to its ratepayers.

Finally, the Trust does not violate the Uniform Trust Act. The County contends that DELCORA did not have the capacity to create the Trust, and that the Trust's purpose is unlawful and violates public policy. As discussed above, none of this is true. The Trust was lawfully created, and DELCORA was authorized by its articles of incorporation to do so. The use of the money in the Trust to benefit ratepayers, who have paid into DELCORA's system for many years as customers, is entirely consistent with public policy and the MAA.⁹

The County has similarly not made a strong showing of entitlement to relief under its claim that seeks to direct DELCORA's termination. Under the MAA, the County may terminate DELCORA only if it removes all of the impediments that the County acknowledges exist. See *supra* p. 8. There has been no showing by the County in this proceeding *or* in the Common Pleas Action that it will be able to do so.

⁹ See 53 Pa.C.S. § 5607(b)(2) (“The purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity...”).

Thus, the County's claim that it had made out a "strong showing" that it is likely to prevail on the merits is false. It has done no such thing, and is not entitled to any stay.

2. The County Has Not Demonstrated That It Will Suffer Any Irreparable Harm.

The County has failed to show – or even sufficiently allege – that it will suffer irreparable harm if a stay is denied. By law, "[h]arm is irreparable when it is irreversible." *Pocono Mt. Charter Sch., Inc. v. Pocono Mt. Sch. Dist.*, 2013 Pa. Commw. Unpub. LEXIS 775, at *6 (Pa. Commw. Ct. Aug. 13, 2013) (citing *Temple Ass'n of Univ. Professionals, Etc. Local 4531 v. Temple Univ.-Of Commonwealth Sys. of Higher Educ.*, 582 A.2d 63, 67 (Pa. Commw. Ct. 1990)).

The County has failed to make any showing of irreparable harm. It contends that it will suffer harm through "the protracted and unnecessary litigation that would occur" in the absence of a stay. This is incorrect for a number of reasons. First, having to litigate an action does not constitute irreparable harm. Second, the County's contention that litigation in this proceeding would be "protracted" is simply incorrect given the aforementioned six-month time limitations that apply here. Third, and perhaps most notably, the County has not specified what would be different about this proceeding if the County is somehow successful in the Common Pleas Action.

Litigation in this proceeding would not be unnecessary or wasted *even if the County is able to succeed on the merits in the Common Pleas Action*. The Commission is certainly able to consider whether the transaction is in the public interest both with and without the prospect of the Trust. And the County still has not said how the proposed transaction would be impacted if DELCORA is terminated and it steps into DELCORA's shoes as party to the APA. In fact, as discussed above, the County has *consistently* stated that the Commission's ruling on the APA and the sale needs to happen "in the first instance" before it can do so. *See* Exhibit C, Response Nos. 3, 6, 7. The County's own words prove that it will not suffer any irreparable harm while this proceeding is ongoing, and its Petition must be denied as a consequence.

3. Any Delay to These Proceedings Would Harm DELCORA and its Ratepayers, Adversely Affecting the Public Interest.

The County's contention that a stay would not cause any harm to any party or the public interest is also wrong. As a threshold matter, violation of 66 Pa.C.S.A § 1329(d)(2) itself would constitute irreparable harm. *See Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1180 (Pa. Commw. Ct. 2016) ("the violation of an express statutory provision constitutes *per se* irreparable harm").

Moreover, if successful, the County's Petition (which is nothing more than a delay tactic) would cause significant harm to DELCORA and its ratepayers. As stated in the testimony of Robert Willert, DELCORA's Executive Director (submitted with Aqua's application and attached hereto as Exhibit I), DELCORA's sale to Aqua came about in large part because DELCORA was facing expenses of at least \$606 million to remain with the Philadelphia Water Department ("PWD"), which handles a portion of DELCORA's wastewater flow. *See* Exhibit I, pp. 6-8. In contrast, separation from PWD will cost approximately \$450 million. *See id.*, p. 9. As a result, the decision was made for DELCORA to leave PWD, and it entered into the transaction with Aqua to help make that happen. *See id.*

The work that must be done to separate from PWD must happen immediately in order to be in a position to disconnect from PWD in 2028, when DELCORA's current contract with PWD ends. *See id.* Any delay in these proceedings would delay this critical capital work. If this occurs, it could have drastic implications for DELCORA and its ratepayers, who would face the burden of bearing even more significant capital improvement costs. Moreover, there would be a real risk that the work would not get completed by 2028, which would leave DELCORA without a way to treat a portion of its wastewater flow at that time.

In short, the County's notion that the Commission can stay this proceeding without any real consequences is preposterous. While the County may fret about the supposed "irreparable harm" of

spending money to pay attorneys for (a) litigation that it decided to initiate and (b) voluntary intervention here, DELCORA is faced with the prospect of real-life consequences for its ratepayers. A stay would cause serious harm, which can be avoided by denying the County's Petition.

D. The Doctrine of Primary Jurisdiction Does Not Support The Issuance of a Stay Because the County has Unequivocally Asserted the PUC's Jurisdiction As a Defense In the Common Pleas Action.

DELCORA joins in and incorporates by reference the section of Aqua's brief in opposition to the Petition regarding the doctrine of primary jurisdiction. However, DELCORA also points out that here, again, the County's arguments are undercut by its own submissions in the Common Pleas Action. In addition to the countless examples already raised in this answer, DELCORA also directs the Commission to the County's August 12, 2020 Preliminary Objections to DELCORA's Counterclaim in the Common Pleas Action, attached as Exhibit J, wherein the County states in no uncertain terms that "[t]here is *no doubt whatsoever* that the Asset Purchase Agreement is subject to the Commission's exclusive jurisdiction over public utilities, as Aqua's application before the PUC seeks Commission approval of its APA with DELCORA under at least three separate provisions of the Public Utility Code." See Exhibit J, ¶ 19 (emphasis added).

The County's own words in the Common Pleas Action speak for themselves. The Commission is fully capable of reviewing the application before it now, just as the Court of Common Pleas is capable of hearing the claims in the Common Pleas Action relating to the validity of the trust and the County's ill-advised ordinance. Both proceedings can, and should, proceed concurrently. To do otherwise would reward the County's duplicitous statements to both tribunals.

V. Conclusion

For all of the reasons set forth herein, DELCORA respectfully requests that the Commission deny the County's Petition.

Respectfully submitted,

/s/ Matthew S. Olesh

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Dated: August 17, 2020

CERTIFICATE OF SERVICE

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing brief upon the parties list below in accordance with the requirements of 52 Pa. Code §§ 1.54 (relating to service by a party) via electronic mail.

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/s/ Matthew Olesh

Matthew Olesh, Esquire

Dated: August 17, 2020

Exhibit A

_____, J.

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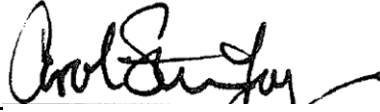
COUNTY OF DELAWARE,	:	IN THE COURT OF COMMON PLEAS
PENNSYLVANIA,	:	DELAWARE COUNTY, PENNSYLVANIA
	:	
Plaintiff	:	
	:	
v.	:	NO. CV-2020-003185
	:	
DELAWARE COUNTY REGIONAL	:	CIVIL ACTION - LAW
WATER QUALITY CONTROL	:	
AUTHORITY, and DELCORA RATE	:	
STABILIZATION FUND TRUST	:	
AGREEMENT b/t THE DELAWARE	:	
COUNTY REGIONAL WATER	:	
QUALITY CONTROL AUTHORITY	:	
as SETTLOR and UNIVEST BANK	:	
AND TRUST CO. as TRUSTEE,	:	
	:	
Defendants	:	

NOTICE TO PLEAD

TO: AQUA PENNSYLVANIA WASTEWATER, INC., Intervenor and JOEL L. FRANK,
ESQ., its attorney:

You are hereby notified to file a written response to the enclosed New Matter

within twenty (20) days from service hereof or a judgment may be entered against you.

By:  _____
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Date: June 30, 2020

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COUNTY OF DELAWARE,	:	IN THE COURT OF COMMON PLEAS
PENNSYLVANIA,	:	DELAWARE COUNTY, PENNSYLVANIA
	:	
Plaintiff	:	
	:	
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	:	
DELAWARE COUNTY REGIONAL	:	CIVIL ACTION - LAW
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AUTHORITY, and DELCORA RATE	:	
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QUALITY CONTROL AUTHORITY	:	
as SETTLOR and UNIVEST BANK	:	
AND TRUST CO. as TRUSTEE,	:	
	:	
Defendants	:	

AMENDED ANSWER OF COUNTY OF DELAWARE, PENNSYLVANIA
TO PETITION TO INTERVENE FILED BY
AQUA PENNSYLVANIA WASTEWATER, INC.

Aqua Pennsylvania Wastewater, Inc. ("Aqua") concedes that the County of Delaware's "Amended Complaint and the Ordinance do not expressly purport to

challenge or attack the enforceability of the APA” between Aqua and DELCORA.

Indeed, the pending disputes between the County and DELCORA do not involve the proposed sale of DELCORA’s assets. Thus, Aqua cannot show that the determination of the disputes between the County and DELCORA may affect a legally enforceable interest of Aqua, and Aqua’s Petition to Intervene should be denied.

The County answers the factual averments set forth in Aqua’s Petition as follows:

1. Admitted.
2. Admitted, upon information and belief.
3. Admitted in part and denied in part. The County admits only that, upon information and belief, DELCORA engaged in discussions with Aqua for the purchase of DELCORA’s system. After reasonable investigation, the County is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph, and the same are therefore denied. By way of further answer, the County denies any implication that the proposed sale of DELCORA’s assets to Aqua was the only—or best—way to address the possibility of increasing capital costs.
4. Denied. The Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith.
5. Denied. The Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. By way of further answer, Section 7.04(a) of the APA, which is titled “Rates,” states that “Buyer shall implement Seller’s sanitary wastewater rates then in effect at Closing, as reflected on Schedule 7.04(a) (“Seller Base Rates”), until the Buyer’s next base rate case proceeding [before the Public Utility Commission] following Closing.” Aqua did not

include Schedule 7.04(a) as part of its exhibits to its Petition to Intervene. Section 7.04(a) of the APA says nothing about rate stabilization. Section 7.04(a) of the APA says nothing about “capping all rate increases for customers at 3% per year, by placing the proceeds of the sale (after paying down Delcora’s obligations) into an independently managed irrevocable trust.” Similarly, in its application to the Pennsylvania Public Utility Commission (“PUC”) for approval of the acquisition of DELCORA’s assets, Aqua failed to include the DELCORA Rate Stabilization Fund Trust Agreement (the “Trust Agreement”) and the DELCORA Trust Funding Agreement (the “Trust Funding Agreement”) as exhibits, despite a statutory requirement to do so. Moreover, Aqua is not (and does not claim to be) a party to the Trust Agreement or Trust Funding Agreement. In sum, despite its public statements and representations to the PUC and this Court, rate stabilization, rate caps, and the “independently managed irrevocable trust” are conspicuously—and troublingly—absent from the APA. The County incorporates by reference its Amended Complaint; its Response to DELCORA’s Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

6. Denied as a legal conclusion. To the extent an answer is deemed required, the County admits only that DELCORA is a municipal authority governed by the Municipality Authorities Act (the “Authorities Act”). As such, DELCORA has limited rights, powers, and duties as set forth in the Authorities Act and DELCORA’s Articles of Incorporation (as amended) and is subject to termination by the County. In fact, during the June 18, 2020 hearing before this Court, DELCORA admitted several times that the County has a right to terminate it. The County incorporates by reference its Amended

Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

7. Denied as a legal conclusion. To the extent an answer is deemed required, the Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith.

8. Denied. The Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. By way of further answer, the County lacks knowledge or information sufficient to form a belief as to what Aqua relied upon in negotiating the Asset Purchase Agreement. The County therefore denies the averments in this paragraph.

9. Denied. The Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. The County denies the numerous legal conclusions contained in this paragraph. By way of further answer, the County denies that DELCORA must proceed to closing on the proposed sale to Aqua before the County may terminate DELCORA. The County denies that it "knows little to nothing about" DELCORA's system, and the County denies that it is unable to operate the system.¹ Further, the Ordinance directs DELCORA to "cooperate with the County in an orderly windup of its activities" and "continue to operate its system

¹ Tellingly, in a recent mailing to local municipalities, DELCORA admitted that after the sale to Aqua, the DELCORA system will continue to be run by the same employees who are running it now. See Exhibit A hereto, FAQ ("Your service will not change. The current employees and services of DELCORA will still oversee all operations so you can expect the same great service."). After termination, the County intends to retain the utility workers and certain administrative staff who run the system on a day to day basis.

in the normal course during this windup,” Ordinance § 2.02, which is consistent with DELCORA’s obligations under the APA (assuming *arguendo* that the APA is an enforceable contract). The County incorporates by reference its Answers to Paragraphs 10-14, below, as well as its Amended Complaint; its Response to DELCORA’s Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

10. Denied. The County incorporates by reference its Answers to Paragraph 9, above, and Paragraphs 11-14, below.

11. Denied. The County denies that it is “not qualified to safely provide service to Delcora’s customers.” The County denies that it is incapable of managing, operating, or controlling the sewer system. The County denies that it cannot obtain the necessary PUC approvals during the windup of DELCORA. The County incorporates by reference its Answers to Paragraphs 9-10, above, and Paragraphs 12-14, below.

12. Denied as conclusions of law. By way of further answer, the PUC only regulates public utility services provided outside of a municipal corporation’s boundaries. 66 Pa. C.S. § 1102(a)(5). As the vast majority of DELCORA’s customers are within Delaware County, these services would not be subject to PUC jurisdiction following a transfer of the system to the County. With regards to the approximately 245 DELCORA customers located in Chester County, as the plain language of the Ordinance demonstrates, DELCORA will be terminated only after any impediments to termination are removed. This includes any approval or permits required by the PUC. Moreover, Aqua also has not been authorized by the PUC to acquire and operate DELCORA’s sewer system. Pursuant to 66 Pa. C.S. § 507, the APA is not effective

until and unless the PUC grants its approval thereof. Thus, it is premature for Aqua to seek a declaratory judgment in this Court, when the PUC has not yet ruled on this issue. The County incorporates by reference its Answers to Paragraphs 9-11, above, and Paragraphs 13-14, below.

13. Denied. The County denies that the lawful termination of DELCORA “puts the safety of all customers at risk and jeopardizes the quality and operation of the sewer system’s assets.” As set forth above, after termination, the County intends to retain the utility workers and certain administrative staff who run the system on a day to day basis. The County incorporates by reference its Answers to Paragraphs 9-11, above, as well as its Amended Complaint; its Response to DELCORA’s Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

14. Admitted in part and denied in part. The County admits only that it does not presently employ the necessary personnel to operate the sewer system. The County denies that such personnel cannot be hired during the orderly windup of DELCORA. In fact, the County intends to retain the utility workers and certain administrative staff who run the system on a day to day basis. By way of further answer, the County believes and therefore avers that Aqua does not employ enough qualified or trained employees or support staff to operate DELCORA’s system. Indeed, Section 7.03(a) of the APA provides that “Buyer [Aqua] shall offer employment effective on the Closing Date, to all active Personnel . . . who are employed by Seller [DELCORA] in operating the System as of the Closing Date” See also Exhibit A, FAQ (“Aqua will offer employment to all DELCORA employees.”).

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted, with the clarification that the County seeks a writ of mandamus compelling DELCORA to comply with the terms of the Ordinance and the Municipality Authorities Ac, in order to effectuate the orderly termination of DELCORA.

21. Admitted in part and denied in part. The County admits only that Aqua has accurately quoted the Ordinance. The County denies any implication that the Ordinance requires the immediate or disorderly termination of DELCORA. The County incorporates by reference its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

22. Admitted in part and denied in part. The County admits that the Amended Complaint and the Ordinance "do not expressly purport to challenge or attack the enforceability of the APA." The County denies that the "practical effect of the relief requested in the Amended Complaint and the Ordinance constitutes a direct attack on the APA." To the contrary, assuming *arguendo* that the APA is an enforceable obligation of DELCORA, then upon the termination of DELCORA, the County will succeed to DELCORA's rights and obligations under the APA. Similarly, the Amended Complaint challenges the Trust Agreement and Trust Funding Agreement, agreements to which Aqua is not (and does not claim to be) a party. Accordingly, issues related to

the legality of the Trust and the termination of DELCORA can be litigated without prejudice to whatever rights Aqua has under the APA—which, once again, says nothing about rate stabilization, rate caps, or the creation or funding of the Trust. Because the determination of the County’s claims asserted in the Amended Complaint will not affect any legally enforceable interest of Aqua, Aqua’s Petition to Intervene should be denied. The County incorporates by reference its Amended Complaint; its Response to DELCORA’s Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

23. Denied. The County lacks knowledge or information sufficient to form a belief as to what “statements” this paragraph refers to. The County therefore denies the averments in this paragraph.

24. Admitted.

25. Denied as legal conclusions. By way of further answer, assuming *arguendo* that the APA is an enforceable obligation of DELCORA, terminating DELCORA would not be a “blatant violation” of “Aqua’s contractual rights.” Rather, the County would succeed to DELCORA’s obligations under the APA. Moreover, DELCORA’s unlawful resistance to termination is a blatant violation of the Authorities Act, which, as DELCORA readily admits, empowers the County to terminate DELCORA. The County incorporates by reference its Answers to Paragraphs 9 and 22, above, as well as its Amended Complaint; its Response to DELCORA’s Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

26. Denied as a legal conclusion. By way of further answer, the County can obtain the relief it seeks in the Amended Complaint without prejudice to Aqua's claimed contractual rights. At most, the APA is a removable impediment to the termination of DELCORA. If Aqua believes that DELCORA, or the County as its successor, breaches the APA (assuming *arguendo* that the APA is an enforceable obligation of DELCORA), then Aqua may seek relief in an appropriate action at an appropriate time. The County incorporates by reference its Answers to Paragraphs 5, 7-8, 22, and 25, above, as well as its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

27. Denied as a legal conclusion. By way of further answer, the County incorporates by reference its Answers to Paragraphs 25-26, above.

28. Denied as a legal conclusion. By way of further answer, Aqua's "enforceable rights and interests under the APA" are not at issue in this action, and the County incorporates by reference its Answers to Paragraphs 25-27, above.

29. Denied as a legal conclusion. By way of further answer, Aqua's "rights under the APA" are not at issue in this action, and the County incorporates by reference its Answers to Paragraphs 25-28, above.

30. Denied as a legal conclusion. By way of further answer, Aqua's "legally enforceable rights and interests under the APA" are not at issue in this action, and the County incorporates by reference its Answers to Paragraphs 25-29, above.

31. Denied as a legal conclusion. By way of further answer, the County denies that Aqua should be permitted to intervene in this action pursuant to Pa. R.C.P. Nos. 2327(2) or 2327(4). This action does not involve the potential disposition of property in the custody of the court. See Pa. R.C.P. 2327(2) (a person may intervene if “such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof”). Further, Aqua concedes that the County has not challenged the APA, see Aqua’s Petition to Intervene ¶ 22, and Aqua does not claim to be a party to the Trust Agreement or Trust Funding Agreement. See Pa. R.C.P. 2327(4) (a person may intervene if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action”). In this action, the Court could invalidate the Trust and require DELCORA’s cooperation in winding up its affairs without prejudicing Aqua’s claimed rights under the APA. Thus, Aqua does not satisfy the criteria under Pa. R.C.P. No. 2327 to intervene in this action, and the County incorporates by reference its Answers to Paragraphs 1-30, above.

32. Admitted in part and denied in part. The County admits only that, if permitted to intervene, Aqua will file the Answer, New Matter, and Counterclaim to the County’s Amended Complaint as set forth in Exhibit A to Aqua’s Petition to Intervene (“Aqua’s Proposed Counterclaim”). The County denies that Aqua’s Proposed Counterclaim has any merit. The County denies that it has any present obligation to answer Aqua’s Proposed Counterclaim, and the County reserves the right to answer

Aqua's Proposed Counterclaim at an appropriate time in the event that Aqua is permitted to intervene.

33. Denied. Aqua's Proposed Counterclaim speaks for itself, and the County denies any characterizations inconsistent therewith. By way of further answer, the County denies that Aqua is entitled to declaratory or injunctive relief related to the APA, which is not at issue in this action. The County denies that it has tortiously interfered with Aqua's claimed contractual rights under the APA. By way of further answer, Aqua's request for declaratory judgment is not proper, as the determination of the transfer of assets from DELCORA to Aqua is pending before the PUC. Further, the claim of tortious interference is not ripe, as the County has not taken any steps to "interfere" in any contractual relation between DELCORA and Aqua.

34. Denied as legal conclusions. To the extent a response is deemed required, the County incorporates by reference its Answers to Paragraphs 9, 22, 31, and 33, above.

35. Admitted, upon information and belief.

New Matter

36. Rule 1096 of the Pennsylvania Rules of Civil Procedure states that counter-claims are not permitted in mandamus actions.

37. Even if they are permitted to intervene, Aqua will not be permitted to file a counterclaim against the County.

38. Aqua's intervention will be futile.

39. The proposed sale of DELCORA's assets to Aqua requires PUC approval.

40. The APA is not effective until and unless the PUC grants its approval thereof. 66 Pa.C.S. § 507.

41. Under the APA, PUC approval of the sale of DELCORA's assets to Aqua is a condition precedent to closing. See e.g., APA Sections 11.03 and 12.03. See also Schedule 4.05 of the APA, which lists the PUC's approval of the transaction as a "Required Consent and Approval."

42. As stated in DELCORA's June 19, 2020 letter to municipalities, the PUC has "conditionally accepted for filing" Aqua's application to acquire DELCORA's wastewater system assets. Exhibit A.

43. Despite representations to this Court that its interests arise out of the APA and a "Rate Stabilization Agreement" (referenced in the Trust Agreement), Aqua has not even provided a copy of the purported Rate Stabilization Agreement to the PUC or the County, despite filing a PUC Application with exhibit pages in the thousands. It appears that Aqua and DELCORA are playing a cat and mouse game with the rate stabilization matter that they deem central to the decision to sell.

44. As DELCORA recognizes, it will be "several months" before the PUC determines whether to approve Aqua's application to acquire DELCORA's wastewater system assets. Exhibit A.

45. The Amended Complaint does not challenge the APA. See Aqua's Petition ¶ 22 (conceding that the "Amended Complaint and the Ordinance do not expressly purport to challenge or attack the enforceability of the APA").

46. The Amended Complaint does not challenge the sale of assets from DELCORA to Aqua. See *id.*

47. Thus, unless and until the PUC approves Aqua's application to acquire DELCORA's wastewater system assets, and unless and until the County actually challenges the sale of such assets to Aqua, Aqua's request for a declaratory judgment that the "Asset Purchase Agreement is a valid, binding and enforceable contract, and that closing on the Asset Purchase Agreement must occur prior to termination of Delcora by the County of Delaware" is not ripe, as an actual case or controversy does not exist.

48. Similarly, unless and until the PUC approves Aqua's application to acquire DELCORA's wastewater system assets and the County actually challenges the sale of such assets to Aqua (which Aqua admits the County has not done), Aqua's claim for tortious interference with an existing contractual relationship between Aqua and DELCORA is not ripe.

49. Aqua cannot show that the County has actually interfered with any contractual relationship between Aqua and DELCORA.

50. Further, even assuming *arguendo* that Aqua could make such a showing, the County's actions are privileged and/or justified.

51. The Municipality Authorities Act empowers the County to terminate DELCORA.

52. DELCORA admitted during the June 18, 2020 proceeding in this Court that the County is empowered to terminate DELCORA.

53. The Municipality Authorities Act does not require that all executory contracts proceed to closing prior to termination of an authority.

54. Rather, executory contracts such as the APA constitute, at most, removable impediments to termination.

55. Because the County is legally empowered to terminate DELCORA and direct DELCORA to windup its affairs, the County's actions are privileged and/or justified.

56. Additionally, Aqua cannot show any actual damages resulting from the alleged interference.

57. Aqua has not alleged (and cannot allege) that the County, as DELCORA's eventual successor, has breached the APA.

58. Indeed, Aqua admits that the County has not actually challenged the APA. Aqua's Petition ¶ 22.

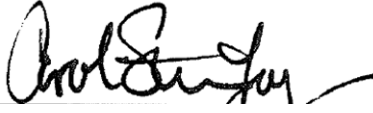
59. Rather, the Amended Complaint challenges the Trust Agreement and Trust Funding Agreement, documents to which Aqua is not (and does not claim to be) a party.

60. In this action, the Court could invalidate the Trust and require DELCORA's cooperation in winding up its affairs without prejudicing Aqua's claimed rights under the APA.

61. Thus, Aqua does not satisfy the criteria under Pa. R.C.P. No. 2327 to intervene in this action. See Pa. R.C.P. 2327(4) (a person may intervene if "the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action").

62. Finally, because Aqua's claims are not ripe and will be subject to dismissal as a matter of law, Aqua's intervention in this action would be futile.

WHEREFORE, the County respectfully requests that the Court deny Aqua's
Petition to Intervene.

By: 

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Dana W. Chilson, I.D. No. 208718
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Date: June 30, 2020

VERIFICATION

Subject to the penalties of 18 Pa. C.S.A §4904, relating to unsworn falsification to authorities, I hereby certify that I am the Chair of the Delaware County Council, Delaware County, Pennsylvania. In that capacity, I am authorized to make this Verification on its behalf. I further certify that the facts set forth in the foregoing document are true and correct to the best of my information and belief.

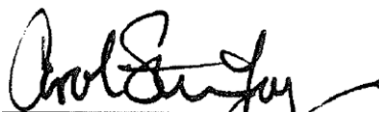


Brian P. Zidek, Chair

Dated: 06/30/2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

By:  _____
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Date: June 30, 2020

EXHIBIT A



DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY
P.O. Box 999 • Chester, PA 19016-0999

June 19, 2020

RECEIVED
JUN 22 2020

BY:

TOWNSHIP OF NETHER PROVIDENCE
214 SYKES LANE
WALLINGFORD, PA 19086

ATTN: GARY CUMMINGS

Dear Mr. Cummings:

On June 11, 2020, the Pennsylvania Public Utility Commission (PUC) conditionally accepted for filing the application of Aqua Pennsylvania Wastewater, Inc. (Aqua) for approval to acquire the Delaware County Regional Water Quality Control Authority (DELCORA) wastewater system assets. I am writing to update you on how this asset sale will impact you because you are an important customer of DELCORA.

DELCORA is facing the need for significant infrastructure improvements and increased expenses as a result of more stringent and costly environmental regulations, in addition to ordinary and necessary capital improvements. We have estimated that the costs associated with these obligations is \$1.2 billion dollars, which will lead to large rate increases for all customers. For this reason, DELCORA sought a local partner with experience in large scale capital investment projects, an excellent reputation and knowledge of our region. These factors led us to the proposed asset sale to Aqua Pennsylvania Wastewater, Inc

As part of the asset sale, DELCORA proposed a Customer Trust Fund ("Trust") that will allow us to minimize the impact to your bills. The assets in Trust will come from the proceeds of the asset sale, and these funds will provide payment assistance to you over the next 8-12 years or until the Trust money runs out. While the enclosed notice must include theoretical future rate increases, the first increase will not occur until Aqua's next rate case becomes effective which is anticipated to be in 2022. At that time, the Trust will keep your bills to a reasonable 3% annual increase over the next 8-12 years, while also providing the means to perform all of the required capital infrastructure improvements.

Recently, the Delaware County Council mounted an effort to dissolve DELCORA and sweep all of its assets into the County general fund. These assets and monies, however, do not belong to the County. They belong to ratepayers like you who have loyally paid their bills to DELCORA over the last 50 years. That is the reason we have mounted a legal case to prevent this takeover and to move ahead with the DELCORA plan to keep rates at a reasonable 3% annual increase. Under the Council's plans, rates will jump approximately 10% annually to pay the looming \$1.2 billion in capital costs.

This sale is now going through the regulatory approval process in Harrisburg at the PUC. This process is expected to take several months. We have developed the attached frequently asked questions in anticipation of questions that you may have. We have also added a section to our website at www.delcora.org to provide additional information.

Sincerely,

Robert J. Willert
Executive Director

RJW:bab
enclosures

cc: File

ADMINISTRATION

☐ 610-876-5523
☐ FAX: 610-876-2728

CUSTOMER SERVICE/BILLING

☐ 610-876-5526
☐ FAX: 610-876-1460

PURCHASING & STORES

☐ 610-876-5523
☐ FAX: 610-497-7959

PLANT & MAINTENANCE

☐ 610-876-5523
☐ FAX: 610-497-7950

NOTICE OF PROPOSED ACQUISITION AND RATE BASE ADDITION

Docket No. A-2019-3015173

Dear Customer:

On June 11, 2020, the Pennsylvania Public Utility Commission (PUC) conditionally accepted for filing the application of Aqua Pennsylvania Wastewater, Inc. (Aqua) for approval to acquire the Delaware County Regional Water Quality Control Authority (DELCORA) wastewater system assets. DELCORA provides direct retail service to approximately 16,000 customers and provides collection, conveyance, and treatment service to approximately 200,000 Equivalent Dwelling Units in Delaware and Chester Counties, Pennsylvania. Aqua's application also requests that the PUC authorize an addition of up to \$276.5 million to Aqua's rate base pursuant to 66 Pa. C.S. § 1329. A utility's rate base is the value of property used by the utility to provide service to its customers and is one of several components used to establish a utility's customer rates.

This acquisition will not immediately, but may, in the future, affect water and/or wastewater bills of Aqua customers, including the new DELCORA wastewater customers. Aqua is not requesting a rate increase as part of the acquisition. Your rates will not change until the conclusion of Aqua's next rate case where Aqua requests and receives PUC approval to increase its rates. Currently, it is not known when Aqua will file its next rate case. At that time, based on a preliminary analysis of the potential rate impacts, Aqua estimates that the rates of the average customer could increase. The amount of the increase will be determined in Aqua's next base rate case and will be dependent on how the PUC chooses to apportion the increase among Aqua's acquired and existing customers. The table below presents a non-binding, estimated incremental rate effect of the proposed rate base addition on DELCORA's EDU Wholesale wastewater customers:

DELCORA EDU Wholesale Customers

Rate Class	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
EDU Wholesale	26,779,250 gal/month	\$9,712.97	12.55%

The amounts stated above could change and will depend on how the PUC chooses to apportion any increase among the types of service, rate zones, and classes of customers.

PUC ROLE

The state agency which approves acquisitions and rates for regulated public utilities is the PUC. The PUC will review and investigate the proposed acquisition and requested \$276.5 million in additional rate base. After examining the evidence, the PUC may approve, modify or deny the acquisition and may approve or modify the \$276.5 million addition to rate base. The PUC will issue a decision on the application on or around January 14, 2021.

ACTIONS YOU CAN TAKE

You can support or challenge Aqua's request by:

- 1) Sending a letter to the PUC. You can tell the PUC why you support or object to Aqua's acquisition of DELCORA's wastewater system in your letter. This information can be helpful when the PUC investigates the application. Send your letter to the Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, PA 17105-3265.
- 2) Attending or presenting testimony at a PUC Public Input Hearing. You can attend or be a witness at a PUC public input hearing. The PUC holds public input hearings if it opens an investigation into Aqua's transaction and there is enough interest in the case. At these hearings, you can present your views to the PUC judge and to company representatives. Testimony under oath becomes part of the application case record. The PUC holds these hearings in the service area of the company. For more information, call the PUC at 1.800.692.7380.
- 3) Filing a protest or a petition to intervene. If you want to be a party to the case, you must file a protest or a petition to intervene. You then have an opportunity to take part in all the hearings about the proposed acquisition. You can receive copies of all materials distributed by the other parties. Protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before August 31, 2020. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on Aqua's counsel at Thomas, Niesen & Thomas, LLC, Attn: Thomas T. Niesen, 212 Locust Street, Suite 302, Harrisburg, PA 17101.

The documents filed as part of this application are available for inspection and copying at the Office of the Secretary of the PUC between 8 a.m. and 4:30 p.m., Monday through Friday, on the PUC's website at www.puc.pa.gov and at Aqua's offices at 762 West Lancaster Avenue, Bryn Mawr, PA 19010. The PUC docket number is A-2019-3009052.

FAQs

I have never heard of DELCORA. Why are you writing to me and who is DELCORA?

You may have never heard of DELCORA because you are likely billed for our wastewater services through your local township or your local municipal wastewater authority. DELCORA is the Delaware County Regional Water Quality Control Authority. Created in 1971, we have been serving Delaware County and Chester County residents for more than four decades, collecting, conveying and treating wastewater in a safe and effective manner.

Why is DELCORA being acquired by Aqua?

DELCORA is on the verge of an increase in costly environmental regulations, rising improvement costs and significant infrastructure needs. The estimated cost of these increases and improvements is approximately \$1.2 billion. DELCORA sought a local partner, with an excellent reputation, who understood these increasing demands and much-needed improvements. These factors led us to the proposed asset sale to Aqua Pennsylvania Wastewater, Inc.

Why are DELCORA's costs going up so dramatically?

There isn't a single reason for the increased costs. The high expense that DELCORA faces if we continue to have a portion of our service area's wastewater treated by the Philadelphia Water Department; the costs to repair our current infrastructure to comply with new environmental regulations; and the costs to upgrade our Chester plant facility to manage the wastewater currently treated by the Philadelphia Water Department together, amount to \$1.2 billion.

What will happen to my rates as a current DELCORA directly billed customer and how are the proceeds of the asset sale being used?

DELCORA is creating a Customer Trust Fund with the proceeds from the asset sale to minimize the impact to rates. This fund will keep customer bills at a reasonable 3% annual increase over the next 8-12 years or until the trust fund money runs out. The first rate increase will not occur until Aqua's next rate case becomes effective which is anticipated to be in 2022.

What will happen to my rates as a current Aqua water customer?

For those of you who are currently an Aqua Pennsylvania water customer, the Pennsylvania Public Utilities Commission (PUC) requires Aqua and DELCORA to notify you of this transaction. Further, the PUC requires that this notification also include a notice that future rates may be increased. However, any rate increase you see in the enclosed notice is projected over a period of years and will not occur until Aqua's next rate case becomes effective which is anticipated to be in 2022.

Why does the notice say rates will go up 12% but your letter says 3%?

The 12% rate increase is projected over a few years and will not occur until Aqua's next rate case becomes effective which is anticipated to be in 2022. Also, for most customers, the DELCORA Customer Trust Fund will use the proceeds from the asset sale to provide payment assistance for customer bills. This fund will keep customer bills at a reasonable 3% annual increase over the next 8-12 years or until the trust fund money runs out.

Which municipal or authority customers of DELCORA are eligible for the DELCORA Customer Trust Fund?

In the case of municipal and authority customers of DELCORA, eligibility for bill assistance under the DELCORA Customer Trust Fund are contingent on the municipality or authority agreeing to the assignment or amendment of its service agreement to Aqua, to the extent Aqua and DELCORA deem necessary.

When will this acquisition be finalized?

We don't have an exact date. First, we have to wait for the PUC to accept the case, then the review process will last approximately six months.

What will happen to DELCORA employees?

Aqua will offer employment to all DELCORA employees.

How will my service change?

Great news! Your service will not change. The current employees and services of DELCORA will still oversee all operations so you can expect the same great service.

Who should I contact in the event I have questions?

If you have any additional questions, please email questions@delcora.org. There is also a new section on the website at delcora.org which will have updates on the asset sale process

Will I be updated as the process continues and in what manner will I be updated?

The best way to stay informed will be to visit delcora.org, where DELCORA will post new and updated information as it becomes available.

CERTIFICATE OF SERVICE

I certify that I have this date served a true and correct copy of the foregoing document by email, addressed as follows:

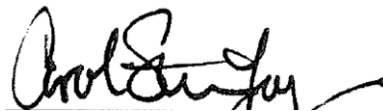
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Joel L. Frank, Esq.
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Lamb McErlane PC
24 E. Market Street- Box 565
West Chester, PA 19381-0565
Counsel for Petitioner Aqua Pennsylvania Wastewater, Inc.



Dated: June 30, 2020

Carol Steinour Young

Exhibit B

Carl W. Ewald
I.D. No. 85639
LAW OFFICES OF CARL W. EWALD, PC
110 W. Front Street
Media, PA 19063
(610) 565-7520

**PLAINTIFF'S BRIEF IN OPPOSITION TO INTERVENOR AQUA PENNSYLVANIA
WASTEWATER, INC.'S PETITION FOR PRELIMINARY INJUNCTIVE RELIEF**

Plaintiff County of Delaware, Pennsylvania (the "County"), by and through its undersigned counsel, hereby submits this Brief in Opposition to Intervenor Aqua Pennsylvania Wastewater, Inc.'s ("Aqua") Petition for Preliminary Injunctive Relief.

Aqua seeks to enjoin and delay the County's lawful termination of Defendant Delaware County Regional Water Quality Control Authority ("DELCORA" or the "Authority"). Yet Aqua concedes—as it must—that the County is empowered to terminate DELCORA. The Ordinance simply sets this process in motion.

Because Aqua cannot show a clear right to relief, immediate or irreparable harm, or that greater injury will result from refusing the injunction than from granting it, the Court should deny Aqua's Petition for Preliminary Injunctive Relief.

I. STATEMENT OF FACTS

A. Procedural History

The County filed an Amended Complaint in this action on June 15, 2020. Count V of the Amended Complaint seeks a writ of mandamus compelling DELCORA to comply with the terms of Ordinance No. 2020-4 and the Municipality Authorities Act to effectuate the orderly windup and termination of DELCORA. All parties have acknowledged that the County, as the municipality that created DELCORA, has a right to terminate DELCORA. *See, e.g.*, Aqua's Consolidated Memorandum in Support of its Petition for Preliminary Injunctive Relief at 8 ("Aqua does not contest the County's general right to terminate Delcora"); Statement of N. Poduslenko, Counsel for DELCORA, Transcript of Proceedings, page 44, lines 16-20 (June 18, 2020) ("Judge, we're not disputing that they have the – they are empowered or have the authority

ultimately to terminate DELCORA. That's – that's what the case law says. There's nothing – nothing unique or different about that.").¹

Despite acknowledging the County's power to terminate DELCORA, Aqua filed two Counterclaims in the County's mandamus action in flagrant violation of the Pennsylvania Rules of Civil Procedure. Count I of Aqua's Counterclaims seeks declaratory and injunctive relief related to the County's statutory right to terminate DELCORA. Aqua's Counterclaims, Count I, *ad damnum* clause. Count II purports to state a claim for tortious interference with the contractual relationship between Aqua and DELCORA and seeks, among other improper relief, an injunction preventing the County from interfering with the APA and from terminating DELCORA prior to closing on the APA. Aqua's Counterclaims, Count II, *ad damnum* clause.

Because Aqua's Counterclaims are subject to dismissal and Aqua cannot show a clear right to relief or any risk of immediate or irreparable harm, the County respectfully requests that the Court deny Aqua's request for a preliminary injunction.

B. Creation of DELCORA

On or about October 20, 1971, the County, as a governing body under the Municipality Authorities Act of 1945 (now codified in the Municipality Authorities Act, 53 Pa.C.S. § 5601 *et seq.*, the "Authorities Act"), created DELCORA by filing Articles of Incorporation pursuant to 53 Pa.C.S. § 5603 (the "Articles") with the Department of State.² The County is the only municipal incorporator of DELCORA.

¹ A true and correct excerpt from the hearing transcript is attached hereto as Exhibit A.

² A true and correct copy of the Articles, as amended, are attached hereto as Exhibit B.

C. Asset Purchase Agreement with Aqua

At its regularly scheduled meeting on September 17, 2019, the DELCORA Board unanimously approved a \$276.5 million sale to Aqua, which is currently pending approval by the Pennsylvania Public Utility Commission. The Asset Purchase Agreement ("APA") (Exhibit A to Aqua's Answer) is dated September 17, 2019, and was subsequently amended on February 24, 2020. DELCORA has publicly stated that the proceeds will be used to pay off outstanding debt and to invest in a rate stabilization plan. The net proceeds could exceed \$200 million.

On March 3, 2020 Aqua filed an Application with the PUC seeking approval of its acquisition of DELCORA through the APA. On July 27, 2020 following internal review by Commission staff, the Commission accepted Aqua's Application. Both the County and DELCORA have filed petitions to intervene in Aqua's Application.

D. Termination of DELCORA

At a special meeting of the Council on June 3, 2020, the County approved and enacted Ordinance No. 2020-4 (the "Ordinance") to effectuate the termination of DELCORA pursuant to 53 Pa. C.S. §§ 5619 and 5622.³

The Ordinance includes the following directives to DELCORA:

- "The Authority shall cooperate with the County in an orderly windup of its activities" Ordinance § 2.02.
- "The Authority shall continue to operate its system in the normal course during this windup." *Id.*
- "The Authority shall take all actions necessary to remove any impediments to its termination in accordance with the Authorities Act, subject, however to the prior approval of such actions by the County Council." Ordinance § 2.05.

³ A true and correct copy of the Ordinance is attached hereto as Exhibit C.

The Ordinance further instructed DELCORA to refrain from expending any funds inconsistent with DELCORA's termination. See 52 Pa. C.S. §5607(c) (authorizing a municipality which organized a municipal authority to specify the powers and purposes of the authority from time to time).

Pursuant to the Authorities Act, DELCORA is required to terminate. To date, however, it has failed and refused to comply with the dictates of the Ordinance.

Quite to the contrary, on June 1, 2020, DELCORA filed a Petition for Preliminary Injunction and Brief in Support thereof (respectively, "DELCORA's Petition" and "DELCORA's Brief") attempting to enjoin the County from enforcing the Ordinance. On June 4, 2020, counsel for the County sent DELCORA a letter demanding DELCORA's cooperation in the termination of DELCORA and its compliance with the dictates of the Ordinance.⁴ Once again, DELCORA failed and refused to comply with the Ordinance.

After intervening in this action, Aqua followed suit: On July 22, 2020, Aqua filed its Answer with New Matter and Counterclaims ("Aqua's Answer" or "Aqua's Counterclaims") along with a Petition for Preliminary Injunctive Relief and Consolidated Memorandum of Law in support thereof (respectively, "Aqua's Petition" and "Aqua's Memorandum"). Count I of Aqua's Counterclaims seeks a declaration that closing on the APA must occur before the termination of DELCORA and an injunction preventing the County from terminating DELCORA prior to closing on the APA. Aqua's Counterclaims ¶ 149 and *ad damnum* clause. Similarly, Aqua's Petition seeks to restrain the county from terminating DELCORA prior to closing on the APA. *E.g.*, Aqua's Petition ¶¶ 8, 33. Further, in its Memorandum, Aqua incorporated DELCORA's

⁴ A true and correct copy of the June 4, 2020 letter is attached hereto as Exhibit D.

Petition, which seeks to enjoin the County from enforcing the Ordinance. *E.g.*, DELCORA's Petition ¶ 252 and *ad damnum* clause.

Count II of Aqua's Counterclaims purports to state a claim for tortious interference with the contractual relationship between Aqua and DELCORA—that is, the APA. Count II seeks an injunction preventing the County from interfering with the APA and from terminating DELCORA prior to closing on the APA. Aqua's Counterclaims, Count II, *ad damnum* clause. Count II also seeks judgment against the County "in an amount in excess of \$50,000, plus interest, punitive damages and attorneys' fees." *Id.*

Because counterclaims are not permitted in a mandamus action, because Count I also violates the Declaratory Judgments Act, and because the County is immune from suits seeking money damages for tortious interference with a contractual relationship, the County has filed Preliminary Objections to Aqua's Counterclaims and a Brief in Support thereof.

Moreover, Aqua's inability to state a Counterclaim against the County in its mandamus action negates Aqua's request for preliminary injunctive relief. Aqua's concession that the County is empowered to terminate DELCORA further undermines its request for an injunction. Additionally, there is no immediate, irreparable, and imminent threat of harm to Aqua (or to DELCORA or its customers), and Aqua has adequate remedies for any future hypothetical breaches of the APA. Because Aqua cannot satisfy the elements of preliminary injunction, its Petition must be denied.

II. QUESTIONS INVOLVED

- A. Where Aqua has not, and cannot, state a counterclaim against the County in its mandamus action, has Aqua failed to show a clear right to relief to support its request for a preliminary injunction?**

Suggested Answer: Yes.

- B. Where the Ordinance does not require immediate termination, mandates that DELCORA continue to offer services to ratepayers, and sets in motion an orderly termination process, has Aqua failed to show a clear right to relief or any threat of immediate and irreparable harm?**

Suggested Answer: Yes.

- C. Where enabling DELCORA to defy a duly authorized and adopted Ordinance would cause irreparable harm to the County and the public, has Aqua failed to show that greater injury may result from denial of the injunction than from its being granted?**

Suggested Answer: Yes.

III. ARGUMENT

A. Legal Standards Governing Preliminary Injunctive Relief

Injunctive relief is proper where the moving party demonstrates all of the following: (1) he has a clear right to relief; (2) there is a likelihood of immediate and irreparable harm which cannot be compensated by damages; (3) an injunction would restore the parties to the *status quo* as it existed prior to a defendant's wrongful conduct; (4) a greater injury may result from denial of the injunction than from its being granted; and (5) the injunction is reasonably suited to abate such activity. *John G. Bryant Co., Inc. v. Sling Testing and Repair, Inc.*, 369 A.2d 1164 (Pa. 1977). A party seeking injunctive relief also must show that granting the request will not adversely affect the public interest. *Id.* "For a preliminary injunction to issue, every one of these prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others." *Cty. of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988).

In this case, the County unquestionably has the power to terminate the Authority, and Pa. R.C.P. 1096 prohibits counterclaims in a mandamus action. Aqua's

Counterclaims also run afoul of the Declaratory Judgments Act. Additionally, the Ordinance sets in motion an orderly windup process, and by its express terms, recognizes that DELCORA's cooperation will be necessary to remove any impediments to termination. Service to DELCORA's customers will not be interrupted,. Thus, Aqua cannot show a clear right to relief, a likelihood of immediate and irreparable harm, or that greater injury may result from denying the injunction than from granting it.

Relatedly, Aqua's invitation for the Court to decide whether the County has the *ability* to operate DELCORA's system or comply with any regulatory requirements ignores the doctrine of primary jurisdiction, which entrusts relevant agencies to decide such issues.

Accordingly, DELCORA's request for a preliminary injunction must be denied.

B. The County incorporates by reference its briefs related to the parties' requests for injunctive relief.

In its Memorandum, Aqua incorporates by reference the Memorandum of Law filed by DELCORA in support of its Petition for a Preliminary Injunction. Aqua's Memorandum at 8. Likewise, the County incorporates by reference its Brief in Opposition to DELCORA's Petition for a Preliminary Injunction; the County's Brief Supporting its Petition for Preliminary Injunction; and the County's Preliminary Objections to Aqua's Counterclaims and Brief in Support thereof.

C. Aqua Does Not Have a Clear Right to Relief Because Aqua's Counterclaims Must be Dismissed

1. Aqua's Counterclaims must be dismissed in accordance with Pa. R.C.P. 1096.

Count V of the Amended Complaint seeks a writ of mandamus compelling DELCORA to comply with the terms of the Ordinance and the Authorities Act in order to effectuate the orderly windup and termination of DELCORA. Because Pennsylvania

Rule of Civil Procedure 1096 prohibits Aqua from asserting a counterclaim against the County in a mandamus action, Aqua cannot show a clear right to relief or the likelihood of success on the merits of its request for a preliminary injunction.

An action in mandamus is an action to compel performance after a plaintiff establishes (1) a clear legal right in the plaintiff, (2) a corresponding duty in the defendant, and (3) absence of any other appropriate or adequate remedy. *Equitable Gas Co. v. Pittsburgh*, 488 A.2d 270, 272 (Pa. 1985); *Homan v. Mackey*, 144 A. 897, 898 (Pa. 1929).

Accordingly, a mandamus action is appropriate to compel a municipal authority to perform a duty it is required by law to undertake. See *Township of Forks v. Forks Twp. Municipal Sewer Auth.*, 759 A.2d 47 (Pa. Commw. 2000) (affirming relief in mandamus to compel municipal authority to obey township's termination order). Mandamus actions are governed by Pa. R.C.P. 1091 *et seq.*

In a mandamus action, "No counterclaim may be asserted." Pa. R.C.P. 1096; *Com., Dep't of Health v. Hanes*, 78 A.3d 676, 691 (Pa. Commw. 2013) (holding that clerk of orphans' court could not challenge constitutionality of statute as defense to mandamus action because "[t]o allow him to raise such a defense would be the functional equivalent of a counterclaim, which is not permitted by Pa. R.C.P. No. 1096.>").

It cannot be contested that the County has the absolute right to terminate DELCORA. 53 Pa. C.S. § 5619(a), (b); *Twp. of Forks*, 759 A.2d at 52-54 ("The Township created the Authority and, under Section 18(A) of the Act [now 53 Pa. C.S. § 5622(a)], it has the power, *without the consent of the Authority*, to order the Authority

to comply with the Township's Resolutions to pay off all Bonds and debt, convey all of its assets and dissolve the Authority." (emphasis added)).

In fact, this is a point that Aqua, DELCORA, and the County completely agree on. See, e.g., Aqua's Memorandum at 8 ("Aqua does not contest the County's general right to terminate Delcora"); *id.* at 10 (contending that Aqua "does not seek to challenge the County's ability to terminate Delcora"); Statement of N. Poduslenko, Counsel for DELCORA, Transcript of Proceedings, page 44, lines 16-20 (June 18, 2020) (excerpt attached to County's Preliminary Objections as Exhibit D) ("Judge, we're not disputing that they have the – they are empowered or have the authority ultimately to terminate DELCORA. That's – that's what the case law says. There's nothing – nothing unique or different about that.").

DELCORA has a corresponding duty to cooperate in its windup and eventual termination. *Twp. of Forks*, 759 A.2d at 53 (holding that "the power to dissolve includes the power to order the Authority, prior to dissolution, to remove legally removable impediments"); *id.* at 54 ("[F]or the purpose of dissolving an authority a municipality has the power to unilaterally direct its authority to transfer authority property without the consent of the authority"); *id.* at 54 (ruling that "Township has implied power to order the Authority not to expand in the meantime as part of the dissolution process"); *Cnty. of Mifflin v. Mifflin Cnty. Airport Auth.*, 437 A.2d 781, 784 (Pa. Commw. 1981) ("Clearly, Section 18 of the Act [now 53 Pa. C.S. § 5622] empowers a municipality to require an Authority to convey a project to the municipality; under the above Section a *municipality may, by ordinance, impose upon an Authority the duty of executing the necessary documents for such a transfer of property.*" (emphasis added)).

Despite DELCORA's well-established duty to cooperate in its windup and eventual termination, DELCORA has refused to do so, choosing instead to expend public monies in a futile attempt to resist termination. Accordingly, Count V of the Amended Complaint seeks a writ of mandamus compelling DELCORA to comply with the terms of the Ordinance and the Authorities Act in order to effectuate the orderly windup and termination of DELCORA.

As set forth in the County's Preliminary Objections to Aqua's Counterclaims, Counts I and II of Aqua's Counterclaims directly challenge the County's well-settled entitlement to mandamus relief to compel DELCORA to cooperate in its windup and termination. Aqua's Counterclaims therefore violate Rule 1096 and must be dismissed. Having failed to state a claim upon which relief can be granted, Aqua cannot show a clear right to the relief it seeks. Moreover, Aqua's request that the County "be enjoined and restrained from terminating Delcora," Aqua's Memorandum at 8, once again directly challenges the County's well-settled entitlement to mandamus relief to compel DELCORA to cooperate in its windup and termination. Aqua's request for injunctive relief is the "functional equivalent of a counterclaim, which is not permitted by Pa. R.C.P. No. 1096." *Hanes*, 78 A.3d at 691.

Because the County has the statutory power to terminate an authority it creates—and because Pa. R.C.P. 1096 prohibits Aqua from asserting a counterclaim in a mandamus action—Aqua cannot show a clear right to relief or a reasonable likelihood of success on the merits of its Counterclaims. Aqua is therefore not entitled to an injunction to prevent the County terminating DELCORA.

2. Count I of Aqua's Counterclaims must be dismissed in accordance with the Declaratory Judgments Act.

Count I of Aqua's Counterclaim seeks a judgment "declaring that the Asset Purchase Agreement is a valid, binding and enforceable contract, and that closing on the Asset Purchase Agreement must occur prior to termination of Delcora by the County of Delaware" and an injunction "preventing the County from terminating Delcora prior to closing on the Asset Purchase Agreement between Aqua and Delcora." Aqua's Counterclaims, Count I, *ad damnum* clause.

Section 7540(a) of the DJA, 42 Pa. C.S. § 7540(a), states: "General rule. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration...." The Declaratory Judgments Act's requirement that all who have an interest in the declaration be made parties to the action is mandatory. *HYK Const. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Commw. 2010) (citation omitted).

Although the County is not a party to the APA, the APA lists a "large number of contracts" to be assigned to Aqua at closing. See DELCORA's Petition for a Preliminary Injunction ¶¶ 190-91 (contending that "44 of these contracts require counterparty consent"). While a pair of these interested parties have intervened in this proceeding, the vast majority have not done so. More importantly, Aqua did not join any of them as parties to its Counterclaims. Accordingly, Aqua has failed to state a claim under the DJA, and Aqua cannot show a clear right to relief.

Moreover, the DJA bars Aqua from seeking relief in this Court because the APA is subject to the exclusive jurisdiction of the PUC.

Section 7541 of the DJA states that "[r]elief shall not be available under this subchapter with respect to any: ... (2) [p]roceeding within the exclusive jurisdiction of a tribunal other than a court." 42 Pa. C.S. § 7541(c)(2). See *Faldowski v. Eighty Four Mining Co.*, 725 A.2d 843 (Pa. Commw. 1999); *Commw., Dep't of General Services v. Frank Briscoe Company, Inc.*, 466 A.2d 1336 (Pa. 1983) (declaratory relief barred as it "would exceed the proper scope of the Declaratory Judgments Act").

The Pennsylvania Public Utility Commission is such a tribunal. See 42 Pa. CS § 102 ("The term includes a government unit, other than the General Assembly and its officers and agencies, when performing quasi-judicial functions."). The PUC's adjudication of Aqua's Application has been assigned to an administrative law judge for evidentiary hearings under the PUC's quasi-judicial authority as administrative agency of the Commonwealth. "'[Q]ukase-judicial' has been thoroughly described as '[a] term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.'" Black's Law Dictionary 1245 (6th ed. 1990)." *Commonwealth v. Ctr. Twp.*, 95 A.3d 354, 363 (Pa. Cmwlth. 2014).

In 2019, the Pennsylvania Supreme Court reinforced a long line of cases holding that the Commission had exclusive jurisdiction over public utilities. In *PPL Electric Utilities Corp. v. City of Lancaster*, the Court concluded its opinion by saying:

In *Philadelphia Electric*, this Court held that "[o]ne would search in vain through the County Code for any provision authorizing counties to control the actions of public utilities The State, speaking through the Public Utility Law [of 1937] ... has given the [PUC] all-embracing regulatory jurisdiction over companies such as the defendant company in this case." *Phila. Elec.*, 218 A.2d at 332. The *Philadelphia Electric* Court further observed that "jurisdiction in matters concerning the relationship between

public utilities and the public" lies in the PUC, encompassing "rates, service, rules of service, extension and expansion, hazard to public safety due to use of utility facilities, installation of utility facilities, [and, inter alia,] location of utility facilities." *Id.* at 332-33 (quoting *Borough of Lansdale*, 170 A.2d at 567; emphasis omitted)). To avoid the harm that would follow from the convolution of fragmentary local regulation of public utilities, the General Assembly "vested in the [PUC] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utility facilities." *Id.* at 333.

214 A.3d 639, 659-60 (Pa. 2019) (alterations in original).

While Aqua is contending before the PUC that some of the components of the proposed transaction are not jurisdictional to the Commission⁵, there is no doubt whatsoever that the Asset Purchase Agreement is subject to the Commission's exclusive jurisdiction over public utilities. Aqua's application seeks Commission approval of its APA with DELCORA under at least three separate provisions of the Public Utility Code:

WHEREFORE, Aqua requests that the Public Utility Commission approve this Application, filed pursuant to Sections 1102, 1329 and 507 of the Public Utility Code, and:

- a. Issue Certificates of Public Convenience under § 1102 of the Pennsylvania Public Utility Code:
 - (1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of DELCORA; and
 - (2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory covered by this Application.
- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
 - (1) Include within its territory all the Requested Territory covered by this Application;

⁵ For example in Paragraph 13 of its August 4, 2020 Answer to the County's Amended Petition for Reconsideration of Staff Action, under the heading "**AQUA IS NOT PROPOSING A RATE STABILIZATION PLAN**," Aqua contends that "What an unregulated third party does with respect to the proceeds of a sale, whether it be to invest those funds into the community or put them into a trust, is not jurisdictional to the Commission and not a rate stabilization plan under the [Public Utility] Code."

- (2) Adopt and apply DELCORA's rates as set forth in this Application as Aqua's Base Rates within the Requested Territory; and
- (3) Apply Aqua's Rules and Regulations within the Requested Territory.
- c. Enter an Order approving this Application and Aqua's acquisition of the Assets and, as part of that Order include the ratemaking rate base of DELCORA as \$276,500,000 pursuant to Section 1329(c)(2) of the Public Utility Code;
- d. Approve Contracts, including Assignment of Contracts, and the Memorandum of Understanding between Aqua and DELCORA, pursuant to Section 507 of the Public Utility Code, and to allow Aqua to apply DELCORA customer assistance payments on DELCORA customer bills; and
- [e]. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the DELCORA wastewater system assets.

Aqua Application at pp 20-21.

Accordingly, there is no question that Section 7541 of the Declaratory Judgments Act bars the relief sought in Count I of Aqua's Counterclaims. Aqua thus cannot show a clear right to relief, and its request for a preliminary injunction should be denied.

D. Aqua Does Not Have a Clear Right to Relief Because the Authorities Act Empowers the County to Terminate DELCORA, and Aqua Cannot Show Immediate and Irreparable Harm

1. The Ordinance begins the termination process; it does not require immediate termination or contemplate any unlawful conduct.

Even if Aqua could state a viable counterclaim against the County, it would still be unable to show a clear entitlement to enjoin the County from terminating DELCORA.

As set forth above, Aqua admits and concedes that the County may terminate DELCORA. Aqua's Memorandum at 8, 10. Aqua claims that DELCORA cannot be terminated until after the sale to Aqua closes because the "County will be unable to make the representations and warranties that were fundamental to the APA." *Id.* at 8.

Aqua cites no authority to support its proposition that DELCORA may be terminated only after closing on the APA with Aqua. See *id.* at 8-10.

To the contrary, the Authorities Act, controlling case law, and the Ordinance all recognize that municipal authorities will have outstanding obligations, and that terminating an authority is a multistep process during which its existing obligations must be satisfied or assumed.

Accordingly, the Ordinance instructs DELCORA to "immediately terminate and cease any activity that is not consistent with the County's directives contained herein and as required to effectuate its termination." Ordinance § 2.01. Those directives include the following:

- "The Authority shall cooperate with the County in an orderly windup of its activities" Ordinance § 2.02.
- "The Authority shall continue to operate its system in the normal course during this windup." *Id.*
- "The Authority shall take all actions necessary to remove any impediments to its termination in accordance with the Authorities Act, subject, however to the prior approval of such actions by the County Council." Ordinance § 2.05.

Thus, the County has not ordered the Authority to stop providing services to its customers or hastily terminate its existence in any illegal manner. The Ordinance expressly directs an orderly windup of the Authority's affairs, the uninterrupted operation of the water and sewer system, and the removal of any impediments to the Authority's termination in compliance with the Authorities Act.

Once again, DELCORA has a corresponding duty to cooperate in the removal of impediments to its termination. As the Commonwealth Court has ruled, "the power to dissolve includes the power to order the Authority, prior to dissolution, to remove legally

removable impediments," such as bank notes, outstanding bonds, and other indebtedness. *Twp. of Forks*, 759 A.2d at 53; *Cnty. of Mifflin v. Mifflin Cnty. Airport Auth.*, 437 A.2d 781, 784 (Pa. Commw. 1981) ("Clearly, Section 18 of the Act [now 53 Pa. C.S. § 5622] empowers a municipality to require an Authority to convey a project to the municipality; under the above Section a municipality may, by ordinance, impose upon an Authority the duty of executing the necessary documents for such a transfer of property.").

Aqua seems to suggest that the APA is a unicorn—that is, a unique impediment that cannot be cleared prior to DELCORA's termination. Once again, Aqua has no support for this proposition. In reality, the APA is one of many contracts between DELCORA and third parties, all of which are impediments that can and will be removed prior to termination. See Ordinance § 7 ("Upon recordation of the Certificate [of Termination] with the Delaware County Recorder of Deeds, all property of the Authority shall pass to the County, the *County shall assume any remaining liabilities of the Authority*, and the Authority will be effectively terminated." (emphasis added)).

As explained above, whether the APA will ultimately become an obligation of DELCORA is a question within the primary jurisdiction of the PUC.

2. The County is not incapable of making the necessary representations and warranties under the APA.

Aqua contends that DELCORA cannot be terminated prior to closing because the County would be unable to make the representations and warranties required under the APA. See, e.g., Aqua's Petition ¶ 117. Assuming, for the sake of argument only, that the APA is a binding obligation of DELCORA, there is no reason why DELCORA cannot be terminated prior to closing on the APA.

First, Aqua puts the cart before the horse because Aqua's speculation about the County's ability to make certain representations and warranties under the APA assumes that the PUC will approve the sale to Aqua in the first place. Until and unless the PUC approves the proposed transaction, which may take several months, neither DELCORA for the County as its successor will be required to make such representations or warranties. There is no reason why the County cannot proceed with the termination process while the PUC considers the issues within its jurisdiction.

Second, Aqua faults the County for not having experience operating a sewer system or the necessary personnel to do so. But Aqua ignores that the County is at the beginning of the termination process. As part of the orderly windup of the Authority's affairs, the County intends to offer continued employment to the utility workers and certain administrative staff who presently run the system on a day to day basis. If those workers and staff members do not accept the County's offers, then the County will hire other qualified personnel to operate DELCORA's system. Stated differently, the County intends to run the system the same way Aqua does: by hiring DELCORA's current employees (or other qualified personnel).⁶

In addition to issues related to DELCORA's contracts and personnel, County will address any other impediments to termination during the orderly windup of DELCORA's affairs. DELCORA identified several other potential impediments in its Petition for a Preliminary Injunction, which the County addressed at length in its Brief in Opposition thereto.

⁶ See DELCORA FAQ, a true and correct copy of which is attached hereto as Exhibit E ("Aqua will offer employment to all DELCORA employees.")

Moreover, with more than 565,000 constituents and an annual budget in excess of \$350 million, the County manages and operates complex systems every day.⁷ These include such diverse departments and operations as transportation, telecommunications, libraries, tax administration, emergency services, and criminal justice.⁸ The County is also the fifth largest employer in Delaware County; neither DELCORA nor Aqua is in the top fifty.⁹ Given the County's extensive experience managing diverse government operations, a significant budget, and a large workforce, Aqua's theory that the County would be unable, by the end of the termination process, to manage and operate DELCORA's system or make any necessary representations under the APA is pure speculation.

Third, if the County assumes the system and is unable to fulfill DELCORA's contractual obligations, then any aggrieved third parties (including Aqua) can seek relief for breach of contract (if it is determined that the APA is enforceable against the County). Thus, Aqua has adequate remedies at law for anything that may happen

⁷ See U.S. Census Bureau, *Quick Facts: Delaware County, Pennsylvania*, <https://www.census.gov/quickfacts/fact/table/delawarecountypennsylvania/PST045219> (last visited August 11, 2020) (estimating population as of July 2019); Delaware County, Pennsylvania, *Delaware County Announces Proposed Budget for 2020*, <https://www.delcopa.gov/publicrelations/releases/2019/proposed2020budget.html> (last visited August 11, 2020).

⁸ See County of Delaware, Office of the Executive Director, *2020 Proposed Budget* (Nov. 4, 2019), *available at* <https://www.delcopa.gov/publicrelations/releases/2019/pdf/Proposed2020Budget.pdf>.

⁹ See Pennsylvania Dep't of Labor and Industry, *Top 50 Employers and Industries – Delaware County*, [https://www.workstats.dli.pa.gov/Documents/Top%2050/Delaware County Top 50.pdf](https://www.workstats.dli.pa.gov/Documents/Top%2050/Delaware%20County%20Top%2050.pdf) (last visited Aug. 11, 2020).

related to its APA, and Aqua cannot show immediate or irreparable harm stemming from any hypothetical future breach of the APA.

In summary, the APA is not unique or special. It is nothing more than one of many impediments that will be removed during the termination process. Given the County's clearly established power to terminate DELCORA, its demonstrated intent to do so in an orderly windup process, Aqua cannot show a clear right to relief, the lack of an adequate remedy at law, or any threat of immediate or irreparable harm. Aqua's request for a preliminary injunction must therefore be denied.

E. Granting the Injunction Will Cause Greater Harm than Refusing It

1. Granting the injunction will irreparably harm the County by allowing DELCORA to ignore its legal obligation to cooperate in the orderly windup and termination of the Authority.

Under Pennsylvania law, DELCORA's violations of the Authorities Act constitute irreparable harm *per se*. *Council 13, AFSCME, AFL-CIO by Keller v. Casey*, 595 A.2d 670, 674 (Pa. Commw. 1991) (citing *Pennsylvania PUC v. Israel*, 52 A.2d 317, 321 (Pa. 1947)); *see also* Aqua's Memorandum at 9 (arguing that statutory violations constitute *per se* irreparable harm). By seeking to enjoin DELCORA's termination, Aqua is aiding and abetting DELCORA's unlawful actions.

In contrast, the County has not, and does not intend to, violate state or federal law. The Commonwealth Court has repeatedly held that the Authorities Act empowers a municipality to terminate an authority and, in doing so, to mandate that the authority cooperate and take all necessary steps to wind up its affairs. *E.g., Twp. of Forks*, 759 A.2d at 52-54; *Cnty. of Mifflin*, 437 A.2d at 784. Aqua's contention that the County will, at some point in the future, inevitably violate state or federal law in the process of terminating the Authority is pure speculation. *See* Aqua's Memorandum at 9

("Termination of Delcora prior to closing would immediately result in multiple violations of state and federal law."). Granting Aqua's requested injunction would cause irreparable harm *to the County* by enabling DELCORA to flout its well-established legal duties even though Aqua has not stated any viable legal claims against the County.

On the other hand, Aqua will suffer no irreparable harm by denying the injunction and allowing the County to proceed with the orderly—and lawful—windup and termination of the Authority. Even if the County ultimately seeks to "scuttle" the APA, as Aqua contends, see Aqua's Memorandum at 7, Aqua will have adequate remedies: Aqua will either be entitled to specific performance of its APA, or to money damages for breach thereof. And to the extent that Aqua complains that the County lacks the experience and personnel to operate the system, it is, ironically, Aqua's (and DELCORA's) request for an injunction, and not any unlawful conduct by the County or any inherent inability of the County to operate DELCORA's system, that would prevent the County from being in a position to comply with any obligations arising under the APA.

2. Aqua's doomsday scenarios are unsupported by the facts, including the plain text of the Ordinance.

Pursuant to the terms of the Ordinance, the County will proceed with an orderly transition of services from DELCORA to the County, and the County will comply with all necessary legal, regulatory, and statutory requirements at the state and federal level. The County has also instructed the Authority to continue its normal operations during the windup period, negating Aqua's hypothesis that that enforcing the Ordinance jeopardizes wastewater services to its customers. See Aqua's Memorandum at 9 (speculating that terminating DELCORA prior to closing on APA will cause "loss of

sewage disposal services"). As explained at length above and in its various Briefs incorporated by reference herein, the Ordinance does not set a firm deadline for termination, and the County expects it will take several months to remove all impediments to termination. There is no crisis; there is no emergency; there is no risk to the public.

3. Whether the sale of DELCORA's assets to Aqua is in the public interest is a question within the exclusive jurisdiction of the PUC.

Aqua posits that the prior County Council "determined that the APA would be in the public interest (in consideration of all the factors identified in Delcora's Petition for Injunctive Relief)." Aqua's Memorandum at 8-9. Aqua provides no support for this claim.

Moreover, even if the prior Council had "determined" that the APA was in the public interest, the APA would still be subject to the PUC's exclusive jurisdiction over public utilities, and the claimed "determination" by a prior County Council would not be binding on the PUC. See *PPL Electric Utilities Corp.*, 214 A.3d at 659-60 (Pa. 2019) and discussion *supra*. Therefore, while PUC proceedings are pending, Aqua cannot show any risk of immediate or irreparable harm, or that allowing the County to enforce its lawfully enacted Ordinance would offend the public interest.

In sum, granting the injunction would cause immediate, irreparable, and immeasurable harm by preventing the County from enforcing its lawfully enacted Ordinance while allowing Aqua to aid DELCORA in persisting with its unlawful resistance to termination. In contrast, denying the injunction would allow the County to proceed with the lawful and orderly termination of DELCORA, thereby giving effect to

the course of action that the County's elected officials, in their judgment, have determined is in the best interest of the public.

F. If an Injunction Is Granted, Aqua Must Post a Significant Bond

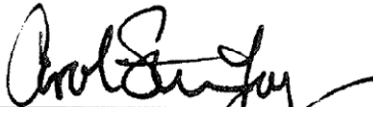
In its Proposed Order, Aqua seeks to post a bond in the amount of \$100 to support its request for a preliminary injunction. In the context of this litigation, a bond of \$100 would be woefully inadequate. Should the Court determine that Aqua is entitled to injunctive relief (which the County denies for all the reasons stated above), the County requests that the Court order Aqua to post a significant to protect the County from any damages sustained as a result. See Pa. R.C.P. 1531(b); *Coll. Watercolor Grp., Inc. v. William H. Newbauer, Inc.*, 360 A.2d 200, 207-08 (Pa. 1976) ("The purpose of [the] bond [required by Pa. R.C.P. 1531(b) is] to protect [the County] in the event that the preliminary injunction was improperly granted and damages were sustained thereby."); *Broad and Locust Associates v. Locust-Broad Realty Co.*, 464 A.2d 506, 509 (1983) ("The question of the proper amount of a bond for a preliminary injunction is within the discretion of the hearing court.").

IV. CONCLUSION

This Court should deny Aqua's request for injunctive relief because (1) Aqua has failed to establish a clear right to relief and is not likely to prevail on the merits, as the parties agree that the County is authorized to terminate DELCORA, and Aqua cannot assert any Counterclaims challenging the termination of DELCORA; (2) there is no immediate, irreparable, and imminent threat of harm to Aqua (or to DELCORA or its customers), as the Ordinance does not seek immediate termination and instead directs an orderly windup of DELCORA's activities and transition of DELCORA's assets to the County; (3) Aqua will have adequate remedies at law for any future breaches of the

APA, which at this point are pure speculation; and (4) greater injury will result from the granting of the injunction than denying it, as the County has a clear and unequivocal right to terminate DELCORA provided that all impediments are removed prior to termination, and court interference in a duly adopted ordinance that complies with the provisions of the Authorities Act would set a dangerous precedent.

McNEES WALLACE & NURICK LLC

By: 

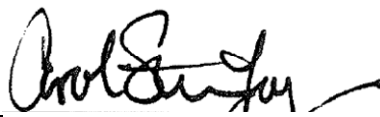
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Date: August 11, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

By:  _____

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Date: August 11, 2020

Exhibit C

Attorneys for Plaintiff

: IN THE COURT OF COMMON PLEAS
: DELAWARE COUNTY, PENNSYLVANIA

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: NO. 2020-003185

: CIVIL ACTION - LAW

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PLAINTIFF'S OBJECTIONS AND ANSWERS TO AQUA PENNSYLVANIA WASTEWATER, INC.'S FIRST SET OF INTERROGATORIES

Plaintiff County of Delaware, Pennsylvania ("Plaintiff" or the "County"), by and through its undersigned counsel, McNees Wallace & Nurick LLC, submits the following Objections and Answers to Intervenor Aqua Pennsylvania Wastewater, Inc.'s First Set of Interrogatories Directed to Plaintiff.

GENERAL OBJECTIONS

Plaintiff asserts and incorporates by reference the following general objections in its response to each of the individual Interrogatories:

A. Plaintiff objects to each and every Interrogatory to the extent that it is overly broad, unduly burdensome, vague and ambiguous, and not limited as to time.

B. Plaintiff objects to each and every Interrogatory on the grounds and to the extent that the manner in which it is worded is so vague, broad, general, and all-inclusive that it does not permit a proper or reasonable response and is, therefore, unduly burdensome and oppressive.

C. Plaintiff objects to each and every Interrogatory to the extent that it calls for documents or information protected by the attorney-client privilege, work product doctrine, common interest privilege, joint defense privilege or any other applicable privilege or protection. Privileged documents and information will not be produced, and any inadvertent disclosure shall not be deemed a waiver of any privilege with respect to such information.

D. Plaintiff objects to each and every Interrogatory to the extent that Defendant seeks to have Plaintiff make certain conclusions as to the legal significance of certain documents or information which it is not required to make and which must be determined by the Court in this action.

E. Plaintiff's decision to provide information or documents notwithstanding the objectionable nature of any of the Interrogatories themselves shall not be construed as: (a) a stipulation or admission that the material is relevant; (b) a waiver of the General Objections or the Objections asserted in response to specific Interrogatories; or (c) an agreement that requests for similar documents or information in this or any other related proceedings will be treated in a similar manner.

F. Plaintiff objects to each and every Interrogatory to the extent that it calls for information that is irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

G. Plaintiff objects to each and every Interrogatory to the extent that it calls for information and/or documents that are confidential, proprietary, privileged and/or constitute trade secrets.

H. Plaintiff objects to each and every Interrogatory to the extent that it calls for information or documents not known to Plaintiff, nor reasonably ascertainable by Plaintiff because such information is in the hands of, or under the control of, third parties not within Plaintiff's control.

I. Plaintiff objects to each and every Interrogatory to the extent that each one is designed merely to harass, annoy, embarrass, oppress, or burden Plaintiff.

J. Plaintiff objects to each and every Interrogatory to the extent that each one may be construed to require a search for and disclosure of information or documents that are a matter of public record or that are otherwise equally accessible to Defendants as they are to Plaintiff.

K. Plaintiff objects to each and every Interrogatory insofar as Defendant seeks, or an answer would disclose, the impressions, conclusions, opinions, strategy, or tactics respecting the value, merit or defense of a claim as protected by the Pennsylvania Rules of Civil Procedure.

L. Plaintiff objects to any inference that might be drawn from any portion of the Interrogatories or the responses to them that the documents or information requested exists or the events referred to in the Interrogatories actually occurred. The failure to object to each such inference in no way constitutes an admission by Plaintiff that such information exists or that such events actually occurred.

M. Plaintiff objects to each and every Interrogatory insofar as Defendant seeks information from or related to Elaine Paul Schaefer, who has recused herself from consideration of issues related to DELCORA.

N. Each of the foregoing General Objections is incorporated by reference in response to Defendant's Interrogatories whether or not any additional objections are made with respect to a specific Interrogatory. Any answer by Plaintiff to the following Interrogatories is specifically made without waiver of these General Objections.

O. As discovery is ongoing, Plaintiff reserves the right to supplement its Answers to these Interrogatories at an appropriate time, if necessary.

INTERROGATORIES

1. State the name, address and employment position of each person that provided information responsive to these interrogatories and the accompanying request for production of documents and provide a summary of the information that was provided by each.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

Subject to and without waiving these Objections, much of the information related to Counts I, II, III, and IV of the Amended Complaint was provided by Aqua and/or DELCORA by way of DELCORA's amended Articles of Incorporation, the Asset Purchase Agreement, the DELCORA Rate Stabilization Fund Trust Agreement (the "Trust Agreement"), and the DELCORA Trust Funding Agreement (the "Trust Funding Agreement"). Non-privileged information related to Count V of the Amended Complaint was provided by Brian Zidek, Dr. Monica Taylor, Christine Reuther, and Kevin Madden. Information was also gathered from the pertinent documents.

2. State whether the County seeks to terminate Delcora prior to closing on the Asset Purchase Agreement between Aqua and Delcora.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

Subject to and without waiving these objections, Plaintiff intends to terminate DELCORA in compliance with the Ordinance and applicable law when all impediments to termination have been removed.

3. State whether the County intends to honor the terms of the Asset Purchase Agreement between Aqua and Delcora, whether Delcora is terminated prior to closing on the Asset Purchase Agreement or not.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory because it seeks legal conclusions, not facts.

Subject to and without waiving these objections, the County will evaluate its options related to the Asset Purchase Agreement after the PUC determines whether to approve the sale of DELCORA's assets to Aqua.

4. State all of the reasons why the County is opposed to the Delcora Trust Agreement.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks legal arguments, not facts, and to the extent that it seeks communications protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

Subject to and without waiving these objections, the County is opposed to the Trust Agreement for several reasons. First, in creating the Trust, DELCORA attempted to create a governmental entity. Specifically, pursuant to Section 9.9 of the Trust Agreement, the Trust is "intended to be a 'grantor trust' of which the Settlor is treated as the owner for federal income-tax purposes" and "intended to qualify as a governmental entity for state and local tax purposes." Thus, it is plain from the terms of the Trust Agreement that DELCORA, as Settlor, "intended [the Trust] to qualify as a governmental entity." DELCORA, however, is not authorized by either its Articles of Incorporation (as amended) or the Municipality Authorities Act to create a separate governmental entity.

Second, the Trust has been described as a "charitable Trust", yet the charitable purpose is not clear. The Trust Agreement also lacks the traditional hallmarks of a charitable trust, and neither DELCORA nor Aqua has treated the Trust as a charitable trust in this litigation.

Third, as currently structured, Aqua is not a party to the Trust Agreement; public funds from the Trust will be distributed to Aqua, a for-profit company; and

Aqua has no contractual obligation to use funds distributed from the Trust for the benefit of rate payers. To the contrary, Aqua would have discretion to determine any rate stabilization for its customers. It is therefore unknown how Aqua will actually use any funds distributed from the Trust, or how the Trust will affect the rates paid by rate payers if the proposed sale to Aqua closes.

Fourth, in creating the Trust, DELCORA exceeded the scope of its authority under its Articles of Incorporation (as amended) and the Municipality Authorities Act. In particular, the amended Articles of Incorporation authorize DELCORA to "distribute to rate payers some or all of the proceeds received from any transfer or sale" of its assets. Exhibit A to Amended Complaint (emphasis added). The scheme whereby public funds are distributed from the Trust to Aqua, a for-profit company, contravenes DELCORA's amended Articles of Incorporation. Additionally, neither the Articles of Incorporation nor the Municipality Authorities Act empowers DELCORA to create a separate governmental entity to distribute public assets to a for-profit company.

Fifth, the Trustee has no authority to make any distribution from the Trust without direction from DELCORA. The Trust therefore violates the statutory requirement that the Trustee must have "duties to perform," 20 Pa. C.S. § 7732(a)(4), and paying the Trustee's fees under these circumstances unnecessarily wastes public funds.

Sixth, and relatedly, DELCORA has admitted that, absent termination by the County, DELCORA would continue to exist following the sale of its assets to Aqua. DELCORA's Answer to Request for Admission #1 (Second Set).

According to DELCORA, it would continue to exist to "oversee and approve the determinations and actions of the Trustee and calculation agent." DELCORA's Answer to Interrogatory #1 (Second Set). The County believes, and therefore avers, that one or more unidentified person(s) will continue to be paid a salary and/or benefits to "oversee and approve the determinations and actions of the Trustee and calculation agent." Whether such person(s) are paid from DELCORA's "reasonable reserves," see DELCORA's Answer to Interrogatory #2 (Second Set), or from the Trust, DELCORA's continued existence following the proposed sale of its assets to Aqua would unnecessarily waste public funds.

Plaintiff incorporates by reference its Amended Complaint, Brief Supporting Petition for Preliminary Injunction, and all other pleadings, filings, and discovery responses served by the County in this action.

As discovery is ongoing, Plaintiff reserves the right to supplement its Answer to this Interrogatory at an appropriate time, if necessary.

5. State all of the reasons why the County is opposed to the Asset Purchase Agreement.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff also objects to this Interrogatory to the extent it seeks information that is equally accessible to Aqua. Plaintiff further objects to this Interrogatory as overbroad because it requests "all" reasons why the County may be opposed to the Asset Purchase Agreement

("APA"). As discovery is ongoing, the County reserves the right to reconsider any issues related to the APA as more information is obtained.

Subject to and without waiving these objections, the County is concerned that the sale of DELCORA's assets to a for-profit corporation is not in the public interest and is not the best way to address any anticipated future rate increases, especially considering Aqua's inconsistent representations to this Court and the PUC regarding rate increases. *Compare* Aqua's Petition for Preliminary Injunctive Relief ¶ 5 (July 22, 2020) (contending that "APA is structured in such a way as to protect Delcora's customers by capping all rate increasers [sic] for customers at 3% per year."), *with* Aqua's Answer to the County's Amended Petition for Reconsideration of Staff Action ¶¶ 11-25 (Aug. 4, 2020) (asserting that Aqua is not proposing a rate stabilization plan in connection with the APA). The County is also concerned that the DELCORA Rate Stabilization Trust Agreement (and related agreements) associated with the APA violates applicable law, including the Municipality Authorities Act.

6. State whether you contend that Delcora was not authorized to enter into the Asset Purchase Agreement with Aqua.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

Subject to and without waiving these objections, as set forth at length in the County's pleadings and briefs, DELCORA was not authorized to create the Trust in

connection with the APA. Issues related to the APA will be determined by the PUC in the first instance.

7. Identify the current employee of the County that possesses the knowledge required to make the representations and warranties that are required of Delcora in the Asset Purchase Agreement, and for each person identify their name, position, the basis of their knowledge, and the specific representation and warranties that each employee is able to make.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

8. Identify the current employee of the County that possesses the knowledge required to confirm that there are no undisclosed liabilities for Delcora's system as of closing on the Asset Purchase Agreement, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

9. Identify the current employee of the County that possesses the knowledge required to confirm at closing that Aqua is getting all of the Delcora's real property interests (including that the real property disclosure Schedule 4.09 to the Asset Purchase Agreement remains accurate and complete at closing), and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

10. Identify the current employee of the County that possesses the knowledge required to make the environmental representations and warranties set forth in Paragraph 4.13 of the Asset Purchase Agreement, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

11. Identify the current employee of the County that possesses the knowledge required to confirm that the County is prepared, and would be permitted, to assume the DEP permits that are required to operate Delcora's system, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

12. Identify the current employee of the County that possesses the knowledge required to confirm that Delcora's service contractors have consented to Aqua's acquisition of Delcora's system, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

13. Identify the current employee of the County that possesses the knowledge required to confirm that the assets Aqua agreed to purchase from Delcora are sufficient to run Delcora's system, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

14. Identify the current employee of the County that possesses the knowledge required to update the representations and warranties within three (3) days of becoming aware of information that implicates a disclosure requirement, as required by Paragraph 9.03 of the Asset Purchase Agreement, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

15. Identify the current employee of the County that possesses the knowledge required to confirm at closing that the representations and warranties made as of the date the parties signed the Asset Purchase Agreement remain true and correct as of the date of the closing, and for each person identify their name, position and the basis of their knowledge.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the front line workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

16. Explain how the County intends to secure PUC approval of the County taking over Delcora's system, as well as the Asset Purchase Agreement, within the outside closing date identified in the Asset Purchase Agreement.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must obtain the PUC approval necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends, with DELCORA's cooperation (which DELCORA is legally obligated to provide), to remove any impediments to termination. Such impediments may include any required PUC or other regulatory approvals. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

17. Explain how the County would operate Delcora's system in the ordinary course of business until the closing on the Asset Purchase Agreement, and identify the current employee of the County with the knowledge required to ensure that the County is able to do so.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. The Ordinance also directs DELCORA to "operate its system in the normal course during this windup." Ordinance § 2.02. As part of this orderly windup process, the County intends to offer continued employment to the utility workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations. The County will address any outstanding issues specifically relating to the APA after the PUC determines in the first instance whether to approve the sale of DELCORA's assets to Aqua.

18. Identify the current employees of the County who have knowledge, training and experience in operating a wastewater system such as Delcora, and identify the specific knowledge, training and experience that each such person has.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the utility workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations.

19. Identify the permits that the County possesses to safely perform Delcora's obligations.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must obtain

the permits necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends, with DELCORA's cooperation (which DELCORA is legally obligated to provide), to remove any impediments to termination. Such impediments may include obtaining any necessary permits.

20. Identify the current employees of the County with knowledge and experience to maintain and perform capital improvements on Delcora's system in order to ensure that the Delcora's system is operated properly.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the utility workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations.

21. Identify the current employees of the County who are qualified and trained to perform operations, maintenance, billing and administrative functions necessary to operate Delcora.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff further objects to this Interrogatory to the extent that it assumes or implies that the County must employ the personnel necessary to operate DELCORA's system before taking the initial step of enacting an Ordinance directing DELCORA's termination.

Subject to and without waiving these objections, the Ordinance sets in motion the orderly windup of DELCORA's affairs. As part of this orderly windup process, the County intends to offer continued employment to the utility workers and certain administrative staff who presently run the system on a day-to-day basis. Thus, upon termination of DELCORA, the necessary personnel will be in place to ensure an uninterrupted transition of operations.

22. Identify any statements made by any County Council members, representatives or employees regarding the County's intent to honor the terms of the Asset Purchase Agreement.

ANSWER:

Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff also objects to this

Interrogatory as vague, overbroad, and unduly burdensome, especially as to public "statements" to which Aqua has equal access, and especially as to written "statements" which are the proper subject of a document request.

Subject to and without waiving these objections, the termination of DELCORA and the proposed sale to Aqua were discussed during the June 3, 2020 Council meeting, which is available at <https://player.vimeo.com/video/425576318>. The County incorporates by reference any statements related to the APA that appear on the website www.delcopa.gov, in any pleadings or briefs filed with this Court or the PUC, or in any other publicly available source. As part of its document production, the statements responsive to this Interrogatory to the extent that such statements are neither privileged nor publicly available.

23. Identify any statements made by any County Council members, representatives or employees regarding the County's intent to allow Delcora and Aqua to proceed to closing on the Asset Purchase Agreement prior to termination of Delcora.

ANSWER:

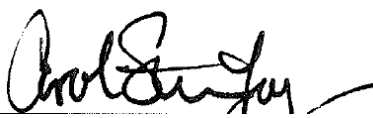
Objection. Plaintiff objects to this Interrogatory to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection. Plaintiff also objects to this Request as vague, overbroad, and unduly burdensome, especially as to public "statements" to which Aqua has equal access, and especially as to written "statements" which are the proper subject of a document request.

Subject to and without waiving these objections, the termination of DELCORA and the proposed sale to Aqua were discussed during the June 3, 2020

Council meeting, which is available at <https://player.vimeo.com/video/425576318>.

The County incorporates by reference any statements related to the APA that appear on the website www.delcopa.gov, in any pleadings or briefs filed with this Court or the PUC, or in any other publicly available source. As part of its document production, the County will produce any written statements responsive to this Interrogatory to the extent that such statements are neither privileged nor publicly available.

McNEES WALLACE & NURICK LLC

By: 

Carol Steinour Young, I.D. No. 55969

Dana W. Chilson, I.D. No. 208718

Attorneys for Plaintiff, County of Delaware,
Pennsylvania

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Attorney for the County, County of
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Media, PA 19063

Phone No. (610) 565-7520

carlewald@gmail.com

Date: August 13, 2020

CERTIFICATE OF SERVICE

I certify that I have this date served a true and correct copy of the foregoing document by email as follows:

Matthew S. Olesh, Esq.
Nick Poduslenko, Esq.
Lanique Roberts, Esq.
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Counsel for Defendant Univest Bank and Trust Co.

William E. Malone, Esq.
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21 West Third Street
Media, PA 19063

Counsel for Intervenor Darby Creek Joint Authority

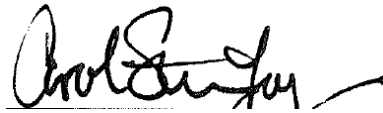
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Counsel for Intervenor Southern Delaware County Authority

Joel L. Frank, Esq.
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Raffaele & Puppio
19 West Third Street
Media, PA 19063

Counsel for Intervenor Aqua Pennsylvania Wastewater, Inc.

A handwritten signature in black ink, appearing to read "Carol Steinour Young", with a horizontal line extending to the right.

Dated: August 13, 2020

Carol Steinour Young

Exhibit D

: IN THE COURT OF COMMON PLEAS
: DELAWARE COUNTY, PENNSYLVANIA

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: CIVIL ACTION - LAW

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C

_____, 2020, upon consideration of the
filed by Intervenor Aqua Pennsylvania
eto and argument thereon, it is hereby

_____, J.

Carol Steinour Young
I.D. No. 55969
Dana W. Chilson
I.D. No. 208718
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100 Pine Street, P.O. Box 1166
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(610) 565-7520

Attorneys for Plaintiff

COUNTY OF DELAWARE, PENNSYLVANIA,	:	IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, PENNSYLVANIA
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Plaintiff

v.

NO. 2020-003185

DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY, and DELCORA RATE STABILIZATION FUND TRUST AGREEMENT b/t THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY as SETTLOR and UNIVEST BANK AND TRUST CO. as TRUSTEE,	:	CIVIL ACTION - LAW
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Defendants

v.

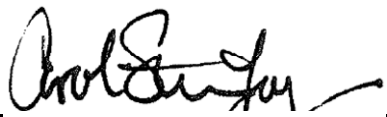
DARBY CREEK JOINT AUTHORITY,
SOUTHERN DELAWARE COUNTY
AUTHORITY, and AQUA
PENNSYLVANIA WASTEWATER, INC.,

Intervenors

NOTICE TO PLEAD

TO: AQUA PENNSYLVANIA WASTEWATER, INC., Intervenor, and JOEL L. FRANK,
ESQ., its attorney:

You are hereby notified to file a written response to the enclosed New Matter
within twenty (20) days from service hereof or a judgment may be entered against you.

By:  _____
Carol Steinour Young
I.D. No. 55969
Dana W. Chilson
I.D. No. 208718
Attorneys for Plaintiff, County of
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Date: August 11, 2020

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Attorneys for Plaintiff

COUNTY OF DELAWARE,	:	IN THE COURT OF COMMON PLEAS
PENNSYLVANIA,	:	DELAWARE COUNTY, PENNSYLVANIA
	:	
Plaintiff	:	
	:	
v.	:	NO. 2020-003185
	:	
DELAWARE COUNTY REGIONAL	:	CIVIL ACTION - LAW
WATER QUALITY CONTROL	:	
AUTHORITY, and DELCORA RATE	:	
STABILIZATION FUND TRUST	:	
AGREEMENT b/t THE DELAWARE	:	
COUNTY REGIONAL WATER	:	
QUALITY CONTROL AUTHORITY	:	
as SETTLOR and UNIVEST BANK	:	
AND TRUST CO. as TRUSTEE,	:	
	:	
Defendants	:	
	:	
v.	:	
	:	
DARBY CREEK JOINT AUTHORITY,	:	
SOUTHERN DELAWARE COUNTY	:	
AUTHORITY, and AQUA	:	
PENNSYLVANIA WASTEWATER, INC.,	:	
	:	
Intervenors	:	

**ANSWER OF COUNTY OF DELAWARE, PENNSYLVANIA
TO PETITION FOR PRELIMINARY INJUNCTIVE RELIEF FILED BY
INTERVENOR AQUA PENNSYLVANIA WASTEWATER, INC.**

Intervenor Aqua Pennsylvania Wastewater, Inc. ("Aqua") seeks to enjoin the lawful termination of Defendant Delaware County Regional Water Quality Control Authority ("DELCORA" or the "Authority"). Yet Aqua concedes that Plaintiff County of Delaware, Pennsylvania (the "County") is empowered to terminate DELCORA.

Because Aqua has no clear right to relief and cannot show any immediate, irreparable, or imminent threat of harm, and because granting Aqua's injunction will cause greater harm than refusing it, Aqua's request for a preliminary injunction must be denied.

The County answers the factual averments set forth in Aqua's Petition for Preliminary Injunctive Relief ("Aqua's Petition") as follows:

1. Admitted.
2. Admitted, upon information and belief.
3. Admitted in part and denied in part. The County admits only that, upon information and belief, DELCORA engaged in discussions with Aqua for the purchase of DELCORA's system. After reasonable investigation, the County is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph, and the same are therefore denied. By way of further answer, the County denies any implication that the proposed sale of DELCORA's assets to Aqua was the only—or best—way to address the possibility of increasing capital costs.
4. Denied. After reasonable investigation, the County is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph related to any negotiations between Aqua and DELCORA, and the same are

therefore denied. The Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith.

5. Denied. The Asset Purchase Agreement ("APA") is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. By way of further answer, Section 7.04(a) of the APA, which is titled "Rates," states that "Buyer shall implement Seller's sanitary wastewater rates then in effect at Closing, as reflected on Schedule 7.04(a) ("Seller Base Rates"), until the Buyer's next base rate case proceeding [before the Public Utility Commission] following Closing." Aqua did not include Schedule 7.04(a) as part of its Petition for Preliminary Injunctive Relief. Section 7.04(a) of the APA says nothing about rate stabilization. Section 7.04(a) of the APA says nothing about "capping all rate increases for customers at 3% per year, by placing the proceeds of the sale (after paying down Delcora's obligations) into an independently managed irrevocable trust." Similarly, in its application to the Pennsylvania Public Utility Commission ("PUC") for approval of the acquisition of DELCORA's assets, Aqua failed to include the DELCORA Rate Stabilization Fund Trust Agreement (the "Trust Agreement") and the DELCORA Trust Funding Agreement (the "Trust Funding Agreement") as exhibits, despite a statutory requirement to do so. Moreover, Aqua is not (and does not claim to be) a party to the Trust Agreement or Trust Funding Agreement. In sum, despite its public statements and representations to the PUC and this Court, rate stabilization, rate caps, and the "independently managed irrevocable trust" are conspicuously—and troublingly—absent from the APA. The County incorporates by reference its Amended Complaint; its Response to DELCORA's Petition

for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

6. Denied as a legal conclusion. To the extent an answer is deemed required, the County incorporates by reference its Answer to Paragraph No. 5, above.

7. Denied as a legal conclusion. To the extent an answer is deemed required, the Trust Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith.

8. Denied as a legal conclusion. To the extent an answer is deemed required, the County admits only that DELCORA is a municipal authority governed by the Municipality Authorities Act (the "Authorities Act"). As such, DELCORA has limited rights, powers, and duties as set forth in the Authorities Act and DELCORA's Articles of Incorporation (as amended) and is subject to termination by the County. In fact, both Aqua and DELCORA have admitted that the County has the right to terminate DELCORA. Aqua's Consolidated Memorandum of Law in Support of its Petition for Preliminary Injunctive Relief ("Aqua's Memorandum") at 8 ("Aqua does not contest the County's general right to terminate Delcora"); Statement of N. Poduslenko, Counsel for DELCORA, Transcript of Proceedings, page 44, lines 16-20 (June 18, 2020) (excerpt attached to County's Brief in Opposition to Aqua's Petition for Preliminary Injunctive Relief as Exhibit A) ("Judge, we're not disputing that they have the – they are empowered or have the authority ultimately to terminate DELCORA. That's – that's what the case law says. There's nothing – nothing unique or different about that."). The County incorporates by reference its Amended Complaint; its

Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

9. Denied as a legal conclusion. To the extent an answer is deemed required, the Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. By way of further answer, the Asset Purchase Agreement is subject to the Pennsylvania Public Utility Commission's ("PUC") exclusive jurisdiction over public utilities.

10. Denied as a legal conclusion. To the extent an answer is deemed required, the Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. By way of further answer, the County lacks knowledge or information sufficient to form a belief as to what Aqua relied upon in negotiating the Asset Purchase Agreement. The County therefore denies the averments in this paragraph.

11. Denied. The Asset Purchase Agreement is a document that speaks for itself, and the County denies any characterizations inconsistent therewith. The County denies the numerous legal conclusions contained in this paragraph. By way of further answer, the County denies that DELCORA must proceed to closing on the proposed sale to Aqua before the County may terminate DELCORA. The County denies that it "knows little to nothing about" DELCORA's system, and the County denies that it is unable to operate the system.¹ Further, the Ordinance directs DELCORA to "cooperate

¹ Tellingly, in a recent mailing to local municipalities, DELCORA admitted that after the sale to Aqua, the DELCORA system will continue to be run by the same employees who are running it now. See Exhibit E to the County's Brief in Opposition to Aqua's Petition, FAQ ("Your service will not change. The current employees and services of

(cont'd footnote)

with the County in an orderly windup of its activities" and "continue to operate its system in the normal course during this windup," Ordinance § 2.02, which is consistent with DELCORA's obligations under the APA (assuming *arguendo* that the APA is an enforceable contract). The County incorporates by reference its Answers to Paragraphs 12-16, below, as well as its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

12. Denied as a legal conclusion. To the extent an answer is deemed required, the County denies that it is incapable of operating DELCORA. By way of further answer, the County serves more than 565,000 constituents, manages an annual budget in excess \$350 million, is the fifth largest employer in Delaware County, and operates such diverse departments as transportation, telecommunications, libraries, tax administration, emergency services, and criminal justice. The County denies that, by the end of the termination process, the County would be unable to manage and operate DELCORA's system or make any necessary representations under the APA. Additionally, the Ordinance directs that DELCORA continue to operate the system in the ordinary course pending termination, and following termination, the County intends to offer continued employment to the utility workers and certain administrative staff who run the system on a day to day basis. Stated differently, the County intends to run the

(continued footnote)

DELCORA will still oversee all operations so you can expect the same great service."). After termination, the County intends to retain the utility workers and certain administrative staff who run the system on a day to day basis.

system the same way Aqua does: by hiring DELCORA's current employees (or other qualified personnel).

13. Denied as legal conclusions. To the extent an answer is deemed required, the County denies that it is "not qualified to safely provide service to Delcora's customers." The County denies that it is incapable of managing, operating, or controlling the sewer system. The County denies that it cannot obtain the necessary PUC approvals during the windup of DELCORA. The County incorporates by reference its Answers to Paragraphs 11-12, above, and Paragraphs 14-16, below.

14. Denied as conclusions of law. By way of further answer, the PUC only regulates public utility services provided by a municipal corporation to customers located outside of the municipal corporation's boundaries. 66 Pa. C.S. § 1102(a)(5). As the vast majority of DELCORA's customers are within Delaware County, these services would not be subject to PUC jurisdiction following a transfer of the system to the County. With regards to the approximately 245 DELCORA customers located in Chester County, as the plain language of the Ordinance demonstrates, DELCORA will be terminated only after any impediments to termination are removed. This includes any approval or permits required by the PUC. Moreover, Aqua also has not been authorized by the PUC to acquire and operate DELCORA's sewer system. Pursuant to 66 Pa. C.S. § 507, the APA is not effective until and unless the PUC grants its approval thereof. The County incorporates by reference its Answers to Paragraphs 11-13, above, and Paragraphs 15-16, below.

15. Denied. The County denies that the lawful termination of DELCORA "puts the safety of all customers at risk and jeopardizes the quality and operation of the sewer

system's assets." As set forth above, after termination, the County intends to retain the utility workers and certain administrative staff who run the system on a day to day basis. The County incorporates by reference its Answers to Paragraphs 11-14, above, and Paragraph 16, below.

16. Admitted in part and denied in part. The County admits only that it does not presently employ the necessary personnel to operate the sewer system. The County denies that such personnel cannot be hired during the orderly windup of DELCORA. In fact, the County intends to retain the utility workers and certain administrative staff who run the system on a day to day basis. By way of further answer, the County believes and therefore avers that Aqua does not employ enough qualified or trained employees or support staff to operate DELCORA's system. Indeed, Section 7.03(a) of the APA provides that "Buyer [Aqua] shall offer employment effective on the Closing Date, to all active Personnel . . . who are employed by Seller [DELCORA] in operating the System as of the Closing Date" See also Exhibit E, FAQ ("Aqua will offer employment to all DELCORA employees.").

17. Admitted in part and denied in part. The County admits only that the APA is subject to PUC approval, and that Aqua filed an application that is pending before the PUC. The County denies all other averments in this paragraph, and the County denies any implication that Aqua's PUC Application was complete, that the APA is in the public interest, or that Aqua's PUC Application should be granted. By way of further answer, the fact that Aqua's PUC Application has not been approved shows that its request for a preliminary injunction is, at the very least, premature.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted in part and denied in part. The County admits only that the PUC conditionally accepted Aqua's PUC Application. The County denies all other averments in this paragraph, and the County denies any implication that the PUC's conditional acceptance of Aqua's PUC Application was correct.

22. Admitted.

23. Admitted.

24. Admitted

25. Admitted, with the clarification that the County seeks a writ of mandamus compelling DELCORA to comply with the terms of the Ordinance and the Municipality Authorities Act, in order to effectuate the orderly termination of DELCORA.

26. Admitted in part and denied in part. The County admits only that Aqua has accurately quoted the Ordinance. The County denies any implication that the Ordinance requires the immediate or disorderly termination of DELCORA. The County incorporates by reference its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

27. Admitted in part and denied in part. The County admits that the Amended Complaint and the Ordinance "do not expressly purport to challenge or attack the enforceability of the APA." The County denies that the "practical effect of the relief requested in the Amended Complaint and the Ordinance constitutes a direct attack on the APA." The County incorporates by reference its Amended Complaint; its Response

to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

28. Admitted in part and denied in part. The County admits only that it filed a Petition to Intervene in Aqua's PUC Application proceeding. The County's PUC flings are documents that speak for themselves, and the County denies any characterizations inconsistent therewith. The County further denies any implication that exercising its lawful right to intervene in the PUC proceedings provides any basis for the relief Aqua seeks in this Court.

29. Denied. The County lacks knowledge or information sufficient to form a belief as to what "statements" in "recent weeks" this paragraph refers to, and this paragraph is vague in that it refers to "statements" made "formally and informally." The County therefore denies the averments in this paragraph.

30. Admitted in part and denied in part. The County admits only that this paragraph accurately quotes Mr. Zidek from the June 3, 2020 County Council meeting. The County lacks knowledge or information sufficient to form a belief as to what "similar sentiment[s]" this paragraph refers to. The County therefore denies the remaining averments in this paragraph.

31. This paragraph refers to a document that speaks for itself, and the County denies any characterizations inconsistent therewith.

32. Denied as legal conclusions. By way of further answer, assuming *arguendo* that the APA is an enforceable obligation of DELCORA, terminating DELCORA would not be a "blatant violation" of "Aqua's contractual rights." Moreover, DELCORA's unlawful resistance to termination is a blatant violation of the Authorities

Act, which, as both DELCORA and Aqua readily admit, empowers the County to terminate DELCORA. Further, the County lacks knowledge or information sufficient to form a belief as to what "law" this paragraph refers to. The County therefore denies that terminating DELCORA prior to closing on the APA would be a "blatant violation" of "the law." The County incorporates by reference its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

Request for Injunctive Relief

33. Denied as legal conclusions. To the extent an answer is deemed required, the County denies that Aqua is entitled to declaratory or injunctive relief related to the Ordinance or the APA, and the County denies that it has tortiously interfered with Aqua's claimed contractual rights under the APA. By way of further answer, Aqua fails to state a claim in its Counterclaims upon which relief may be granted. Aqua's request for a declaratory judgment is not proper, as the determination of the transfer of assets from DELCORA to Aqua is pending before the PUC and Aqua has failed to join necessary parties as required by the Declaratory Judgments Act. Further, Aqua's claim of tortious interference is not ripe, as the County has not taken any steps to "interfere" in any contractual relation between DELCORA and Aqua. To the contrary, the County can obtain the relief it seeks in the Amended Complaint without prejudice to Aqua's claimed contractual rights because, at most, the APA is a removable impediment to the termination of DELCORA. If Aqua believes that DELCORA, or the County as its successor, breaches the APA (assuming *arguendo* that the APA is an enforceable obligation of DELCORA), then Aqua may seek relief in an appropriate

action at an appropriate time. In summary, Aqua cannot show a clear right to relief, any risk of immediate or irreparable harm, that greater injury may result from denying the injunction than from granting it, or any threat to the public interest. The County incorporates by reference its Answers to Paragraphs 1-32, above, and 34-40, below, as well as its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; its Petition for Preliminary Injunction and Brief in Support thereof; its Preliminary Objections to Aqua's Counterclaims and Brief in Support thereof; and its Brief Opposing Aqua's Petition for Preliminary Injunctive Relief.

34. Admitted in part and denied in part. The County admits only that Aqua does not—and cannot—contest the County's right to terminate DELCORA. The County denies the remaining averments in this paragraph as legal conclusions. By way of further answer, the County denies that termination of DELCORA cannot occur prior to closing on the APA. The County also denies that the former County Council determined that the APA is in the public interest, which determination is within the jurisdiction of the PUC. The County denies that it would be unable to make the necessary representations and warranties under the APA (assuming *arguendo* that the APA is an enforceable obligation of DELCORA). The County also denies that Aqua, DELCORA, and DELCORA's ratepayers will suffer irreparable harm if Aqua's Petition for Preliminary Injunctive Relief is not granted. The County incorporates by reference its Answer to Paragraph 33, above.

35. Denied as legal conclusions. To the extent an answer is required, the County denies that terminating DELCORA prior to closing on the APA would "immediately result in multiple violations of state and federal law" or would cause the

"loss of sewage disposal services." As set forth at length in the County's pleadings and briefs, the Ordinance calls for an orderly windup process during which wastewater services will be uninterrupted, all impediments to termination will be removed, and all lawful obligations of DELCORA will be settled or assumed by the County. The County incorporates by reference its Amended Complaint; its Response to DELCORA's Petition for Preliminary Injunction and Brief in Opposition thereto; and its Petition for Preliminary Injunction and Brief in Support thereof.

36. Denied as legal conclusions. By way of further answer, the County incorporates by reference its Answers to Paragraphs 33-35, above.

37. Denied as legal conclusions. To the extent an answer is deemed required, the County denies that it has engaged in any wrongful or unlawful act warranting the restoration of a pre-existing status quo. To the contrary, the County has lawfully taken steps to terminate DELCORA, and the County is entitled to injunctive and mandamus relief. Additionally, the Ordinance directs DELCORA to continue operating its system in the normal course while cooperating in the orderly windup of its affairs. The County therefore denies any suggestion that terminating DELCORA before closing on the APA would somehow interrupt wastewater services to DELCORA's ratepayers. Indeed, Aqua concedes that DELCORA's system can be transferred to another party without interrupting wastewater conveyance and treatment services—but Aqua's apparent belief that it is the only entity capable of ensuring an orderly transition is unfounded. The County incorporates by reference its Answers to Paragraphs 33-36, above.

38. Denied as legal conclusions. To the extent an answer is deemed required, assuming *arguendo* that the APA is an enforceable contract, the County denies that only DELCORA can make the representations and warranties required by the APA. The plain language of the Ordinance, which directs DELCORA to continue operating its system in the normal course while cooperating in the orderly windup of its affairs and removing all impediments to termination, shows that the County intends to terminate DELCORA only after the County is in a position to manage DELCORA's day-to-day operations—that is, after all impediments to termination have been removed, necessary personnel have been hired, etc. By way of further answer, Aqua's Counterclaims must be dismissed because Pennsylvania Rule of Civil Procedure 1096 bars counterclaims in a mandamus action and Aqua's Counterclaims do not comply with the Declaratory Judgments Act. Aqua will therefore be unable to demonstrate a clear right to relief and has no chance of prevailing on the merits. The County incorporates by reference its Preliminary Objections to Aqua's Counterclaims and Brief in Support thereof, and its Brief Opposing Aqua's Petition for Preliminary Injunctive Relief.

39. Denied as legal conclusions. To the extent an answer is deemed required, the County denies that the requested injunction does not seek to challenge the County's ability to terminate DELCORA. To the contrary, Aqua's Petition directly attacks the County's well-established authority to terminate DELCORA. As such, Aqua has no right to relief or likelihood of success on the merits of its Counterclaims, which must be dismissed because counterclaims are not permitted in a mandamus action. The County incorporates by reference its Answer to Paragraph 38, above.

40. Denied as legal conclusions. To the extent an answer is deemed required, the County incorporates by reference its Answer to Paragraph 34, above.

New Matter

41. Rule 1096 of the Pennsylvania Rules of Civil Procedure states that counterclaims are not permitted in mandamus actions.

42. The Declaratory Judgments Act requires that Aqua join all interested parties to Count I of its Counterclaims.

43. The proposed sale of DELCORA's assets to Aqua requires PUC approval.

44. The APA is subject to the PUC's exclusive jurisdiction over public utilities.

45. The APA is not effective until and unless the PUC grants its approval thereof. 66 Pa. C.S. § 507.

46. Under the APA, PUC approval of the sale of DELCORA's assets to Aqua is a condition precedent to closing. See e.g., APA Sections 11.03 and 12.03. See also Schedule 4.05 of the APA, which lists the PUC's approval of the transaction as a "Required Consent and Approval."

47. As stated in DELCORA's June 19, 2020 letter to municipalities, the PUC has "conditionally accepted for filing" Aqua's application to acquire DELCORA's wastewater system assets.

48. As DELCORA recognizes in its letter, it will be "several months" before the PUC determines whether to approve Aqua's application to acquire DELCORA's wastewater system assets.

49. The Court of Common Pleas lacks jurisdiction to issue a declaratory judgment related to the validity or enforceability of the APA.

50. The Court of Common Pleas lacks jurisdiction to determine whether the APA is in the public interest.

51. Further, the Amended Complaint does not challenge the APA. See Aqua's Petition ¶ 27 (conceding that the "Amended Complaint and the Ordinance do not expressly or directly purport to challenge the enforceability of the APA").

52. The Amended Complaint does not challenge the sale of assets from DELCORA to Aqua. See *id.*

53. Thus, unless and until the PUC approves Aqua's application to acquire DELCORA's wastewater system assets, and unless and until the County actually challenges the sale of such assets to Aqua, Aqua's request for the County to be "enjoined and restrained from terminating Delcora prior to the closing on the Aqua/Delcora APA, and enjoined and restrained from interfering in any way with Aqua's existing contractual relationship with Delcora," is not ripe, as an actual case or controversy does not exist. See Aqua's Petition ¶ 33.

54. Similarly, unless and until the PUC approves Aqua's application to acquire DELCORA's wastewater system assets and the County actually challenges the sale of such assets to Aqua (which Aqua admits the County has not done), Aqua's claim for tortious interference with an existing contractual relationship between Aqua and DELCORA is not ripe.

55. Aqua cannot show that the County has actually interfered with any contractual relationship between Aqua and DELCORA.

56. Further, even assuming *arguendo* that Aqua could make such a showing, the County's actions are privileged and/or justified.

57. The Municipality Authorities Act empowers the County to terminate DELCORA.

58. DELCORA admitted during the June 18, 2020 proceeding in this Court that the County is empowered to terminate DELCORA.

59. The Municipality Authorities Act does not require that all executory contracts proceed to closing prior to termination of an authority.

60. Rather, executory contracts such as the APA constitute, at most, removable impediments to termination.

61. Because the County is legally empowered to terminate DELCORA and direct DELCORA to wind up its affairs, the County's actions are privileged and/or justified.

62. Additionally, Aqua cannot show any actual damages resulting from the alleged interference.

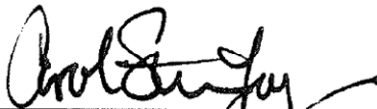
63. Aqua has not alleged (and cannot allege) that the County, as DELCORA's eventual successor, has breached the APA.

64. Indeed, Aqua admits that the County has not actually challenged the APA. Aqua's Petition ¶ 27.

65. Even if the County had breached the APA, Aqua would have adequate remedies, and a preliminary injunction is not warranted.

66. Because Aqua's claims are not ripe and will be subject to dismissal as a matter of law, Aqua is not entitled to preliminary injunctive relief.

WHEREFORE, the County respectfully requests that the Court deny Aqua's
Petition for Preliminary Injunctive Relief.

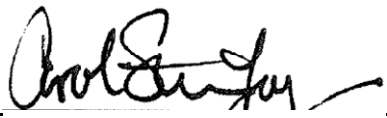
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Date: August 11, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

By:  _____
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Date: August 11, 2020

CERTIFICATE OF SERVICE

I certify that I have this date served a true and correct copy of the foregoing document by email, addressed as follows:

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Counsel for Intervenor Aqua Pennsylvania Wastewater, Inc.

A handwritten signature in black ink, appearing to read "Carol Steinour Young", with a long horizontal flourish extending to the right.

Dated: August 11, 2020

Carol Steinour Young

Exhibit E

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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY
PENNSYLVANIA

CIVIL COURT DIVISION

* * * * * No. 2020-003185
*
COUNTY OF DELAWARE, *
PENNSYLVANIA *
*
VS. *
*
DELAWARE COUNTY REGIONAL *
WATER QUALITY CONTROL *
AUTHORITY, et al *
*
* * * * *

Media, PA, June 30, 2020, 1:35 p.m.

Courtroom 7

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JUDGE BARRY C. DOZOR

JOEL FRANK, ESQUIRE
MICHAEL PUPPIO, ESQUIRE
For the Plaintiff

CAROL STEINOUR YOUNG, ESQUIRE
NICHOLAS PODUSLENKO, ESQUIRE
MATTHEW OLESH, ESQUIRE
WILLIAM MALONE, ESQUIRE
CARL EWALD, ESQUIRE
For the Defendant

ANDREW REILLY, ESQUIRE
For the Intervener

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INDEX

DIRECT CROSS REDIRECT RECROSS

ON BEHALF OF THE PLAINTIFF:

[None]

ON BEHALF OF THE DEFENDANT:

[None]

ON BEHALF OF THE INTERVENER:

[None]

EXHIBITS

MARKED ADMITTED

ON BEHALF OF THE PLAINTIFF:

P-1-5 Document Packet

15

26

ON BEHALF OF THE DEFENDANT:

[None]

ON BEHALF OF THE INTERVENER:

[None]

P R O C E E D I N G S

June 30, 2020

THE OFFICER: -- presiding. Good afternoon, Your Honor.

ALL: Good afternoon, Your Honor.

THE COURT: Good afternoon, everybody. You can have a seat and be comfortable. Okay. We're on the record this afternoon regarding the County of Delaware vs. the Delaware County Regional Water Control Authority known as DELCORA and the DELCORA Rate Stabilization Fund Trust Agreement between the Delaware County Regional Water Control Authority as Settler and Univest Bank and Trust Company as Trustee. It has a Court term and number of 3185-2020. Could everybody introduce themselves?

MR. FRANK: Good afternoon, Your Honor. Joel Frank on behalf of the Petitioner, Aqua Pennsylvania Waste Water.

MR. PUPPIO: Good afternoon, Your Honor. Michael Puppio, Attorney #62320 on behalf of the Petitioner, Aqua Waster Water as well, sir.

MR. REILLY: Andrew Reilly, Attorney ID #50076 on behalf of the Intervener, Southern Delaware County Authority.

MS. STEINOUR YOUNG: Good afternoon, Your

1 Honor. Carol Steinour Young for the County of
2 Delaware, Attorney #55969.

3 MR. PODUSLENKO: Good afternoon, Your
4 Honor. Nick Poduslenko for DELCORA, Attorney ID
5 51562.

6 MR. OLESH: And Your Honor, Matt Olesh for
7 DELCORA also, 206553.

8 MR. MALONE: Good afternoon, Your Honor.
9 William Malone, Attorney ID 67157 on behalf of the
10 Garden Creek Joint Partner.

11 MR. EWALD: Good afternoon, Carl Ewald on
12 behalf of the Delaware -- the County of Delaware,
13 #85639.

14 MR. MARTIN: Good afternoon, Your Honor.
15 William Martin, Solicitor, Delaware County, 39756.

16 THE COURT: Thank you. Hopefully, all of
17 you feel comfortable where you're sitting because
18 it's important to make you feel comfortable under
19 the circumstances of this pandemic. So you -- so
20 there's appropriate social distancing and you're all
21 wearing of your masks. I'm a good 25 feet from you,
22 so my mask has slipped off and hopefully, that does
23 not offend anybody? No objection? Okay.

24 MS. STEINOUR YOUNG: No objection, Your
25 Honor.

1 THE COURT: Since we have met last, when I
2 had initially, prior to the last hearing, signed a
3 Scheduling Order and Interim Temporary Stay of
4 Activity, an Order dated June 4, 2020, after the
5 last hearing, without objection of any of the
6 parties, I signed two Orders, June 18, 2020, both
7 dated June 18, 2020 which allow for the intervention
8 of two municipal authorities, Darby Creek Joint
9 Authority is represented here today, as well as, the
10 Southern Delaware County Authority who is also
11 represented here today. This Court also issued an
12 Order on the very Thursday that I was expecting a
13 proposed Order, that being June 25, 2020, which
14 simply scheduled a hearing on the cross injunctions
15 and we scheduled it, I set aside two days, September
16 9 and the second day if needed, September 11. And I
17 believe my office had coordinated the dates of that,
18 okay. And so I had prepared that and sent that out.
19 And confirming that till further Order of Court, the
20 initial stay continues to remain in place. I don't
21 know if anybody noted in my Order, but I did
22 indicate until further Order of the Court or unless
23 the parties mutually agree to the contrary because I
24 was -- at the last hearing, I was anticipating that
25 there was a good deal of -- going to be a good deal

1 of conversation between the County of Delaware and
2 DELCORA about possibly me entering an Interim Order
3 that might have -- might deal with the issues of
4 operation and day-to-day procedure and things like
5 that. I never received it nor did I receive a
6 letter or anything regarding that, so but knowing
7 that that might still happen and I'm only guessing
8 that that might still happen, my Order of June 25,
9 does not preclude that, okay. So that's why I put
10 that language in.

11 MS. STEINOUR YOUNG: Thank you, Your Honor.
12 I rise just to alert the Court to the fact that we
13 did provide a Proposed Order to DELCORA. I'm sure
14 Mr. Poduslenko will get back to me. Hopefully, we
15 can have further conversations this week and next
16 about that.

17 THE COURT: Okay. So assuming there is
18 some agreement, whatever that might be, and if you
19 want the Court to be engaged along the line in any
20 point in time, we -- I'm willing to be engaged if
21 you welcome it and if you invite me.

22 MS. STEINOUR YOUNG: Thank you, Your Honor.

23 THE COURT: Yeah. I had entered that
24 Order, that day on June 25, because I was
25 anticipating some Proposed Orders which I never

1 received, never received communication in that
2 regard, so I just did it on my own, okay. I was
3 also anticipating an Order again of my new
4 Scheduling Order that would provide for some
5 discovery and things of that nature on Thursday. I
6 never had received that. At 4:00 yesterday, Mr.
7 Ewald's letter of communication was -- finally
8 arrived at my chambers about 4:00 yesterday. Mr.
9 Ewald filed it on -- apparently typed me a letter
10 and sent me everything on June 25. I don't know
11 where you delivered it, but it wasn't hand carried
12 to my office until yesterday. And I suspect, I'm
13 guessing you brought in the front door, you put it
14 some place and wherever you put it, it stayed there
15 until yesterday, so that's no fault of yours. So
16 when I came in this morning, I saw it for the first
17 time.

18 MR. EWALD: I'm sorry, Your Honor.

19 THE COURT: And that's your letter of June
20 25.

21 MR. EWALD: Yeah.

22 THE COURT: So you need to get it to
23 chambers.

24 MR. EWALD: Certainly.

25 THE COURT: Our offices are in the same

1 building, so you just need to say you have to drop
2 something off in Judge Dozor's chambers or have a
3 carrier -- courier do it because -- and maybe the
4 safety precautions that went on before when we were
5 in yellow, now we're in green, maybe they don't have
6 that box out front or wherever you left it. Maybe
7 things have changed in the courthouse a little bit.

8 MR. EWALD: Okay, thank you.

9 THE COURT: Yeah.

10 MR. EWALD: Security did not let me bring
11 it in. They had me place it in a bucket.

12 THE COURT: Yeah, we figured that out.

13 MR. EWALD: Yeah.

14 THE COURT: And it was -- you obviously
15 made the effort to get it to me and I appreciate
16 that, but I was, you know, so -- and we'll turn to
17 this later today and talk about the Scheduling
18 Order. At first glance, it appears to be excellent
19 and I'm assuming it took a lot of work back-and-
20 forth to get it done, so we'll touch base on that,
21 okay. And that's all in addition -- and that's with
22 regards to the hearing in September which is a date
23 that I had also cleared with everybody.

24 MR. EWALD: Yes.

25 THE COURT: Okay. So we'll get --

1 MR. EWALD: Your Honor, on that --

2 THE COURT: Don't let me go --

3 MR. EWALD: Okay.

4 THE COURT: -- let us go home before we
5 deal with that at the end. Do you want to say
6 something, Mr. Ewald?

7 MR. EWALD: Well, just that I had also
8 hand-delivered -- okay.

9 THE COURT: Hand-delivered what?

10 MR. EWALD: An answer to the petition.

11 THE COURT: Yes, I have that.

12 MR. EWALD: Okay.

13 THE COURT: And I was aware, we actually
14 printed that out ourselves because I was so upset I
15 didn't get anything from you on Thursday, we went to
16 the computer and printed all that out and then yours
17 just arrived just yesterday.

18 MR. EWALD: Okay.

19 THE COURT: Yeah.

20 MR. EWALD: And we did this morning file an
21 amended answer, but --

22 THE COURT: An amended answer?

23 MR. EWALD: Yes, which I have a copy of it
24 --

25 THE COURT: As opposed to your answer of

1 last week?

2 MR. EWALD: Correct, Your Honor.

3 THE COURT: So you --

4 MR. EWALD: It adds a couple of paragraphs.

5 MS. STEINOUR YOUNG: Three paragraphs.

6 THE COURT: No problem.

7 MS. STEINOUR YOUNG: Three paragraphs,
8 Judge, very quickly on a --

9 THE COURT: You can amend anything you
10 like.

11 MS. STEINOUR YOUNG: -- mandamus action.

12 THE COURT: I'm just smiling that in four
13 days you went and amended it.

14 MS. STEINOUR YOUNG: Right.

15 THE COURT: But anyway, I'll be -- you'll
16 hand that up?

17 MR. EWALD: Yes. If this an appropriate
18 time, I can hand it --

19 THE COURT: I guess so. This is an amended
20 answer to what?

21 MR. EWALD: There are actually two
22 amendments.

23 THE COURT: To the interim --

24 MR. FRANK: There were three answers filed.
25 One was timely, the subsequent two were untimely,

1 Your Honor.

2 THE COURT: Okay. So we'll deal with that
3 in a second. Number one quality of a Judge has
4 nothing to do with brains, it has to do with
5 organization, so I'm trying to be organized. Okay.
6 So we're here today on a single issue and that is
7 the Aqua's Petition to Intervene. There was an
8 answer to the Petition to Intervene and new matter.
9 I see that Aqua has just responded. I think I have
10 a copy of that.

11 MR. FRANK: That's correct, Your Honor.

12 THE COURT: And now, there's something new
13 again?

14 MR. FRANK: Well, to clarify, Your Honor,
15 you're correct. Aqua appropriately responded to the
16 initial answer and new matter that was timely filed
17 on the 25th. This morning, they have not responded to
18 the two subsequent untimely filed amended answers.

19 THE COURT: Okay. So there's been two
20 amended answers to your response?

21 MR. FRANK: Correct.

22 MS. STEINOUR YOUNG: That's incorrect,
23 Judge.

24 MR. FRANK: My petition, not my response,
25 my -- the original petition, correct.

1 THE COURT: Okay. Well, you can consider
2 that probably a compliment to whatever you filed if
3 they thought it was worth the response.

4 MS. STEINOUR YOUNG: Your Honor, if I may?

5 THE COURT: Of course.

6 MS. STEINOUR YOUNG: We filed our petition
7 timely or answer to the petition timely on the 25th
8 as the Court had ruled. We alerted both Aqua and
9 the County last evening that we were going -- that
10 we had filed. And, in fact, last night filed an
11 amended answer. That amended answer added three
12 paragraphs. It's a legal argument only.

13 THE COURT: Ms. Young, I'm not offended by
14 your filing. My listing of this case accelerated
15 the necessity of all the replies and counter
16 replies. And I actually may have, in a sense,
17 listed this a bit early to make it more difficult
18 for everybody to reply. The fact that everybody has
19 replied and nobody has suggested to me that I
20 reschedule this matter is appreciated, but I did
21 accelerate this. I thought the intervention issue
22 was important to get that aside. So I put everybody
23 in the position to have to accelerate their
24 responses and their amendments and things like that.
25 So that -- so it's on me, not you.

1 MS. STEINOUR YOUNG: Well, I understand.
2 But Judge, just to be clear --

3 THE COURT: You agree with that?

4 MS. STEINOUR YOUNG: I'm not going to cast
5 any aspersions on the Court. But just to be clear,
6 Aqua did not respond to what we filed yesterday.
7 They filed an answer even today knowing that we had
8 filed an amended answer yesterday. The problem with
9 the filing yesterday is it did not include the
10 exhibit, so we filed an amended -- another amended
11 one today, just to include the exhibit. That's it.
12 They have not yet responded to our legal argument,
13 but I don't think it should hold up the proceedings.
14 Judge, because it is a legal argument.

15 THE COURT: Would everybody agree that --
16 does everybody agree to allow the proceedings to
17 proceed today?

18 MR. FRANK: Absolutely.

19 MS. STEINOUR YOUNG: Yes, Your Honor.

20 THE COURT: Okay. Well, why don't you --
21 this is your petition.

22 MR. FRANK: It's my petition.

23 THE COURT: Your petition, so you can stand
24 or sit, whatever you feel more comfortable.

25 MR. FRANK: From the lectern, Your Honor?

1 THE COURT: You may.

2 MR. FRANK: Keep the mask on still or --

3 THE COURT: Yeah, it's up to you. It
4 doesn't offend me. There's plastic separating us.

5 MR. FRANK: Great, thanks.

6 THE COURT: Right.

7 MR. FRANK: May I proceed?

8 THE COURT: You may.

9 MR. FRANK: All right. Again, Joel Frank
10 on behalf of Aqua Pennsylvania Waste Water. Now I
11 submit to Your Honor, this is probably going to be
12 one of the easiest decisions for Your Honor to make
13 based upon, you know, your long tendered [inaudible]
14 on the bench.

15 THE COURT: Okay.

16 MR. FRANK: As Your Honor is well aware,
17 we're not litigating underlying issues here. The
18 County may think we are, but we're truly not. The
19 only thing we're here for today is to again,
20 determine whether Aqua has a right to participate in
21 this matter and again, I think the answer is very
22 clear. There's no need for witnesses today, Your
23 Honor. We won't be calling any witnesses. I do
24 have five documents, copies of which have already
25 been provided to all counsel here today. With the

1 Court's permission, I'd like to hand up a copy to
2 the Court.

3 THE COURT: Do you wish to mark these as
4 exhibits?

5 MR. FRANK: They're already marked.

6 THE COURT: Oh. You may have marked them,
7 but the Court hasn't marked them yet.

8 MR. FRANK: Correct.

9 THE COURT: And we mark our own exhibits.

10 THE CLERK: How would you like this marked,
11 I?

12 THE COURT: Have you marked it? Do you
13 want to mark the single packet or each one
14 individually?

15 MR. FRANK: It's a packet. You'll see each
16 one's Aqua 1 through Aqua 5.

17 THE COURT: Okay. So unless there's no
18 exception, we'll indicate Petitioner 1, 2, 3, 4, 5.
19 So you want to put your seals on each one.

20 MR. FRANK: Would you like me to proceed,
21 Your Honor, or wait until the exhibits are marked?

22 THE COURT: No, you can proceed.

23 MR. FRANK: Okay, very good. So again,
24 Your Honor, what we're really talking about is Rule
25 2327, Subpart 4, which importantly, the language of

1 the rule is important. It says a party shall, not
2 may, but shall be permitted to intervene if their
3 interest may, not shall, may be impacted or
4 affected. As Your Honor recognized the last time we
5 were in front of you on June 18 at the hearing, Aqua
6 and the APA are smack dab in the middle of the
7 dispute between the County and DELCORA. Without the
8 APA, the Asset Purchase Agreement, we're not even
9 talking about a subject trust. The multiple filings
10 of both parties, DELCORA and the County have -- are
11 replete with references to Aqua and Aqua's
12 involvement. The position of the County, quite
13 honestly, Your Honor, uses sophisticated legal
14 terms, it's silly. And I look forward to go ahead
15 and receiving the right to know response and to find
16 out, you know, how many county taxpayer dollars were
17 expended in filing opposition to Aqua and your
18 appearance here today because those arguments will
19 be forthcoming. I've got to address one of the
20 exhibits. I think Your Honor's already familiar
21 with it, Exhibit 4 in our packet, Your Honor is the
22 actual town and the docket Ordinance 2020-4 which
23 went ahead and directed the termination of DELCORA.
24 Would you like me to wait until you have that packet
25 in front of you?

1 THE COURT: No, you can proceed.

2 MR. FRANK: Okay, very good. Importantly,
3 you know, the document speaks for itself, but what
4 it also -- what it doesn't say is important for
5 Aqua's purposes. And what it doesn't say is that
6 it's utterly silent with regarding whether the
7 County will honor the APA, the Asset Purchase
8 Agreement. In all filings and proceedings so far in
9 front of this Court, the County has yet to affirm it
10 will honor the APA or allow closing with the APA
11 prior to termination as must occur pursuant to the
12 contract itself. Now various council members
13 themselves, Your Honor, have expressed in public
14 their -- excuse me, their adversity to the APA on
15 the record. And you'll see in response in Paragraph
16 24 of our petition and the County's response to it,
17 they admit that councilmen, you know, council chairs
18 decided, who by the way, was also a board chair --
19 excuse me, a board member of DELCORA during relevant
20 timeframes. He stated specifically his goal was to
21 upend the deal. That's Paragraph 24. Other council
22 members at the last County council meeting
23 addressing this on a video recorded record, also
24 expressed, you know, a similar sentiment. So, think
25 about it, Your Honor. What the County would propose

1 is that Aqua with nearly a \$300 million deal on the
2 table. You know, the County would propose just, you
3 know, sit on the sidelines and kind of you, you
4 know, we'll wake you up when this is done and over.
5 Well, you know, that's not the appropriate way to go
6 ahead and deal with this. Referring you to Exhibit
7 1, which is the Asset Purchase Agreement, Aqua
8 specifically chose it's dance partner and that dance
9 partner was DELCORA, not the County, not anybody
10 else. Paragraph 9 of our petition, sir, which is on
11 Pages 4 and 5 of the petition, there's multiple
12 provisions in the petition including -- that include
13 [inaudible] and warranties. The terms of which were
14 agreed to because we were doing it, you know, Aqua
15 was doing a deal specifically with DELCORA with its
16 expertise and experience, not with the County and
17 it's lack thereof. So the County's responds to that
18 and said well look, we're going to go ahead and hire
19 the DELCORA employees anyway, so hopefully now,
20 we'll be able to transition out without any issues.
21 Well, number one, the County's only assuming that
22 the current DELCORA employees would come if they
23 chose to be employed by the County. And there's no
24 assurance of that whatsoever. It's rank
25 speculation. I want to specifically refer you, sir,

1 to Paragraphs 15 -- Provisions 15.0, 15.08, and
2 15.09 which can be found on Page 46 of the APA.
3 1508 specifically says that there are no third party
4 beneficiaries of this agreement. They also say --
5 it also says specifically provides that no one has
6 any rights to the APA besides the initial parties.
7 That being Aqua and DELCORA. 1509 simply says there
8 shall be no assignment or delegation of any rights
9 prior -- without the prior written consent of the
10 other initial party. Let's take a moment to talk
11 about the County's opposition, what they say. They
12 make a lot of noise, the County does, about Aqua not
13 being a party to the Trust Agreement or to the Trust
14 Funding Agreement. What they conveniently didn't
15 disclose to you, but should have is that in Exhibit
16 2 is the Trust Agreement. Aqua was obviously
17 referenced throughout the Trust Agreement, but more
18 specifically, Section 11, which can be found on Page
19 4, Aqua is specifically designated as a third party
20 beneficiary to the Trust Agreement. So the fact
21 that they're not a party so to speak, that's not
22 entirely accurate and that's what they're disclosing
23 to Your Honor. Similarly, Section 9 which can be
24 found on Page 3 of the notices, Aqua is to be copied
25 on all communications, demands, and notices between

1 the parties to that agreement. So again, another
2 strong indicia of Aqua's involvement in that
3 document in and of itself. Moving on to Exhibit 3
4 which is the Rate Stabilization Fund Trust
5 Agreement, Your Honor, again, Aqua referenced
6 throughout the document. Specifically, Section 2.2
7 which can be found on Page 4. The purpose of the
8 trust under the actual definition and purpose of the
9 trust, Aqua is referenced as the distribution agent
10 to be utilized to stabilize the rates. And again,
11 similar to the Trust Agreement itself in Section 9.3
12 on Pages 15 through 16, again, under the notices,
13 Aqua is obligated to be copied on all demands,
14 notices, and communications yet another indicia of
15 Aqua's integral involvement in this matter overall.
16 And then really coup de grace, the irony widens, on
17 May 15, excuse me, May 18 of '20, the County,
18 through the same law firm representing the County
19 here today, sought to intervene, themselves
20 intervene in Aqua's PGC application which in part
21 seeks that the application seeks approval of the
22 subject Asset Purchase Agreement. In that document,
23 they say the County requires, the County requires
24 party status in that matter so as to monitor the
25 proceedings regarding Aqua's application yet they go

1 ahead and object to Aqua's inclusion in this matter.
2 How the County, Your Honor, could legitimately or
3 reasonably object to Aqua's participation in this
4 matter is beyond me. I trust the Court will reach
5 the same conclusion and I'm happy to answer any
6 questions the Court has.

7 THE COURT: Well, let me ask this. The
8 statutory of the case law requirements for
9 intervention, how are they met? I mean, you have --
10 one you feel that you have a financial interest by
11 the way of --

12 MR. FRANK: There's a financial interest,
13 but if you look at --

14 THE COURT: -- the factor of third party --

15 MR. FRANK: -- Subpart --

16 THE COURT: -- beneficiary.

17 MR. FRANK: -- I'm sorry. If you look at
18 Subpart 4, it specifically says if a ruling or a
19 decision in an underlying matter will affect your
20 legal interest, that's their rule -- that certainly
21 is the standard.

22 THE COURT: And how does it affect your
23 legal interest?

24 MR. FRANK: Oh, well Aqua, the APA itself,
25 the Trust Agreement -- again, without the APA, you

1 don't even have a Trust Agreement which is what the
2 County --

3 THE COURT: It makes your Sale Agreement
4 ineffectual?

5 MR. FRANK: I'm sorry?

6 THE COURT: It makes your Sale Agreement in
7 effectual because your Sale Agreement is contingent
8 on and relying upon the Trust Agreement.

9 MR. FRANK: Well, correct.

10 THE COURT: Right. You can't separate one
11 from the other, can you?

12 MR. FRANK: You cannot, Your Honor. Again,
13 Aqua is specifically a third party beneficiary --

14 THE COURT: Right.

15 MR. FRANK: -- in the -- in that document
16 itself, in the Trust Agreement itself, in Section
17 11. I mean, it's totally integrated into the whole
18 -- like I said, you look at the pleading, look in
19 the files that both parties have made. There's
20 repeated references in both their files about how
21 Aqua's involvement and the APA itself.

22 THE COURT: Now in your reply to
23 Plaintiff's new matter, you talk about in Paragraph
24 46, that the County has actually interfered with the
25 contractual relationship between you, Aqua, and

1 DELCORA.

2 MR. FRANK: Correct.

3 THE COURT: And how is that?

4 MR. FRANK: Well, again, Your Honor, that's
5 going to be filed if, in fact, you give us
6 permission to intervene as the rules require, as I'm
7 sure you're aware, you need to go ahead and attach
8 to your Petition to Intervene, the filing that --

9 THE COURT: This your -- I'm reading ahead.
10 This is your proposed reply?

11 MR. FRANK: Correct.

12 THE COURT: Right.

13 MR. FRANK: Correct, Your Honor. And
14 again, if I can, I know that one of the -- we just
15 addressed one of the points that, you know, we made
16 here with Ms. Young in their third filing of their
17 answer, one of the provisions they made, the
18 assertions they make is that well you can't have
19 counterclaim anyway to mandamus action. Well, I'd
20 just point out to Your Honor that in their amended
21 complaint, there's five counts, only one of them is
22 a mandamus. So the counterclaim that we're, you
23 know, looking to get ahead of, sir, but you can't
24 just seize a declaration. There's two counts and
25 then the proposed counterclaim if we want to get

1 into that. Number one, it's just a declaration
2 [inaudible] from the Court that, in fact, the APA
3 is, in fact, valid and it needs to be consummated in
4 [inaudible] be consummated with DELCORA before the
5 dissolution sought by the County can be effectuated.

6 THE COURT: Well let me ask you about that.
7 The Delaware County's amended complaint one of the
8 requests for a writ of mandamus, but from my
9 perspective reading of the words, it asks for
10 injunctive relief and declaratory judgment. They
11 want a finding that DELCORA violated the Municipal
12 Authority's Act and violated DELCORA's Article of
13 Incorporation by contracting with you, Aqua.
14 Correct? So that's --

15 MR. FRANK: I don't think they -- they've
16 not made that statement by contracting with us.
17 They haven't delineated specifically what that was.
18 My understanding, Your Honor, they have, you know,
19 made consummations without the trust and the Rate
20 Stabilization Agreement they talked about.

21 THE COURT: Well, the second point, and I'm
22 using actually their verbiage is the -- I use the
23 word join, joins DELCORA from transferring any
24 assets into the trust, pending logicity [ph] of the
25 trust --

1 MR. FRANK: Sure.

2 THE COURT: -- and that trust, you are the
3 third party beneficiary of that trust.

4 MR. FRANK: Correct.

5 THE COURT: So that's a financial interest.

6 MR. FRANK: Correct. The whole deal is a
7 financial interest. I mean, you've got, you know,
8 the deal between DELCORA and Aqua is, you know,
9 Aqua's going --

10 THE COURT: I ask these questions because I
11 don't want to assume anything.

12 MR. FRANK: Yes, Your Honor, I understand.
13 I mean, the whole kit and kaboodle is, you know,
14 Aqua has struck a valid deal with DELCORA back in
15 September of 2019.

16 THE COURT: So you think this is an easy
17 decision for a Judge, huh?

18 MR. FRANK: Absolutely. And again, Judge,
19 we're not getting into underlying merits. All it
20 really needs to take into account is may Aqua's
21 interest be potentially impacted by this matter?
22 And clearly, that's the case. I really, you know,
23 don't see any basis for holding to the contrary.

24 THE COURT: Okay, thank you.

25 MR. FRANK: Thank you. If I can move for

1 exhibits, again 1 through 5. Thank you, Your Honor.

2 THE COURT: Any objection?

3 MS. STEINOUR YOUNG: No objection, Your
4 Honor.

5 THE COURT: So moved.

6 MR. FRANK: Thank you.

7 THE COURT: Ms. Young, you don't think it's
8 an easy decision, do you? You think it's a hard
9 one, right?

10 MS. STEINOUR YOUNG: Judge, I think it's
11 neither easy nor silly. In fact, I think it's well
12 founded in the law. Judge, I would direct your
13 attention again to what this case is about because
14 the only pleading that is in this case right now as
15 far as complaint, there's no answer filed by
16 DELCORA. There is a complaint, an amended
17 complaint, four counts. The first four deal --

18 THE COURT: Well, I want to raise that
19 issue because I think the stipulation or the
20 Scheduling Order requires that. So I want to be
21 giving a date and, you know, a date for that
22 hearing. So obviously, everybody's going to have to
23 file their replies and answers and things of that
24 nature. And I think Mr. Ewing's Order speaks to
25 that, right.

1 MS. STEINOUR YOUNG: Okay. Judge, getting
2 back to my argument. So there are four counts
3 dealing with the trust.

4 THE COURT: Right.

5 MS. STEINOUR YOUNG: There is one count
6 dealing with mandamus.

7 THE COURT: Right.

8 MS. STEINOUR YOUNG: Let's take mandamus
9 first.

10 THE COURT: Right.

11 MS. STEINOUR YOUNG: With respect to the
12 mandamus, DELCORA stood up in the courtroom, not
13 this courtroom, but over in the other building
14 several times and said the County is permitted under
15 the Municipality Authority's Act to terminate
16 DELCORA. That's not an issue. The issue with
17 respect to the mandamus action, Judge, is the
18 impediments, all right? That's what that case has
19 to deal with. Those impediments are between the
20 County and DELCORA. What does the County need to
21 do? What does DELCORA need to do working with the
22 County to remove those impediments. Those have
23 absolutely nothing to do with Aqua. We have said in
24 our plea -- in our answer that we will assume all
25 obligations of DELCORA, including the APA. The

1 enforceability of that agreement, Judge, is not
2 before this Court in any way, shape, or form.
3 That's number one on mandamus. Number two on
4 mandamus it is there --

5 THE COURT: Well, it's not as of yet.
6 Nobody's filed any replies or anything else, so I
7 don't know what's ahead of me. I hope it isn't, but
8 --

9 MS. STEINOUR YOUNG: Then --

10 THE COURT: -- the pleadings are still
11 outstanding.

12 MS. STEINOUR YOUNG: -- perhaps we --

13 THE COURT: And I don't know where we're
14 going in that regard yet.

15 MS. STEINOUR YOUNG: Well, Judge, I will
16 get to that in a moment.

17 THE COURT: All right.

18 MS. STEINOUR YOUNG: With regard to
19 mandamus, it is clear that no counterclaim under
20 Rule 1096, no counterclaim may be asserted. So
21 let's just stick with the mandamus action for a
22 moment. When you talk about silly, I'm going to use
23 an another word, Judge. I'm talking about audacious
24 and outrageous that Aqua will come into this Court
25 and say to this Court, Judge, you have to hold up

1 the enforcement of a validly enacted ordinance, the
2 termination of DELCORA, until our private interest,
3 Aqua, until we get taken care of. Put aside the
4 taxpayers, Judge. Don't pay any attention to them
5 because we get to close our deal before the
6 termination of DELCORA. That to me is outrageous,
7 Judge.

8 THE COURT: Right. If you don't mind, I'd
9 ask -- you don't mind me interrupting you, do you?

10 MS. STEINOUR YOUNG: As long as I don't
11 lose my train of thought, Judge.

12 THE COURT: Right. Well, I'm losing mine
13 as I'm talking to you. But I'm not sure they said
14 that.

15 MS. STEINOUR YOUNG: Absolutely, they said
16 it.

17 THE COURT: Well --

18 MS. STEINOUR YOUNG: That's their position.
19 He said in it papers, Judge, and he said it this
20 morning that --

21 THE COURT: My impression is that their
22 interest is the Trust Agreement at the present time.
23 Their interest is their third party beneficiary
24 financial interest by way of the Trust Agreement
25 which is an integral part of the Agreement of Sale.

1 That's their interest. Their interest isn't well if
2 DELCORA survives or doesn't survive.

3 MS. STEINOUR YOUNG: I don't think that was
4 what Mr. Frank said.

5 THE COURT: And I may not have to know that
6 today either, but --

7 MS. STEINOUR YOUNG: Absolutely you need to
8 know that today, Judge, because --

9 THE COURT: Okay. Tell me why.

10 MS. STEINOUR YOUNG: -- what they're trying
11 to do, if you look at the rules, Judge. 2329, upon
12 the filing of the petition, et cetera, et cetera, an
13 application for intervention may be refused if the
14 claim or defense of the Petitioner is not in
15 subordination to and in recognition of the propriety
16 of the action. Not only is it not insubordination
17 to or in recognition of the propriety of the
18 mandamus action which even DELCORA has said it can
19 be terminated, it is asking the Court to do the
20 opposite. It is asking the Court to stay the
21 enforcement of a validly enacted ordinance. That is
22 not proper, Judge.

23 THE COURT: Well --

24 MS. STEINOUR YOUNG: They've showed their
25 hands.

1 THE COURT: -- but their intervention has
2 everything to do with the amended complaint you
3 filed, not necessarily the injunction matters.

4 MS. STEINOUR YOUNG: I'm not talking -- I'm
5 talking about the mandamus, just the mandamus. The
6 mandamus action is clear, DELCORA can be terminated,
7 period. Aqua has no say in that.

8 THE COURT: But the --

9 MS. STEINOUR YOUNG: I'll get -- Judge, I
10 will get to the trust in a moment. I promise you, I
11 will get to the trust. I want to take this issue
12 first. The mandamus action is clear. And we will
13 be filing a preemptory judgement action because
14 under the law, it is a validly passed ordinance.
15 DELCORA has already admitted it can be terminated.
16 And we need to do that before Aqua closes with
17 DELCORA. Now, secondly, Judge, let me get to the
18 trust. I urge you, Judge, to look at the APA, the
19 Asset Purchase Agreement. And what you will find is
20 the trust is not even mentioned. Not even
21 mentioned. And yet, Aqua has the audacity to come
22 into this courtroom and say it's intertwined. It's
23 inextricably intertwined. It's not. It's not even
24 mentioned. I said in our answer, Judge, that Aqua
25 and DELCORA are playing some kind of cat and mouse

1 game here with the Rate Stabilization Agreement. We
2 need to know on behalf of the taxpayers, what is
3 going on with this trust? They're not a party to
4 this trust. They don't really have a financial
5 interest necessarily in the trust.

6 THE COURT: And why do you say that? They
7 represent themselves as a third party beneficiary
8 because the trust specifically requires an
9 accounting of the money to be paid to them for
10 specific use. And so, are they not a third party
11 beneficiary or are they using that word too
12 generally, that terminology too generally?

13 MS. STEINOUR YOUNG: With respect to --
14 well, what we're talking about Judge is the actual
15 legitimacy of the trust and whether or not it could
16 have been even adopted or created in the first
17 place.

18 THE COURT: And we're going to be doing
19 that in the later date.

20 MS. STEINOUR YOUNG: Right.

21 THE COURT: But are they not the
22 beneficiaries of that trust? Are they not a party
23 of interest in that trust? And if they so, they are
24 the issues you brought up and their amended
25 complaint and that's their financial interest they

1 claim.

2 MS. STEINOUR YOUNG: They can claim that
3 that, but Judge, I would point you to another issue
4 of --

5 THE COURT: If you think I'm wrong, I don't
6 mind you telling me.

7 MS. STEINOUR YOUNG: Okay. Other --

8 THE COURT: This dialogue is helpful to me.

9 MS. STEINOUR YOUNG: Okay. Under 2329, an
10 application for intervention may be refused if the
11 interest of the Petitioner is already adequately
12 represented. So they may --

13 THE COURT: And why are they adequately
14 represented?

15 MS. STEINOUR YOUNG: Because DELCORA wants
16 to move forward. DELCORA is going to be fighting in
17 their battle. Judge, one of the things that you
18 mentioned last time, and in fact, Mr. Frank
19 mentioned it today. He's all up in arms about all
20 this money that it is costing the County. If Aqua
21 is permitted to intervene and pile on, which is what
22 they want to do, it's going to increase the cost of
23 this litigation pretty astronomically and it's
24 simply not necessary. Under 2329, they are not
25 going to be intervening to in the words of the rule,

1 their claim is not going to be insubordination to a
2 recognition of the propriety of the action. In
3 fact, they're going to take the opposite position
4 and their interest is going to be adequately
5 represented by DELCORA. There is no need, Judge,
6 for Aqua to be invited to this. Plain and simple.
7 Now, with respect to what they were saying about
8 their counterclaims, I think there's also a futility
9 argument, Judge. The Asset Purchase Agreement is
10 not at issue in this case and it should not be
11 injected into this case. Again, the Trust is not
12 part of the APA. It's a separate document. And
13 Judge, with respect to --

14 THE COURT: Well, the subject matter is
15 identical. The interests are parallel. I know it's
16 two separate documents, probably, I'm guessing dated
17 the same time. I don't know if they were or not.

18 MS. STEINOUR YOUNG: I think they were
19 dated separate. I think the trust was created
20 afterwards, Judge.

21 THE COURT: Okay. Okay.

22 MS. STEINOUR YOUNG: And the trust isn't
23 even necessary for rate stabilization. And that is
24 exactly what we're challenging before the PUC, but
25 I'll get to that in a moment.

1 THE COURT: And I have already suggested
2 that that's the pathway to resolve this case. The
3 trust can be modified. The trust can be improved
4 upon. The trust can be -- there's a lot of common
5 ground here, if you wanted to pursue that common
6 ground. The parties gave me that impression that
7 there might be some discussion, but maybe it's too
8 soon.

9 MS. STEINOUR YOUNG: Judge, if I could just
10 get back to again, the futility argument.

11 THE COURT: Of course.

12 MS. STEINOUR YOUNG: The tortious
13 interference. There is no interference with their
14 contract at this point.

15 THE COURT: Well --

16 MS. STEINOUR YOUNG: It's not even ripe.

17 THE COURT: -- let me ask you this.

18 MS. STEINOUR YOUNG: Yes, sir.

19 THE COURT: There may not be tortious
20 interference. There may not be any kind of
21 malicious interference, but it's definitely
22 interference in a legal sense. You're challenging
23 the very vehicle that would have from their
24 perspective, allows for the acquisition and the
25 sale.

1 MS. STEINOUR YOUNG: We --

2 THE COURT: So I'm not suggesting anything,
3 you know, rises to the level of any kind of negative
4 consequences, but there's definitely a nexus here, a
5 very true nexus here. Correct?

6 MS. STEINOUR YOUNG: Judge, we are
7 permitted -- tortious interference, that means that
8 we are not privileged to do so. That's -- we are
9 privileged. We are permitted to move forward and
10 terminate DELCORA. I don't know how they could
11 possibly be tortious interference.

12 THE COURT: Well I thought the tortious
13 interference you're referring to the Trust
14 Agreement. You're invasion of the Trust Agreement
15 is tortious interference. I thought that's what you
16 were suggesting.

17 MS. STEINOUR YOUNG: No, Judge. I --

18 THE COURT: I misunderstood.

19 MS. STEINOUR YOUNG: -- if that's what
20 they're suggesting, I think --

21 THE COURT: No, I haven't heard them
22 suggest it.

23 MS. STEINOUR YOUNG: Well --

24 THE COURT: I thought --

25 MS. STEINOUR YOUNG: -- that is a tortious

1 --

2 THE COURT: I didn't hear the word tortious
3 inference till you raised it.

4 MS. STEINOUR YOUNG: The County is
5 permitted to protect. In fact, not just permitted,
6 but obligated to protect the interest of the
7 taxpayers. And what we have in this trust scheme,
8 and I will use that word. I don't use that word
9 lightly, Judge. All of the assets that are being
10 paid are going to go into this trust and go to Aqua.

11 THE COURT: And I --

12 MS. STEINOUR YOUNG: All of the money that
13 is now sitting in DELCORA is going to go into the
14 trust and go to Aqua.

15 THE COURT: -- learned from you last time
16 that Trust Agreements of this nature are not unusual
17 and they are found across the state you said -- told
18 me. Now I don't know what -- how similar the terms
19 and conditions are and that's another issue, but the
20 word trust, you know, this kind of trust provision
21 is not unusual.

22 MS. STEINOUR YOUNG: Judge, I must have
23 misspoke because that is not correct.

24 THE COURT: Okay.

25 MS. STEINOUR YOUNG: Rate Stabilization

1 Agreements are not unusual. Trusts like this I --
2 we -- our PUC folks know of no other trust used
3 anywhere --

4 THE COURT: Okay. So --

5 MS. STEINOUR YOUNG: -- in fact, so rate
6 stabilization is one issue.

7 THE COURT: I think you're correct.

8 MS. STEINOUR YOUNG: Trust is a different.

9 THE COURT: I think you're correct. That's
10 how I remembered it, you're correct. So assuming
11 the parties agree on rate stabilization, they can
12 still work out a pathway to resolve that.

13 MS. STEINOUR YOUNG: Yes.

14 THE COURT: By modifying the trust or
15 changing something as a better alternative than a
16 trust.

17 MS. STEINOUR YOUNG: The trust is
18 completely unnecessary, Judge. In fact, it's
19 illegal, which we will be establishing --

20 THE COURT: Right.

21 MS. STEINOUR YOUNG: -- before this Court.

22 THE COURT: So if the parties wanted to
23 find an accord and resolution, by finding another
24 avenue or providing rate stabilization, that might
25 resolve this litigation.

1 MS. STEINOUR YOUNG: There are all kind of
2 things that could resolve this litigation, Judge. I
3 need to hear from DELCORA, and I need to hear from
4 Aqua other than being accused of filing silly
5 pleadings.

6 THE COURT: Well --

7 MS. STEINOUR YOUNG: We're happy to sit
8 down and talk.

9 THE COURT: -- the reason I mention this is
10 all I'm trying to do is wave some flags in front of
11 everybody.

12 MS. STEINOUR YOUNG: Right.

13 THE COURT: And, you know, and make some
14 suggestions. That's all I'm doing because if I wave
15 these flags, maybe somebody will grab a flag and run
16 with it and talk about it among themselves.

17 MS. STEINOUR YOUNG: I appreciate that,
18 Judge, but I can tell you, that Aqua's appearance in
19 this litigation is not going to make that any
20 easier, it will complicate it.

21 THE COURT: Well, let me ask about this.
22 When I re-read the amended complaint the other
23 night, I counted that Delaware County referred to
24 Aqua minimally, 15 different times in your amended
25 complaint. So the obvious elephant in the room is

1 Aqua, wherein your amended complaint, you thought it
2 was essential for you to -- for your prayer for
3 relief to name them and make factual representations
4 approximately 15 times. I counted different
5 paragraphs where the word Aqua was in it. Okay.

6 MS. STEINOUR YOUNG: Judge, I'm looking for
7 my prayer for relief.

8 THE COURT: No, I'm talking about --

9 MS. STEINOUR YOUNG: I don't see Aqua
10 mentioned in my prayer for relief.

11 THE COURT: Well, there's approximate --
12 there's 15, I counted separate paragraphs within
13 your amended complaint that refers to the word Aqua.
14 So in setting forth the foundation for your relief,
15 you thought it was essential to identify
16 circumstances and representations involved in Aqua,
17 so that would suggest to me that they're a party of
18 interest. It doesn't mean they're a party of
19 interest, but I saw it was suggested.

20 MS. STEINOUR YOUNG: Judge, I think that we
21 referenced Aqua to point out how deceptive the
22 scheme is because Aqua has said and DELCORA has said
23 that the ratepayers are going to benefit from this
24 trust.

25 THE COURT: Right.

1 MS. STEINOUR YOUNG: In fact, all the money
2 that DELCORA paid -- that Aqua pays is going back
3 into their pockets. That's why they're mentioned,
4 Judge, to show the flaw in this scheme and how it
5 actually hurts the taxpayers of this County which is
6 why the County is even here, Judge, to prevent that
7 from happening. Okay?

8 THE COURT: I appreciate that.

9 MS. STEINOUR YOUNG: Thank you.

10 THE COURT: Any follow up?

11 MR. PODUSLENKO: Your Honor, may I? Nick
12 Poduslenko for DELCORA. May I make a few comments
13 as well?

14 THE COURT: Of course, and then I want to
15 hear from Aqua again.

16 MR. PODUSLENKO: Your Honor, I think I just
17 heard a moment ago, Ms. Young say that she needs to
18 hear from DELCORA and from Aqua, but she doesn't
19 want to have Aqua intervene. There's a couple of
20 things I want to correct for the record. First off,
21 there is this disconnect --

22 THE COURT: Well, I think she said that you
23 could speak on their behalf and they should be --

24 MR. PODUSLENKO: Oh, she said she needed to
25 hear from Aqua, not me. She said that separately,

1 but there's a disconnect first for everybody to
2 understand. We have never said that the County has
3 the right to absolutely terminate DELCORA. What
4 we've said is that they are in power to do so if and
5 only if -- let me repeat that. If, and only if,
6 they make the requirements under the Municipal
7 Authority's Act, none of which they have met or even
8 come close to meeting. The second I heard Ms. Young
9 say a moment ago that they are now assuming the
10 obligations of the Asset Purchase Agreement? It was
11 clear that I heard it and we'll order a transcript
12 and make sure, that is nowhere within their
13 pleadings whatsoever. In fact, that's exactly what
14 they're doing. There's this cat and mouse game of
15 wanting to have it both ways. Terminate, terminate
16 DELCORA, but we're not going to acknowledge or even
17 assume under any circumstances, the APA. That's
18 what they're really trying to do here. And, Your
19 Honor, this APA is going to be hard in this case
20 because if there's no counterclaim yet, we certainly
21 will be looking to raise the issues of why the
22 County that's never assumed the obligation of the
23 APA. And as Your Honor said, that's kind of the
24 elephant in the room here, you know, the Aqua APA
25 more than anything else. There's a couple other

1 points that I'd like to make as well and you hit the
2 nail on the head when you went back to the amended
3 complaint. I don't know if there were 15, but there
4 were certainly a lot of them. And when you go back
5 and read that amended complaint, what you'll see in
6 the introductory paragraph, I think it's .2, the
7 County asserts that basically the following.
8 Enjoining DELCORA from transferring any of its
9 assets into the trust pending review of the legis
10 [ph] of the trust, DELCORA's power to create a
11 governmental entity and DELCORA's authority to
12 transfer of public moneys to an entity which has no
13 public accountability of oversight. And guess who
14 that is? It's Aqua. And we continue to go through.
15 You go through the amended complaint as well. It is
16 replete with references to Aqua. In fact, if you go
17 two paragraphs for example 57 and 59, it says the
18 following. In devising a scheme in which public
19 assets are transferred to the trust and then
20 distributed directly to Aqua, DELCORA's exceeded
21 it's authority. Paragraph 59 of the amended
22 complaint. As sent forth above, the trust assets
23 will be paid directly to Aqua and Aqua as the
24 distribution agent has the sole authority to
25 determine whether to provide the benefits of the

1 ratepayers. There's so many more, Your Honor. If
2 you can go through and see that. That, in fact,
3 Aqua is interrelated and certainly has its own
4 rights within which it should be able to defend it's
5 ability here. Basically, what they're saying here
6 is that this trust is illegally transferring assets
7 to Aqua and that's not the case. We all know that,
8 because we know what the purpose is of the trust, we
9 talked about it before. But there's no question
10 here that Aqua has the ability and should have the
11 right to intervene on its behalf. Thank you, Your
12 Honor.

13 MR. FRANK: Thank you, Your Honor. Again,
14 that's the first time that I've heard needing
15 filings or the time we've been in Court that the
16 County does -- will, in fact, assume the contract.
17 First time we've heard that. But here's the problem
18 with that. I mean, that's why it's a timing issue
19 that's very important, Your Honor. We contracted,
20 Aqua contracted with DELCORA who has specific
21 expertise there are certain -- again a point to my
22 initial comment in our petition. There's specific
23 provisions that Aqua as a business and DELCORA as a
24 business specifically agreed to knowing that they
25 were going to be each other's partners. For

1 example, there was an indemnification provision
2 whereby if something goes awry, there's a cap now
3 right now of 5 percent that Aqua agreed to because
4 DELCORA was going to be its partner. If the County
5 ends up being its partner with its lack of expertise
6 comparably to DELCORA, that provision that we agreed
7 to enter into thinking our partner is going to be
8 DELCORA throughout this is really to our financial
9 determent, you know, potential. They clearly don't
10 understand. The County clearly doesn't understand
11 the financial dynamics. It's a 276 plus or minus
12 million dollar contract. Only a portion of those
13 funds are being placed in the trust. And Judge,
14 that's to benefit the ratepayers. There's a 3
15 percent cap on the rates that can be charged by
16 virtue of that giveback, if you will. There's no
17 scheme. That's a silly comment. That just shows
18 that there's no financial acumen as to what's
19 actually transpiring here in this action -- in this
20 transaction. What I heard primarily from Ms. Young
21 is an argument on the merits. We're not here on the
22 merits. We're not here to argue preliminary
23 objections as to whether there's a valid cause of
24 action or not a valid cause of action. We're here
25 just to simply ascertain whether Aqua has somewhat

1 of an interest in this that they go ahead and they
2 should be able to participate here. So let's talk
3 about efficiency. If we're declined for some reason,
4 the ability to go ahead and intervene in this
5 matter, what are we doing? We're filing a separate
6 complaint against the County. So we have two
7 parallel matters at that point. How is that
8 efficient for the taxpayers --

9 THE COURT: And that would obviously be
10 consolidated with this matter and obviously,
11 assigned to me.

12 MR. FRANK: Yeah, so let it be led in right
13 now, right? I mean, we made the criteria. Again,
14 if you look at, you know, 2327, it's a very low
15 threshold. It's a very low bar to go ahead and be
16 able to be put in. As Mr. Poduslenko said and even
17 Your Honor for that matter, there's an amended
18 complaint, just read it. If you should read that
19 document alone, I don't see how there's any valid
20 basis to exclude the intervention of Aqua, you know,
21 in this matter. Don't forget, Judge, you know, this
22 scheme. And anything that's ultimately granted by
23 the PUC, the PUC has oversight here, right? PUC is
24 not going to allow anything to occur that's not to
25 the benefit of the ratepayers. So I'd note that as

1 well. As far as Ms. Young's comment about piling it
2 on, I mean, I guess she's got a crystal ball because
3 I think potentially Aqua's involvement could assist
4 the Court in making a -- the proper decision in the
5 end game. So to preclude us at this point in time,
6 I just don't think is really ready to go and I would
7 again ask for permission to intervene as set forth
8 in our petition. Thank you, sir.

9 THE COURT: Thank you. Any follow up?

10 MS. STEINOUR YOUNG: Very, very briefly,
11 Judge.

12 THE COURT: No, take your time.

13 MS. STEINOUR YOUNG: Again, I'm astounded
14 at this cat and mouse game that Aqua continues to
15 play. First, we note -- first, we hear, oh, the
16 assets are going to go into the trust. Now, only
17 part of the assets are going to go into the trust.

18 THE COURT: Well, the trust will speak for
19 itself, whatever it says.

20 MS. STEINOUR YOUNG: But Judge, what's
21 going to happen to DELCORA? They're going to
22 continue to exist after? So there are --

23 THE COURT: I don't know the answer to that
24 either.

25 MS. STEINOUR YOUNG: I don't either, Judge.

1 THE COURT: But we'll find that out along
2 the way.

3 MS. STEINOUR YOUNG: I don't either, Judge,
4 but --

5 THE COURT: In fact, when we last -- at the
6 last hearing, I had reason to believe that you would
7 have some dialogue about that because they believed
8 that it was a matter of necessity to a limited
9 extent they needed to exist because of some
10 outstanding obligations, you thought differently.
11 So there was going to be some dialogue.

12 MS. STEINOUR YOUNG: I sent them --

13 THE COURT: And God knows if there's been
14 any dialogue.

15 MS. STEINOUR YOUNG: -- and invitation to
16 dialogue and have not heard back, Judge.

17 MR. FRANK: That's not true. The
18 invitation was relating to the Injunction Order and
19 nothing to do with the trust and I'd like to see the
20 email where you invited us to talk about the trust
21 issues.

22 THE COURT: Well, I'm going --

23 MS. STEINOUR YOUNG: I didn't -- I'm not
24 talking about the trust right now, I'm talking about
25 mandamus.

1 MR. FRANK: Well, be sure you make a
2 correct statement on the record.

3 MS. STEINOUR YOUNG: I am, but I was not
4 talking about the trust, I was talking about the
5 mandamus.

6 THE COURT: We're going to deal with the
7 issue of intervention on the merits and based on the
8 statute and the requirements of the law. We're
9 going to -- we have an injunction hearing on the
10 cross petitions on September 9 and September 11,
11 okay? We have already on everybody's calendar, a
12 September 23, 2020 hearing on the issue of this
13 amended complaint and any replies thereto. And we
14 don't know where, you know, where that's leading us.

15 MS. STEINOUR YOUNG: I'm confused, Judge.
16 September 23 and 24, I thought was on the argument
17 regarding the trust.

18 THE COURT: Correct, I misspoke.

19 MS. STEINOUR YOUNG: Yeah.

20 THE COURT: That's exactly right, but
21 that's the amended complaint. The amended complaint
22 talks about the issues of the trust.

23 MS. STEINOUR YOUNG: Well, the original
24 complaint did as well.

25 THE COURT: Right. And --

1 MS. STEINOUR YOUNG: But Judge, I think now
2 that --

3 THE COURT: -- that's scheduled -- that's
4 going to be scheduled for September 23. Correct?

5 MS. STEINOUR YOUNG: Correct.

6 THE COURT: Okay.

7 MS. STEINOUR YOUNG: I think, Judge, based
8 on what DELCORA is asking or what Aqua is asking
9 this Court to do and that is to, in essence, hold up
10 the validly adopted ordinance until the deal closes,
11 I think we need to --

12 THE COURT: Well, I have -- that's not in
13 front of me. No, I heard that reference, but that's
14 not in front of me. What's in front of me is you
15 have drafted with the assistance of all counsel, I
16 imagine, a Proposed Scheduling Order, which deals
17 with the amended complaint, okay.

18 MS. STEINOUR YOUNG: Well, the injunction
19 and the trust issue, from what I understand.

20 THE COURT: The injunction, the cross
21 injunctions are going to be on September 9 and
22 September 11.

23 MS. STEINOUR YOUNG: Correct.

24 THE COURT: The injunction issues.

25 MS. STEINOUR YOUNG: Yes.

1 THE COURT: Then we have the issue of your
2 amended complaint which is really a declaratory
3 judgment action and a mandamus action, okay? That
4 is -- the thought was that was going to be scheduled
5 for September 23.

6 MS. STEINOUR YOUNG: Okay, that's fine.

7 THE COURT: September 23.

8 MS. STEINOUR YOUNG: That's fine.

9 THE COURT: And your co-counsel provided me
10 with a Proposed Scheduling Order which sets forth,
11 you know, the discovery schedule. And I'm looking
12 at it here, hopefully, also there's a Scheduling
13 Order that also deals with all outstanding motions
14 and replies and answers and things of that nature.
15 Correct? Mr. Ewald, am I correct?

16 MR. EWALD: Yeah.

17 THE COURT: This is the document you
18 drafted, right?

19 MR. EWALD: Yes. The --

20 THE COURT: Okay.

21 MR. EWALD: -- motions, correct.

22 THE COURT: So we don't know what replies
23 are going to be filed to the amended complaint. And
24 I don't know what cross claims are going to be
25 filed, okay. But they're all going to be done

1 pursuant to the Scheduling Order. The Scheduling
2 Order talks about that. Okay. And then all the --
3 you're going to do all your discovery issues and
4 then I'm going to have a hearing on the cross
5 motions for the summary judgment on September 23.
6 Now the cross motion for summary judgment, that
7 deals with the amended complaint, that deals with
8 all the issues of the amended complaint?

9 MS. STEINOUR YOUNG: Judge, it does not
10 include Count Five and I would think that based on
11 what you just said, we should include Count Five as
12 well.

13 THE COURT: And what is Count Five?

14 MS. STEINOUR YOUNG: Count Five is the
15 mandamus.

16 THE COURT: Yeah, let's do it all.

17 MS. STEINOUR YOUNG: Okay.

18 THE COURT: Now, when we get closer to
19 that, for some reason the parties agree we need to
20 sever some of this or separate it or reschedule, you
21 know, we can do that. But I think with no exception
22 on like the game plan and I'll rethink it, if
23 necessary, but the game plan is on or -- on
24 September 23, I can deal with -- we need to be
25 prepared to deal with all issues involving the

1 amended complaint, any replies, new matter,
2 counterclaims, whatever might arise, all counts, and
3 deal with it. And that deals with the trust and
4 whatever I -- mostly it's all the trust in my
5 perspective.

6 MS. STEINOUR YOUNG: The mandamus, I
7 believe, Judge is the paramount.

8 THE COURT: Remind me again, mandamus is to
9 Order --

10 MS. STEINOUR YOUNG: Enforcement of the
11 ordinance.

12 THE COURT: Okay, perfect. We'll deal with
13 that. That's what I want to deal with because I
14 have a lot of issues, questions about the ordinance
15 myself and I have questions about how it was enacted
16 and things of that nature. So we'll deal with all
17 of that.

18 MS. STEINOUR YOUNG: Thank you.

19 THE COURT: Okay. And we'll deal with
20 whatever else I see in the replies in the new matter
21 because nobody's replied as of yet. I can -- I'm
22 just imagining what I'm going to see. I have no
23 idea. Okay. And then, Aqua will be involved or not
24 involved, depending on this intervention. And we do
25 have two other parties that have intervened. God

1 knows if any other municipal authorities will do.

2 MR. FRANK: Small monkey wrench, Your
3 Honor.

4 THE COURT: Monkey wrench?

5 MR. FRANK: A small one.

6 THE COURT: Okay.

7 MR. FRANK: What we initially were talking
8 about scheduling your chambers for the, you know,
9 the end of September 23, 24, 25, whatever those
10 dates were.

11 THE COURT: Yeah.

12 MR. FRANK: We were informed that it dealt
13 solely with the trust, the legitimacy of the trust,
14 whether the trust was proper or not proper.

15 THE COURT: Yeah, that was probably because
16 that was in my mind. I saw everything involved in
17 the trust, now I see the mandamus action.

18 MR. FRANK: Well here's the problem. I'm
19 actually out of the country then, but if you're
20 really just going ahead and dealing with the trust
21 issues --

22 THE COURT: No, no, I want to deal with all
23 of it.

24 MR. FRANK: -- I don't need to be here. I
25 don't need to participate. Somebody else in my firm

1 --

2 THE COURT: Well you've got great
3 associates.

4 MR. FRANK: Absolutely. My concern is if
5 you're now going ahead and I heard -- just heard you
6 say they're talking about counterclaims and
7 everything --

8 THE COURT: I don't know what you're going
9 to file. I have no idea, but the idea is we get
10 right to it on a given date. If September 23 is a
11 bad date, I'll -- there's nothing magic about
12 September 23. I could do it --

13 MR. FRANK: All I'm saying is if it was
14 going to be limited to the trust, I don't want to
15 hold anything up and --

16 THE COURT: And it's not going to be
17 limited to the trust. I want to deal with this
18 pleading. So I want to deal with everything the
19 best I can and then you'll file whatever appeals and
20 we'll have a nice foundation, a nice record, and
21 either -- and we'll deal with it. Now, if you think
22 differently, let me know and along the line when we
23 get closer, when there's some dialogue among you,
24 maybe you'll want me to segregate things and
25 separate things and I'll rethink it.

1 MS. STEINOUR YOUNG: Thank you, Judge.

2 THE COURT: But --

3 MS. STEINOUR YOUNG: I --

4 THE COURT: Does that make sense?

5 MS. STEINOUR YOUNG: It absolutely makes
6 sense, Judge, yes.

7 THE COURT: I mean, you know, there's an
8 open wound here, we might as well just deal with the
9 open wound and deal with it and all the discovery
10 has to be -- deal with all of these issues because I
11 want everybody to be equipped to do the discovery
12 they think is relevant and pertinent, relevant and
13 pertinent discovery.

14 MS. STEINOUR YOUNG: And proportional.

15 MR. FRANK: Well, Judge, we're already on
16 our third document request from the County, so I'm
17 not sure about proportionality.

18 MS. STEINOUR YOUNG: Judge, we did that --

19 THE COURT: Well, that's --

20 MS. STEINOUR YOUNG: -- at their request.
21 We served the first one and they said reserve it, so
22 we did.

23 MR. FRANK: What's the third one?

24 THE COURT: Okay. So let's --

25 MS. STEINOUR YOUNG: We broke up the first

1 one into two and three.

2 THE COURT: Let me look at the Scheduling
3 Orders. Everybody have this Proposed Scheduling
4 Order in front of them?

5 MR. FRANK: No, Your Honor.

6 MS. STEINOUR YOUNG: No.

7 THE COURT: Okay. Mr. Ewald, who -- you
8 work this out with whatever opposing counsel,
9 DELCORA?

10 MR. EWALD: Actually --

11 THE COURT: Nobody, just yourself?

12 MR. EWALD: No, no, they -- I was not
13 terribly involved --

14 THE COURT: Oh.

15 MR. EWALD: -- in it.

16 THE COURT: Are you the delivery man?

17 MR. EWALD: All counsel was involved. I
18 did not draft it --

19 THE COURT: Okay.

20 MR. EWALD: -- originally.

21 MR. FRANK: We were not involved in that
22 because we were not -- had party status yet --

23 THE COURT: Right.

24 MR. FRANK: -- so we were not involved, in
25 that, sir.

1 THE COURT: Right. I would not have
2 involved you either, if I was them.

3 MS. STEINOUR YOUNG: There were -- Mr.
4 Frank did correspond with your assistant, Judge.

5 THE COURT: I think the correspondence was
6 he wasn't available on the date that we were picking
7 out.

8 MS. STEINOUR YOUNG: Correct.

9 THE COURT: I asked them. I asked my law
10 clerk to deal with the three of you. I thought you
11 three were players, so I wanted to clear the date.
12 I think it was nothing more than that.

13 MR. FRANK: We'd agree with your assessment
14 that us three are the players, Your Honor.

15 THE COURT: So does this Scheduling Order
16 pickup everything we want to pickup?

17 MS. STEINOUR YOUNG: Yes, Judge, as long as
18 we all understand that under --

19 THE COURT: We want to change it. See it
20 says Counts One, Count Three, Count Four, so at
21 Paragraph 2, I want discovery on -- it has to say
22 discovery with regards to, you know, all requests
23 for relief from either party or all counts, you
24 know. I don't want to leave anything out. So we
25 want to redo that, right?

1 MS. STEINOUR YOUNG: Are you looking at
2 Paragraph 3, Judge?

3 THE COURT: I am.

4 MS. STEINOUR YOUNG: Well, actually, I
5 guess everything should just include --

6 THE COURT: Yeah, exactly, exactly. And as
7 well as any replies thereto.

8 MS. STEINOUR YOUNG: Yes.

9 THE COURT: And then as a result of
10 whatever these replies are, you need a little, you
11 know, if we need to relook at the schedule, we can
12 talk about it. Now what's this -- so Paragraph 6,
13 too, is -- the numbers, I guess. Any reference to
14 some of the counts we want to make, you know. And
15 then talk, you know, and then see if all these dates
16 match. And if you like September -- and then
17 obviously, we may have to pick another date other
18 than the September 23. If you're allowed to
19 intervene, you want to send an associate or do you
20 want yourself to be involved?

21 MR. FRANK: Well, again, Your Honor, if it
22 was going to go ahead and be a just specifically on
23 the trust issue, I wouldn't need to be here. If
24 it's going to be more global, I think my client --

25 THE COURT: Yeah, it's going to be more

1 global.

2 MR. FRANK: -- would prefer to have me
3 here.

4 THE COURT: It's going to be more global,
5 so we'll --

6 MR. FRANK: Yeah.

7 THE COURT: -- pick out a new date.

8 MS. STEINOIR YOUNG: And Judge --

9 THE COURT: And you might want a new date
10 because of all these new global issues, right?

11 MS. STEINOIR YOUNG: Certainly. We would
12 just ask the Court to find the earliest possible
13 date. We appreciate that.

14 THE COURT: It will be after though
15 September 23.

16 MS. STEINOIR YOUNG: Understood.

17 THE COURT: Yeah, okay. Yeah, we'll do
18 that. We're going to provide every courtesy in the
19 world to everybody. Okay. So you'll redo the
20 Scheduling Order, send it out to the parties, the
21 lawyers, and counsel involved, and let's improve
22 that and leave the blank on that date. Okay. So I
23 owe you an Order with regards to the intervention
24 issues. You owe me an Order regarding the
25 scheduling of all issues involved in the amended

1 complaint and any replies thereto and things like
2 that. I think in the amended complaint, you have to
3 put a deadline for all the -- I don't know, maybe
4 it's there, all the replies and new matter and
5 further replies, you know, in there. Anything else
6 that comes to mind that should be in there? What do
7 you think? Well, I'll leave it up to all of you.
8 You do this far more than I. Okay. And as to the
9 injunction hearing, there's no pre-req requirements
10 of any discovery on that one, although you're doing
11 the discovery parallel.

12 MS. STEINOUR YOUNG: We are, Your Honor.

13 THE COURT: Okay. But --

14 MS. STEINOUR YOUNG: And we've agreed to do
15 expedited discovery on trust issues, but it's matter
16 of a couple of days.

17 THE COURT: Okay.

18 MS. STEINOUR YOUNG: So I -- that should
19 all work itself out.

20 THE COURT: Okay. Is there anything else
21 you need my attention to? Again, I'm engaged to
22 whatever extent you want me to be, but I have to be
23 invited to be engaged. I'm not going to invite
24 myself into issues. There is a pathway to resolve
25 this case, I've said it before, it's so obvious to

1 me. There's all kinds of possible scenarios, but
2 you're going to have to want to do it, rather than
3 try this case in the newspapers and that's where I
4 read about this case all the time. It's a lot of
5 verbiage. It's a lot of verbiage. And there's
6 really avenues that all the parties can be winners
7 and all the parties can find a common ground. You
8 know, so I've waved a couple of flags and a couple
9 ideas in front of you. I have a host of others, but
10 you're all brighter than me and you can all figure
11 that out yourself. Okay. Anything else? Thank you
12 very much.

13 ALL: Thank you, Your Honor.

14 ***

15 [End of Proceeding, 2:38 p.m.]

16

17

18

19

C E R T I F I C A T I O N

I, Richard Coogan, hereby certify that the proceedings and evidence are contained fully and accurately on multitrack recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

Richard Coogan, Administrator
Court Reporters

DIAZ TRANSCRIPTION SERVICES hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

COUNTY OF DELAWARE, PENNSYLVANIA

v.

DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY, et al

#2020-003185

BY:



Traci L. Calaman
Transcriber for
Diaz Transcription Services

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

Judge

Exhibit F

Attorneys for Plaintiff

: IN THE COURT OF COMMON PLEAS
: DELAWARE COUNTY, PENNSYLVANIA

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: CIVIL ACTION - LAW

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You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint

and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyers' Reference Service
Front & Lemon Streets
Media, PA 19063
Phone: (610) 566-6625**

A V I S O


USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE

AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

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By: _____

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Date: June 15, 2020

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Attorneys for Plaintiff

COUNTY OF DELAWARE,	:	IN THE COURT OF COMMON PLEAS
PENNSYLVANIA,	:	DELAWARE COUNTY, PENNSYLVANIA
	:	
Plaintiff	:	
	:	
v.	:	NO. 2020-003185
	:	
DELAWARE COUNTY REGIONAL	:	CIVIL ACTION - LAW
WATER QUALITY CONTROL	:	
AUTHORITY, and DELCORA RATE	:	
STABILIZATION FUND TRUST	:	
AGREEMENT b/t THE DELAWARE	:	
COUNTY REGIONAL WATER	:	
QUALITY CONTROL AUTHORITY	:	
as SETTLOR and UNIVEST BANK	:	
AND TRUST CO. as TRUSTEE,	:	
	:	
Defendants	:	

AMENDED COMPLAINT

Plaintiff County of Delaware, Pennsylvania (the "County"), by and through their undersigned counsel, hereby files this Amended Complaint against Defendants the Delaware County Regional Water Quality Control Authority ("DELCORA"), and the DELCORA Rate Stabilization Fund Trust Agreement between The Delaware County Regional Water Quality Control Authority as Settlor and Uninvest Bank and Trust Co. as Trustee ("Uninvest") (together, the "Trust"), seeking an Order of Court that DELCORA violated the Municipal Authorities Act, 53 Pa.C.S. §5601 *et seq.*, by (1) creating a

governmental entity (the Trust) when it had no power to do so; (2) devising a scheme in which DELCORA will continue to exist and hold and distribute public monies, even though DELCORA will no longer exist after selling the sewer system to Aqua; (3) adopting a funding scheme in the Trust which is contrary to and violates DELCORA's Articles of Incorporation; and (4) refusing to comply with the mandates of County Ordinance 2020-4. The County also seeks an order of Court enjoining DELCORA (1) from transferring any of its assets into the Trust pending review of the legitimacy of the Trust; (2) from transferring public monies to an entity which has no public accountability or oversight; (3) from refusing to comply with the mandates of County Ordinance No. 2020-4, which authorizes and directs the orderly windup and termination of DELCORA; (4) pending termination, from taking any action inconsistent with the termination and the Ordinance; and, (5) pending termination, from transferring any DELCORA assets, except as set forth in any Order of Court.

In support hereof, the County avers the following:

Parties

1. The County is a political subdivision of the Commonwealth of Pennsylvania with administrative offices located at Government Center, 226A, 201 W. Front Street, Media, Pennsylvania 19063.

2. DELCORA is a municipal authority created under the Municipal Authorities Act of 1945 (now codified in the Municipal Authorities Act, 53 Pa.C.S. §5601 *et seq.*, the "Authorities Act") with administrative offices located at 100 East Fifth Street, Chester, Pennsylvania 17042.

3. The County is a customer of DELCORA and, as such, is a rate payer as defined by 53 Pa.C.S. § 5612.

4. The Trust is allegedly a government entity created by DELCORA on or about December 27, 2019, and is named as a nominal Defendant in this action.

5. Univest is a Pennsylvania state-chartered bank and trust company having a registered business address of 14 North Main Street, Souderton Pennsylvania 18964.

Creation of DELCORA

6. On or about October 20, 1971, the County, as a governing body under the Authorities Act, created DELCORA by filing Articles of Incorporation pursuant to 53 Pa.C.S. § 5603 (the "Articles") with the Department of State. A true and correct copy of the Articles, as amended, are attached hereto as Exhibit A.

7. The County is the only municipal incorporator of DELCORA.

8. The original Articles provide that DELCORA "shall be organized for the purpose only to acquire, hold, construct, improve, maintain, operate, own and lease, either in the capacity of lessor or lessee, projects of the following kind and character, sewers, sewer systems or parts thereof, sewerage treatment works, including works for the treating and disposing of industrial waste, in and for the County of Delaware and such other territory as it may be authorized to serve and to contract with individuals, corporations, municipal corporations, authorities, and other governmental bodies or regulatory agencies both within and without the County of Delaware, and shall exercise all of the powers granted to an Authority organized for such purpose by the Municipality Authorities Act of 1945 under which it is organized."

9. The Articles were subsequently amended by the County through the filing of Articles of Amendment on or about November 9, 1977 to increase the number of board members of DELCORA from seven to nine.

10. On or about April 16, 2002, the Articles were again amended to extend the term of existence of DELCORA from October 20, 2021 to January 15, 2052.

Asset Purchase Agreement with Aqua Pennsylvania Wastewater Inc.

11. At its regularly scheduled meeting on September 17, 2019, the DELCORA Board unanimously approved a \$276.5 million sale to Aqua Pennsylvania Wastewater Inc. ("Aqua").¹

12. The Asset Purchase Agreement is dated September 17, 2019, and was subsequently amended on February 24, 2020.

13. DELCORA has publicly stated that the proceeds will be used to pay off outstanding debt and to invest in a rate stabilization plan.

14. Robert Willert, Executive Director of DELCORA, has publicly stated that DELCORA intends to fund a trust or non-profit entity with the net proceeds of the intended sale of DELCORA to Aqua.

15. The net proceeds could exceed \$200 million.

¹ The sale is pending approval by the Pennsylvania Public Utility Commission ("PUC").

Lame Duck Council Agrees to Creation of the Trust in December 2019

16. The County is governed under its Home Rule Charter by a County Council consisting of five members, which as of November 2017, and for many years prior thereto, consisted of all Republicans.

17. On November 7, 2017, a regularly scheduled election was held, wherein two seats on the County Council were on the ballot and were won by Democrats, bringing the representation on the County Council as of January 2018 to three Republicans and two Democrats.

18. On November 5, 2019, a regularly scheduled election was held, wherein three seats on the County Council were on the ballot and were won by Democrats, bringing the representation on the County Council as of January 2020 to five Democrats and no Republicans, resulting in a change from Republican control to Democratic control.

19. After the election of November 5, 2019, but before the new council members were sworn in on January 6, 2020, the outgoing lame duck County Council voted to amend the Articles once again.

20. To that end, on or about December 18, 2019, the Articles were amended to add the following to the "purpose" provision: "In anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation, to: (1) establish a trust or non-profit entity **to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds**

received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreement to effectuate this purpose prior, during or after any transfer and sale and/or dissolution." See the Amended Articles, attached hereto as Exhibit A (emphasis added to original.)

21. The lame duck County Council, having had responsibility for watching over public moneys for generations, should have realized how important it is not to allow such responsibility to be ceded to persons or parties not elected by the citizens of Delaware County.

22. The lame duck County Council cynically ignored the will of the citizens of Delaware County and decided to use its last few weeks in office to thwart the will of those citizens.

23. The Asset Purchase Agreement does not include any reference to the creation of a trust or a non-profit entity for the purpose of rate stabilization.

24. According to the Amended Articles, assets of a trust or non-profit entity will be distributed to the rate payers for the purpose of "rate stabilization."

The Trust Funding Mechanism Violates the Amended Articles of Incorporation

25. On or about December 27, 2019, the Trust between DELCORA, as Settlor, and Univest Bank and Trust Co., as Trustee, was created. See a true and correct copy of the Trust, attached hereto and made a part hereof as Exhibit B.

26. The stated purposes of the Trust are "to benefit the Beneficiaries [defined as DELCORA's customers] by receiving Sale Proceeds deposited into the Trust Fund by the Settlor [DELCORA] and any additional contributions made to the Trust under

Section 3.3 hereof [referring to other contributions in the form of cash, securities, or other property acceptable to the Trustee, including funds released from Escrow Accounts related to the sale to Aqua]". See Section 2.2 of the Trust.

27. Pursuant to Section 4.1(a) of the Trust, however, distributions from the Trust shall be to Aqua Wastewater, not DELCORA'S customers: "[t]he Settlor shall direct the Trustee to make Distributions to Aqua Wastewater from time to time in accordance with the Rate Stabilization Agreement."

28. This distribution scheme violates the Amended Articles which granted DELCORA the authority to create a trust "to exist for the benefit of rate payers to **distribute to rate payers some or all of the proceeds received from any transfer or sale...**" See Amended Articles of Incorporation, Exhibit A, at page 34.

29. Further, DELCORA maintains the sole authority over distributions: "The Trustee shall have no duty to determine whether or not the amounts or timing of such Distributions are proper under the Rate Stabilization Agreement." See Section 4.1(a) of the Trust.

30. Pursuant to Article 4, these DELCORA-controlled distributions go to the Distribution Agent (defined on page 2 of the Trust as "Aqua Wastewater or any successor thereto serving as the entity responsible for allocating rate reductions as provided under the Rate Stabilization Agreement to and among the Beneficiaries."). See Article 1, Definitions, in the Trust.

31. The Distribution Agent (Aqua), in turn, will determine any rate stabilization for its customers.

32. Because the Trustee has no authority to make any distribution from the Trust without direction from DELCORA, the Trustee is not functioning as a Trustee, but rather as a conduit for the distribution of public assets and monies to Aqua: "[t]he Trust shall make Distributions to the Distribution Agent [Aqua] from time to time in accordance with written directions received by the Trustee from a duly authorized representative of the Settlor . . ." See Section 4.1(b) of the Trust.

33. Although all Trust assets are public assets, the Trust dictates that the assets will be distributed at the sole discretion of unelected individuals at DELCORA, none of whom will be accountable to the ratepayers.

34. The employees and contractors who perform work for the Trust will be paid from the assets of the Trust, causing wasteful and unnecessary dissipation of public assets.

35. The County believes, and therefore avers, that DELCORA and the prior County Council approved the Amended Articles to permit creation of a trust or non-profit entity as a political patronage deal to benefit the outgoing members of the County Council and their political supporters, to the detriment of the public at large, as evidenced by the terms of the Trust.

36. Indeed, while the situs of the Trust is the Commonwealth of Pennsylvania, the Trustee may, "at any time and from time to time, transfer the situs of the Trust to any other jurisdiction that the Trustee may deem appropriate." See Section 2.5 of the Trust.

37. Thus, despite managing public assets of DELCORA's customers, the Trustee has the discretion to move the site of the Trust to any other jurisdiction.

Creation of the Trust violates the Municipal Authorities Act

38. Pursuant to Section 9.9 of the Trust, the Trust "is intended to qualify as a governmental entity for state and local tax purposes."

39. As an entity created by statute, the Municipal Authorities Act, DELCORA has limited powers and authority.

40. DELCORA does not have the authority to create a separate governmental entity to distribute public assets to a private for-profit company, like Aqua.

The Trust Funding Agreement Shows that DELCORA intends to maintain control over some of the Assets from the Sale to Aqua

41. A Trust Funding Agreement, attached to the Trust and also dated December 27, 2019 (the "Trust Funding Agreement"), is part of the Trust agreement between DELCORA as Settlor and Univest as Trustee.

42. In the Trust Funding Agreement, Paragraph 1, DELCORA agrees to transfer into the Trust the following:

- (a) \$1,000 upon creation of the Trust;
- (b) "an amount equal to the total proceeds Settlor [DELCORA] receives from the sale of the Sewer System under the Sewer System Sale Agreement [with Aqua] less all of the Settlor's liabilities and obligations, expenses, and reasonable reserves (the "Net Closing Proceeds")"; and
- (c) amounts received by Settlor [DELCORA] as final distribution from an escrow agreement among Settlor, Trustee, and Aqua Pennsylvania Wastewater.

43. DELCORA has not publicly provided any explanation as to why it needs to maintain "reasonable reserves" when it is selling the entire sewer system to Aqua.

44. DELCORA has not provided any public explanation as to why it needs to exist following the sale of the sewer system to Aqua.

45. Further, review of public records show that DELCORA has approximately \$115,000,000.00 in cash. See www.delcora.org/wp-content/uploads/2020/02/February-2020-Finance.pdf. Neither the Trust nor the Trust Funding Agreement mentions or refers to DELCORA's cash reserves, nor does either agreement provide any explanation or justification for DELCORA to retain possession of such a vast amount of public monies.

Sworn Testimony submitted to the Public Utility Commission confirms that the Trust Assets will be Paid Directly to Aqua, not DELCORA Customers

46. In his testimony submitted to the PUC, William C. Packer, Vice President-Controller for Aqua Pennsylvania (parent company of Aqua Pennsylvania Wastewater, Inc.), states: "To address DELCORA's request for Aqua to apply customer assistance payments from the Trust to DELCORA customers, the Company [Aqua] is proposing to include a payment line item on the customer bill." See Testimony of William C. Packer, attached hereto as Exhibit C at p. 5.

47. Mr. Packer testified that the "preferred method would be to include the payment from the Trust on the customer bills." *Id.*, at p. 6.

48. Thus, assets of the Trust will not be paid directly to ratepayers. Instead, the assets of the Trust (which are the same assets paid by Aqua to DELCORA to purchase the sewer system) will be paid directly to Aqua.

Termination of DELCORA

49. On May 19, 2020, the County published Ordinance No. 2020-4 (the "Ordinance") authorizing and directing the orderly windup and termination of DELCORA pursuant to 53 Pa.C.S. §§ 5619 and 5622. A true and correct copy of the Ordinance is attached hereto as Exhibit D.

50. The Ordinance was unanimously approved and enacted in accordance with the Authorities Act at a special meeting of the Council on June 3, 2020.

51. The Ordinance directs and orders DELCORA to cooperate with the County in an orderly windup of DELCORA's operations.

52. In accordance with the Ordinance and an orderly windup of its affairs, DELCORA was directed to satisfy any outstanding debts and obligations of DELCORA and to take all actions necessary to remove any impediments to its termination.

53. The Ordinance further instructed DELCORA to refrain from taking any action or expending any funds inconsistent with DELCORA's windup of its affairs and termination. See 53 Pa.C.S. §5607(c) (which authorizes a municipality which organized a municipal authority to specify the powers and purposes of the authority from time to time).

54. On June 4, 2020, counsel for the County sent DELCORA a letter demanding DELCORA's cooperation in the windup and termination of DELCORA and its compliance with the dictates of the Ordinance. A true and correct copy of the June 4, 2020 letter is attached hereto as Exhibit E.

55. Pursuant to the Authorities Act, DELCORA is required to windup its affairs and terminate. To date, however, it has failed and refused to comply with the dictates of the Ordinance, in violation of the Authorities Act.

COUNT I
Violation of the Articles of Incorporation
(The County v. DELCORA)

56. The County incorporates Paragraphs 1- 55 as if set forth in full.

57. In devising a scheme in which the public assets are transferred to the Trust, and then distributed directly to Aqua, DELCORA has exceeded its authority and acted in contravention of the Articles of Incorporation, amended on December 18, 2019.

58. The Amended Articles of Incorporation state, in part, that:

In anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation, to: (1) establish a trust or non-profit entity **to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale**, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution.

59. As set forth above, the Trust assets will be paid directly to Aqua, and Aqua, as the Distribution Agent, has the sole authority to determine whether to provide the benefits to the ratepayers.

60. The rate stabilization scheme in the Trust is not only inconsistent with the Amended Articles of Incorporation, it violates the Amended Articles.

WHEREFORE, Plaintiff County of Delaware, Pennsylvania, requests that this Court enter judgment in its favor and against Defendant DELCORA, finding that

DELCORA violated its Articles of Incorporation by adopting the funding mechanism set forth in the Trust.

COUNT II
VIOLATION OF 53 Pa.C.S. § 5603
(The County v. DELCORA)

61. The County incorporates paragraphs 1- 60 as if set forth in full.

62. DELCORA's authority is limited to those powers set forth in the Municipal Authorities Act, 53 Pa.C.S. §5607(a).

63. Pursuant to the Municipal Authorities Act, DELCORA does not have the authority to create another governmental entity, as the Trust is described in Section 9.9 of the Trust.

64. In creating the Trust as a separate governmental entity, DELCORA has acted in an *ultra vires* manner.

WHEREFORE, Plaintiff County of Delaware, Pennsylvania, requests that this Court enter judgment in its favor and against Defendant DELCORA, and enter an order terminating the Trust, as well as any other relief the Court deems just and proper.

COUNT III
VIOLATION OF 53 Pa.C.S. § 5612
(The County v. DELCORA)

65. The County incorporates paragraphs 1- 64 as if set forth in full.

66. By creating the trust and transferring its assets into the trust, DELCORA has violated 53 Pa.C.S. § 5612 (a.1), which includes the following prohibition:

Money of the authority may not be used for any grant, loan or other expenditure for any purpose other than a service or project directly related to the mission or purpose of the authority as set for in the articles of incorporation or in the resolution or ordinance establishing the authority under section 5603 (relating to method of incorporation).

67. Pursuant to the Amended Articles, the trust was created in "anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment[.]"

68. The Trust was established "for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreement to effectuate this purpose prior, during or after any transfer and sale and/or dissolution."

69. The Trust will be in existence after the dissolution of DELCORA and/or the transfer and sale of all or substantially all DELCORA's assets.

70. Thus, the Trust cannot be a "service" or "project" directly related to the mission or purpose of the authority, as DELCORA will either cease to exist at the time the trust assets are distributed, or all or substantially all of DELCORA's assets will have been transferred.

71. The County believes, and therefore avers, that DELCORA has expended public funds to create the trust.

72. The County, as a ratepayer, has standing to seek the return of money expended in violation of 53 Pa.C.S. § 5612 (a.1)(1).

WHEREFORE, Plaintiff County of Delaware, Pennsylvania, demands judgment be entered in its favor, as well as permanent injunctive relief, and against Defendant Delaware County Regional Water Quality Control Authority to comply with the Authorities Act and return all monies expended in violation of the Act. Further, the

County demands permanent injunctive relief against DELCORA to prevent the transfer of any DELCORA funds into the trust.

COUNT IV
The Creation of the Trust Violates the Uniform Trust Act § 7701 et. Seq
(The County v. DELCORA and the Trust)

73. The County incorporates paragraphs 1- 72 as if set forth in full.

74. The creation of the Trust violates Section 7732 of the Uniform Trust Act (the "UTA"), § 7701 *et seq.*, as DELCORA did not have the capacity to create a trust.

75. The creation of the Trust also violates Section 7734 of the UTA, as a trust may be created only to the extent its purposes are lawful and not contrary to public policy.

76. DELCORA created the Trust, with the assistance of the lame duck County Council, in order to maintain control of public monies after newly elected officials were to take office. This act is in violation of the law.

77. Pursuant to Section 7740(a), this Court may terminate the Trust because the purposes of the trust are unlawful and contrary to public policy.

WHEREFORE, Plaintiff County of Delaware, Pennsylvania, demands permanent injunctive relief against DELCORA to prevent the transfer of any DELCORA funds into the trust. The County further demands that the Court enter an Order terminating the Trust.

COUNT V
Request for Writ of Mandamus
(The County v. DELCORA)

78. The County incorporates paragraphs 1- 77 as if set forth in full.

79. The Authorities Act defines the term "project" as " . . . any structure, facility or undertaking which an authority is authorized to acquire, construct, finance, improve, maintain or operate, or provide financing for insurance reserves under the provisions of this chapter." 53 Pa.C.S. § 5602.

80. DELCORA's sewer system is a "project" as that term is defined by the Authorities Act. See 53 Pa.C.S. § 5607 (permitting an authority to maintain sewer systems and facilities).

81. Pursuant to the Authorities Act, DELCORA, upon the enactment of a proper ordinance by the County, must "convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all obligations incurred by the authorities with respect to the project." 53 Pa.C.S. § 5622(a).

82. Moreover, DELCORA is required to convey all of its projects and property upon the County's direction to terminate, provided that all bonds have been paid and discharged. 53 Pa.C.S. § 5619(a), (b). See also *Forward Township Sanitary Sewage Auth. v. Township of Forward*, 654 A.2d 170, 174-76 (Pa. Commw. 1995); *Township of Forks v. Forks Twp. Mun. Sewer Auth.*, 759 A.2d 47, 52-54 (Pa. Commw. 2000) (" . . . Sections 18A and 14 of the [Authorities] Act, when read together in conjunction with *Forward* and *Mifflin*, control this matter and lead to the inescapable conclusion that for the purpose of dissolving an Authority a municipality has the power to unilaterally direct its Authority to transfer Authority property without consent of the Authority provided however, that no impediments exist at the time of conveyance[.]")

83. DELCORA has the following outstanding bond obligations: its Sewer Revenue Bonds, Series of 2017; its Sewer Revenue Bonds, 2016 Series; its Sewer

Revenue Bonds, 2015 Series; its Sewer Revenue Refunding Bonds, 2007 Series; and a Pennvest Bond that matures on September 1, 2031.

84. The County in the Ordinance directed DELCORA to defease DELCORA's outstanding bond obligations, and if DELCORA does not have enough cash on hand to effectuate such defeasance, the County will cover any shortfall through the issuance of its own bonds. See Ordinance, § 8 (authorizing proper officers of the County to take any further action necessary to defease DELCORA's outstanding bond obligations, including through the incurrence of indebtedness by the County in accordance with applicable law).

85. The County will assume any and all inter-municipal agreements executed by DELCORA.

86. The County will work with PUC to obtain any necessary approvals to serve extraterritorial customers.

87. The County has directed DELCORA to cooperate with the County in the assignment or transfer of permits, consent decrees, or other environmental approvals.

88. In sum, there exist no impediments that cannot be legally removed prior to termination, and there will be no impediments to DELCORA's termination at the time DELCORA conveys its property to the County.

89. The Ordinance has directed DELCORA to take all action necessary to remove any impediments to its termination. *Township of Forks v. Forks Twp. Mun. Sewer Auth.*, 759 A.2d at 53 ("Under the Act, the power to dissolve includes the power to order the Authority, prior to dissolution, to remove legally removable impediments").

90. A mandamus action is appropriate to compel a municipal authority to perform a duty that it is required by law to undertake. See Pa.R.C.P. Nos. 1091 *et seq.*, *Forward Twp. Sanitary Sewage Auth.*, 654 A.2d at 174. *Accord Township of Forks*, 759 A.2d at 53 (noting that previous order of mandamus compelling municipal authority to obey termination directive had been affirmed on appeal).

91. DELCORA has an obligation, pursuant to the Ordinance and the Authorities Act, to take all steps necessary to terminate.

92. The County has tried to resolve this matter through other means and has exhausted other methods of obtaining DELCORA's cooperation.

93. DELCORA has failed and refused to take the steps necessary to terminate.

94. The County has been immediately and directly harmed by DELCORA's failure to take actions to terminate pursuant to the Ordinance and the Authorities Act, as follows:

- a. First, violation of the Ordinance is irreparable harm *per se*.
- b. Second, the creation of the trust is not in the public interest, as the assets held in the trust are not primarily for the benefit of the rate payers, but for the benefit of Aqua and other unidentified beneficiaries, including the unknown and unelected individuals or entities employed or contracted to administer the trust;
- c. Third, should it seek to fund the trust entity prior to or through the sale to Aqua, DELCORA will be taking unauthorized actions outside the ordinary

course of business that will have a detrimental impact on the ratepayers and taxpayers.

95. The County seeks to compel DELCORA, through its respective board members, to comply with DELCORA'S obligations under the Ordinance and the Authorities Act.

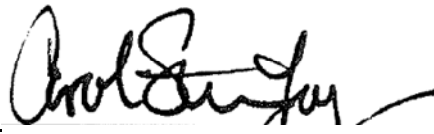
96. Because DELCORA has refused to take actions to terminate when it is under a legal obligation to do so, the County is entitled to a writ of mandamus requiring DELCORA to take all necessary steps to terminate and to comply with the Ordinance and the Authorities Act.

97. The County's right to relief is clear.

98. The County has no appropriate and/or adequate alternative remedy to this action that would provide relief.

WHEREFORE, Plaintiff County of Delaware, Pennsylvania demands judgment be entered in its favor, as well as preliminary and permanent injunctive relief, and against Defendant Delaware County Regional Water Quality Control Authority to comply with the terms of the Ordinance and the Authorities Act in order to effectuate the termination of DELCORA. Further, the County demands that the Court issue a writ of

mandamus compelling DELCORA to comply with the terms of the Ordinance and the Authorities Act in order to effectuate the orderly termination of DELCORA and enjoining DELCORA from taking any actions inconsistent with the direction to terminate.

By: 

Carol Steinour Young

I.D. No. 55969

Dana W. Chilson

I.D. No. 208718

Attorneys for Plaintiff, County of
Delaware, Pennsylvania

McNEES WALLACE & NURICK LLC

100 Pine Street, P.O. Box 1166

Harrisburg, PA 17108-1166

Phone No.: (717) 237-5342

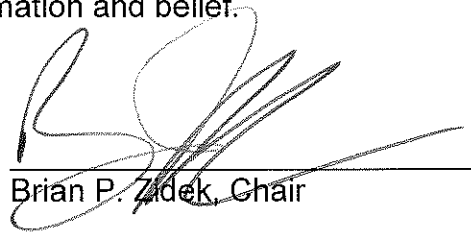
Fax No.: (717) 260-1748

csteinour@mcneeslaw.com

Date: June 15, 2020

VERIFICATION

Subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities, I hereby certify that I am the Chair of the Delaware County Council, Delaware County, Pennsylvania. In that capacity, I am authorized to make this Verification on its behalf. I further certify that the facts set forth in the foregoing document are true and correct to the best of my information and belief.



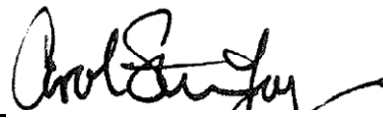
Brian P. Zidek, Chair

Dated: 6/12/20

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

By: _____



Carol Steinour Young

I.D. No. 55969

Dana W. Chilson

I.D. No. 208718

Attorneys for Plaintiff, County of
Delaware, Pennsylvania

McNEES WALLACE & NURICK LLC

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Phone No.: (717) 237-5342

Fax No.: (717) 260-1748

csteinour@mcneeslaw.com

Date: June 15, 2020

Exhibit G

pennecorp@pennecorp.pa.gov

ARTICLES OF AMENDMENT

TO: THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA

In compliance with requirements of the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. Ch. 56, (the "Authorities Act"), and pursuant to a resolution duly adopted by the Board of the **DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY** (the "Authority"), proposing an amendment to the Articles of Incorporation of the Authority, which proposed amendment has been submitted to and approved by the Council of the County of Delaware, Pennsylvania (the "County"), the governing body of the municipality composing the Authority, by a Resolution duly adopted, the Authority hereby files these Articles of Amendment to its Articles of Incorporation and certifies:

1. The name of the Authority is "Delaware County Regional Water Quality Control Authority" and the registered office of the Authority is located at 100 East Fifth Street, Chester, Pennsylvania 19016, Delaware County.

2. The Authority was duly formed under, and is now governed by, the provisions of the Authorities Act.

3. As set forth in the Authorities Act, pursuant to appropriate action of the governing body of the County, the original Articles of Incorporation of the Authority were approved and filed in the Department of State of the Commonwealth on November 17, 1971.

4. A copy of the Ordinance adopted by the Council of the County, said Council being the governing authority of the municipality composing the Authority, duly certified by the County Clerk of the County, adopting and approving the amendment herein set forth, is attached hereto and hereby is made a part of these Articles of Amendment.

5. The amendment proposed by the Board of the Authority and adopted and approved by the Council of the County, as aforesaid, is to amend the Authority's Articles of Incorporation by adding the following provision to the existing Section (g) thereof:

"(g) In anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation, to: (1) establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreements to effectuate this purpose prior, during or after any transfer and sale and/or dissolution."



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4813-9457-6046

DEC 19 AM 9:45

PA. DEPT. OF STATE

IN WITNESS WHEREOF, Delaware County Regional Water Quality Control Authority has caused these Articles of Amendment to be executed by its Chairman or Vice Chairman and its official seal to be affixed hereto and attested by its Secretary, all as of the 18th day of December, 2019.

DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL
AUTHORITY

(SEAL)

ATTEST:


Edward E. Monaghan III,
Secretary


Stanley R. Kester, Chairman

COMMONWEALTH OF PENNSYLVANIA

SS:

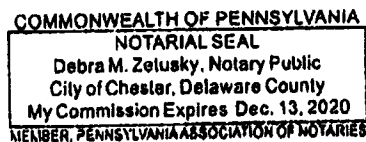
COUNTY OF DELAWARE

On this 18th day of December, 2019, before me, the undersigned officer, a Notary Public, personally appeared Stanley R. Kester and Edward E. Monaghan III, who, in due form of law, acknowledged themselves to be Chairman and Secretary, respectively, of the **DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY** (the "Authority"), and who, in due form of law, further acknowledged the foregoing to be the act and deed of the Authority for purposes therein specified.

WITNESS my hand and official seal the day and year aforesaid.


NOTARY PUBLIC

My Commission Expires: 12/13/2020



ORDINANCE 2019-4

**AN ORDINANCE OF DELAWARE COUNTY, PENNSYLVANIA
AUTHORIZING THE DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY TO AMEND ITS ARTICLES OF
INCORPORATION TO PERMIT THE CREATION OF A TRUST OR
NON-PROFIT ENTITY FOR THE PURPOSE OF STABILIZING
RATES UPON THE DISSOLUTION OF THE AUTHORITY OR SALE
OF ALL OR SUBSTANTIALLY ALL OF ITS ASSETS.**

WHEREAS, the Delaware County Regional Water Quality Control Authority ("Authority") is a municipal authority, originally incorporated under the Municipal Authorities Act of 1945, as amended and supplemented, pursuant to appropriate action by this Council duly taken on October 20, 1971; and

WHEREAS, the Authority is governed by the Municipal Authorities Act, 53 Pa. C.S. § 5601 *et seq.* (the "Act"); and

WHEREAS, the Authority, by vote at a public meeting pursuant to its by-laws, authorized an amendment to its articles of incorporation to permit certain actions of the Authority in anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects; and

WHEREAS, §5605 of the Pennsylvania Municipal Authorities Act (the "Act") provides the process through which the Authority may amend its articles of incorporation; and

WHEREAS, §5605(b) of the Act provides that every amendment to the articles of incorporation shall first be proposed by the board of the Authority by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to the governing body which composed the authority, and

WHEREAS, pursuant to the Act, Delaware County Council is the governing authority that composed the Authority; and

WHEREAS, §5605(b) of the Act further provides that after the amendments have been submitted to the governing body, such governing body shall adopt or reject such amendment by resolution or ordinance; and

WHEREAS, this Ordinance shall authorize the amending of the articles of incorporation amended as provided herein subject to completion of the requirements of §5605 of the Act.

NOW THEREFORE, the Delaware County Council here ordains that:

1. The minutes of the board of the Authority proposing the amendment to the articles of incorporation, and the resolution of the Authority authorizing such amendment, are hereby adopted by Delaware County (the "County").


2. The County authorizes and approves an amendment to the articles of incorporation of the Authority by the addition of Section (g) as follows:

(g) In anticipation of the dissolution the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation, to: (1) establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreements to effectuate this purpose prior, during or after any transfer and sale and dissolution.

3. All ordinances, resolutions and parts of ordinances and resolutions, insofar as the same shall be inconsistent herewith, shall be and the same hereby expressly are repealed.

ENACTED AND ORDAINED this 18th day of December 2019.


John P. McBlain, Chairman


Colleen P. Morrone, Vice Chair


Michael F. Cullen, Council Member

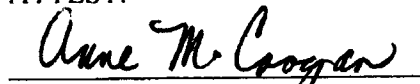
ABSENT

Kevin M. Madden, Council Member

ABSENT

Brian P. Zidek, Council Member

ATTEST:


Anne M. Coogan
County Clerk

**DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY**

RESOLUTION NO. 2019-32

ADOPTED NOVEMBER 19, 2019

AMENDING ITS ARTICLES OF INCORPORATION

WHEREAS, the Delaware County Regional Water Quality Control Authority ("Authority") wishes to amend its Articles of Incorporation to permit certain actions of the Authority in anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects; and

WHEREAS, §5605 of the Pennsylvania Municipal Authorities Act (the "Act") provides the process through which the Authority may amend its Articles of Incorporation; and

WHEREAS, §5605(b) of the Act provides that every amendment to the Articles shall first be proposed by the Board by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to the governing authorities of the municipality or municipalities composing the authority, and

WHEREAS, §5605(b) of the Act also provides that every resolution shall contain the language of the proposed amendment to the Articles by providing that the Articles shall be amended so as to read as set forth in full in the resolution, that any provision of the Articles be amended so as to read as set forth in full in the resolution or that the matter stated in the resolution be added to or stricken from the Articles; and

WHEREAS, §5605(b) of the Act further provides that after the amendments have been submitted to the municipality or municipalities, such municipality or municipalities shall adopt or reject such amendment by resolution or ordinance;

WHEREAS, on September 17, 2019, the Authority passed a resolution approving a proposed amendment (the "Prior Amendment") to its Articles, and in accordance with the Act submitted same to its incorporating body, the County Council of Delaware County ("Council");

WHEREAS, Council has yet to take action on such proposed Prior Amendment; and

WHEREAS, the Authority wishes to submit a new proposed amendment, as detailed herein, for Council to consider if it determines it does not wish to adopt the Prior Amendment; and

WHEREAS, the Articles shall be amended as provided herein subject to completion of the requirements of §5605 of the Act.

NOW THEREFORE, be it RESOLVED by the Board of the Authority, as follows:

1. The Board authorizes and approves an amendment to the Articles of Incorporation by the addition of Section (g) as follows:

(g) In anticipation of the dissolution of the Authority and/or the transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation, to: (1) establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreements to effectuate this purpose prior, during or after any transfer and sale and/or dissolution.

2. The Executive Director of the Authority is hereby authorized by the Board pursuant to §5605(b) of the Act, to provide this Resolution under cover letter of the Authority to the County Council of Delaware County for consideration and request that the County Council adopt this amendment to the Articles of Incorporation of the Authority by Ordinance at the soonest available public meeting of the County Council of Delaware County.

3. The Executive Director is authorized to take all actions reasonable, prudent and necessary to complete the intention of this Resolution to address any items required pursuant to this Resolution.

ENACTED and RESOLVED, this 19th day of NOVEMBER, 2019.

DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL AUTHORITY

[SEAL]

BY: Stanley R. Kester
Stanley R. Kester, Chairman

ATTEST:

Edward E. Monaghan III
Edward E. Monaghan III, Secretary

COMMONWEALTH OF PENNSYLVANIA

Department of State

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN THAT,

CERTIFICATE OF AMENDMENT

has been granted to;

DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY

whereby, Section G of the Articles of Incorporation has been amended to add, In anticipation of the dissolution of the Authority and/or transfer and sale of all or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation, to: (1) establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreements to effectuate this purpose prior, during or after any transfer and sale and/or dissolution, under the authority of Act 22 of 2001 known as the Municipality Authorities Act.

Filed this Nineteenth day
of December, 2019



Katlynn Erickson

Secretary of the Commonwealth

Exhibit H

**DELCORA RATE STABILIZATION FUND
TRUST AGREEMENT**

between

**THE DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL AUTHORITY**

as SETTLOR

and

UNIVEST BANK AND TRUST CO.

as TRUSTEE

Effective Date: December 27, 2019

TABLE OF CONTENTS

	Page
ARTICLE 1. DEFINITIONS AND INCORPORATION BY REFERENCE	2
Section 1.1. Definitions.....	2
Section 1.2 Other Definitional Provisions	4
ARTICLE 2. ORGANIZATION	4
Section 2.1 Declaration of Trust	4
Section 2.2 Purposes of the Trust	4
Section 2.3 Appointment of Trustee	4
Section 2.4 Title to Trust Property.....	4
Section 2.5 Situs of Trust.....	5
Section 2.6 Use of Trust Assets	5
ARTICLE 3. CONTRIBUTIONS TO THE TRUST.....	5
Section 3.1 Initial Contribution.....	5
Section 3.2 Contribution of Sale Proceeds	5
Section 3.3 Additional Contributions	5
Section 3.4 Acceptance by the Trust.....	5
ARTICLE 4. DISTRIBUTIONS FROM THE TRUST.....	5
Section 4.1 Distributions.....	5
Section 4.2 No Right of Reversion	6
ARTICLE 5. THE TRUSTEE	6
Section 5.1 Trustee Resignation, Removal and Succession	6
Section 5.2 Duties of Trustee.....	7
Section 5.3 Acceptance of Trust and Duties	7
Section 5.4 Refrain from Certain Actions.....	10
Section 5.5 Reliance.....	10
Section 5.6 Compensation and Expenses.....	10
Section 5.7 Investment of Trust Assets.....	11
Section 5.8 Trustee Powers.....	11
Section 5.9 Indemnity of Trustee.....	12
Section 5.10 Interpretation and Direction.....	12
Section 5.11 Books and Records	12
Section 5.12 Accounting and Reports.....	13
Section 5.13 Third Party Reliance	13
Section 5.14 Interpretation; Rules.....	14

ARTICLE 6. POWER OF SUBSTITUTION.....	14
Section 6.1 Power of Substitution.....	14
Section 6.2 Confirmations	14
ARTICLE 7. TERMINATION.....	14
Section 7.1 Termination.....	14
Section 7.2 Trust Irrevocable.....	14
ARTICLE 8. AMENDMENTS	15
Section 8.1 Amendment of Agreement.....	15
ARTICLE 9. MISCELLANEOUS	15
Section 9.1 No Legal Title to Trust Property.....	15
Section 9.2 Limitations on Rights of Others.....	15
Section 9.3 Notices	15
Section 9.4 Counterparts	16
Section 9.5 Successors and Assigns.....	16
Section 9.6 Headings	16
Section 9.7 Governing Law	16
Section 9.8 Consent to Jurisdiction and Service or Process	17
Section 9.9 Tax Status of the Trust.....	17
Section 9.10 Entire Agreement.....	17
Section 9.11 Reliance on Trust Agreement	17

Exhibit A - Trustee Compensation and Reimbursement

**DELCORA RATE STABILIZATION FUND
TRUST AGREEMENT**

THIS DELCORA RATE STABILIZATION FUND TRUST AGREEMENT, dated as of the Effective Date, is by and between **THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**, a body corporate and politic existing under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601 *et seq.* (the "Settlor"), and **UNIVEST BANK AND TRUST CO.**, a Pennsylvania state-chartered bank and trust company, as trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Settlor currently owns and operates a sewer system (the "Sewer System") serving various residential, commercial, industrial, and municipal customers in Delaware County, Pennsylvania (the "DELCORA Customers");

WHEREAS, pursuant to that certain agreement dated September 17, 2019 (the "Sewer System Sale Agreement") between the Settlor and Aqua Pennsylvania Wastewater, Inc. ("Aqua Wastewater"), the Settlor has agreed to sell the Sewer System to Aqua Wastewater;

WHEREAS, the Settlor has agreed to devote a majority of the proceeds which it receives from the sale of the Sewer System (the "Sale Proceeds") to stabilizing the amounts which the DELCORA Customers will pay for access to the Sewer System during a period of years following the closing under the Sewer System Sale Agreement (the "Closing Date");

WHEREAS, the Settlor and the Trustee desire to establish a trust for the benefit of the DELCORA Customers (the "Trust"), and the Trustee agrees to serve as trustee of such trust;

WHEREAS, the Settlor has entered into a Funding Agreement with the Trustee bearing even date herewith (the "Funding Agreement") pursuant to which the Settlor has agreed to contribute to the Trust a majority of the Sale Proceeds on the Closing Date, as well as any amounts which Settlor may receive under Section 9 of the Escrow Agreement;

WHEREAS, the Settlor and Aqua Resources, Inc., will enter into a rate stabilization agreement, of which Aqua Wastewater will be the designated third party Distribution Agent, pursuant to which (a) Aqua Wastewater will bill DELCORA Customers at reduced levels and (b) the Trust will reimburse Aqua Wastewater for such reductions, as and when so directed by the Settlor pursuant to Article 5 below; and

WHEREAS, the Settlor and the Trustee desire that the Sale Proceeds transferred to the Trust pursuant to this Agreement, together with all other funds transferred to the Trustee hereunder, be held and administered as an irrevocable trust for the benefit of the DELCORA Customers pursuant to the provisions of this Trust Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants expressed herein, and intending to be legally bound, the Settlor and the Trustee hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. Except as otherwise specified herein, or as the context otherwise requires, the following terms have the respective meanings set forth below for all purposes of this Agreement, including, without limitation, the recitals hereto.

"Affiliate" means, with respect to any specified person, any other person controlling or controlled by or under common control with such specified person. For the purposes of this definition, "control" when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" or "Trust Agreement" means this trust agreement between the Settlor and the Trustee, as such document is modified or reformed from time to time.

"Aqua Resources" means Aqua Resources, Inc., a Pennsylvania business corporation which is an Affiliate of Aqua Wastewater, and its successors and assigns.

"Aqua Wastewater" means Aqua Wastewater Pennsylvania, Inc., a Pennsylvania business corporation operating as a wastewater utility company, and its successors and assigns.

"Beneficiaries" shall refer to the DELCORA Customers.

"Calculation Agent" means the company engaged by the Settlor to provide calculation services in connection with the implementation of the Rate Stabilization Agreement.

"Closing Date" means the date of closing under the Sewer System Sale Agreement.

"Code" means the U.S. Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder. References to such Code shall be taken as references to any corresponding provisions of future law.

"County" means Delaware County, Pennsylvania.

"DELCORA Customers" means the customers connected to the Sewer System.

"Distribution Agent" shall refer to Aqua Wastewater or any successor thereto serving as the entity responsible for allocating rate reductions as provided under the Rate Stabilization Agreement to and among the Beneficiaries.

“Distributions” means distributions made by the Trustee to the Distribution Agent from time to time, as directed by the Settlor, pursuant to Article 4 below.

“Distribution Order” means a written direction delivered by an authorized representative of the Settlor to the Trustee instructing the Trustee to make a Distribution.

“Effective Date” means December 27, 2019.

“Escrow Agreement” means that certain Escrow Agreement among the Settlor, the Trustee (as escrow agent), and Aqua Wastewater dated as of December 27, 2019.

“Fund” or “Trust” means the Delaware County Regional Water Quality Control Authority Rate Stabilization Trust, which is the trust created pursuant to this Trust Agreement.

“Funding Agreement” means that certain agreement between the Settlor and the Trustee bearing even date herewith, pursuant to which the Settlor will be required to transfer a majority of the Sale Proceeds to the Trust on the Closing Date, as well as any amounts which Settlor may receive under Section 9 of the Escrow Agreement.

“Investment Guidelines” means such guidelines for the investment of the Trust assets as shall be provided from time to time by the Settlor to the Trustee.

“Permitted Investments” means investments which an authority constituted under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601 *et seq.* is permitted to make under applicable law.

“Rate Stabilization Agreement” means the agreement to be entered into by and between the Settlor and Aqua Resources, with Aqua Wastewater as a designated third party Distribution Agent, pursuant to which (a) the Distribution Agent will agree to bill the Beneficiaries at reduced levels and (b) the Settlor will agree to direct the Trust to reimburse the Distribution Agent for such reductions, pursuant to Article 4 of this Trust Agreement.

“Settlor” means the Delaware County Regional Water Quality Control Authority and its successors (including the County upon termination of the Settlor).

“Sewer System” means the sewer system which is currently owned and operated by the Settlor and which will be sold by the Settlor to Aqua Wastewater, as improved by Aqua Wastewater subsequent to the Closing Date.

“Trust Assets” means the assets held from time to time by the Trustee in the Trust Fund.

“Trust Expenses” means the trustee compensation and any other expenses of the Trust, including, without limitation, amounts payable out of the Trust Fund pursuant to Section 5.6 below.

"Trustee" means Univest Bank and Trust Co., and its successors and permitted assigns.

"Trust Fund" means the trust estate managed, protected, and conserved pursuant to the terms and conditions of this Trust Agreement, which shall consist of the Sale Proceeds deposited by the Settlor hereunder, and any Additional Contributions made to the Trust under Section 3.3 hereof, together with any and all investment income earned from Permitted Investments made and held by the Trustee pursuant to this Trust Agreement.

Section 1.2 Other Definitional Provisions. (a) All references to Articles, Sections, and subsections are to Articles, Sections, and subsections of this Agreement unless otherwise specified. All terms defined in this Agreement shall have the defined meanings herein when used in any certificate, notice, or other document made or delivered pursuant hereto, unless otherwise defined therein.

(b) In the event of any change in the identity of the Settlor, Distribution Agent or Calculation Agent as defined above, whether by merger, incorporation or cessation of existence, written notice of the identity and contact information for the successor entity shall be provided in writing to the Trustee within ten (10) days of any change in accordance with the notice requirements of Section 9.3 below.

ARTICLE 2 ORGANIZATION

Section 2.1 Declaration of Trust. The name of the Trust shall be "The Delaware County Regional Water Quality Control Authority Rate Stabilization Trust." Effective as of the Effective Date, the Trustee shall have all of the rights, powers and duties set forth herein with respect to accomplishing the purposes of the Trust.

Section 2.2 Purposes of the Trust. The purposes of the Trust are to benefit the Beneficiaries by receiving Sale Proceeds deposited into the Trust Fund by the Settlor and any additional contributions made to the Trust under Section 3.3 hereof, investing and reinvesting such Sale Proceeds and any Additional Contributions, and making Distributions from time to time to the Distribution Agent for the benefit of the Beneficiaries, as directed by the Settlor pursuant to Article 4 below. The Distributions to the Distribution Agent are intended to reimburse the Distribution Agent for rate reductions which the Distribution Agent provides to the Beneficiaries pursuant to the Rate Stabilization Agreement. Neither the Distribution Agent nor any of its Affiliates is an intended beneficiary of the Trust.

Section 2.3 Appointment of Trustee. The Settlor hereby appoints the Trustee of the Trust, effective as of the Effective Date, to have all the rights, powers, and duties and all of the protections, indemnities, and immunities set forth herein. The Trustee hereby accepts such appointment.

Section 2.4 Title to Trust Property. Legal title to all the Trust Assets shall be vested at all times in the Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Trust Assets to be vested in the Trustee, in which case title shall

be deemed to be vested in the Trustee or a Trustee, as the case may be, *provided* that the Trustee shall have the power to cause legal title to any Trust Assets to be held by or in the name of the Trust, a custodian, sub-custodian, securities depository, or their respective nominee.

Section 2.5 Situs of Trust. The Trust shall be located in the Commonwealth of Pennsylvania, and questions pertaining to the validity and construction of this Agreement and with respect to the administration of the Trust shall be determined in accordance with the laws of the Commonwealth of Pennsylvania. The Trustee may, however, at any time and from time to time transfer the situs of the Trust to any other jurisdiction that the Trustee may deem appropriate.

Section 2.6 Use of Trust Assets. Trust Assets shall be used solely to carry out the purposes set forth in Section 2.2 above, and shall not be subject (in whole or in part) to voluntary or involuntary assignment, anticipation, legal process, or claims of creditors of the Settlor, the Distribution Agent, the Aqua Parent, any Beneficiary, or any other person or entity.

ARTICLE 3 CONTRIBUTIONS TO THE TRUST

Section 3.1 Initial Contribution. The Settlor shall transfer one thousand dollars (\$1000.00) in cash to the Trust on the Effective Date.

Section 3.2 Contribution of Sale Proceeds. On or as soon as practicable after the Closing Date, the Settlor shall transfer to the Trust (or direct Aqua Wastewater to transfer to the Trust on the Settlor's behalf) that portion of the Sale Proceeds (comprising a majority of the Sale Proceeds) which the Settlor is required to contribute to the Trust pursuant to the Funding Agreement.

Section 3.3 Additional Contributions. In addition to the contributions described in Sections 3.1 and 3.2 above, the Trustee may receive such additional contributions as may be made to it from time to time by the Settlor or any other person in the form of cash, securities, or other property acceptable to the Trustee (the "Additional Contributions"). Such Additional Contributions may include (without limitation) funds released from time to time from one or more escrow accounts created under the Sewer System Sale Agreement. *Provided, however*, that the Trustee shall have no responsibility for collecting any such Additional Contributions.

Section 3.4 Acceptance by the Trustee. The Trustee hereby agrees to accept the contributions described in sections 3.1, 3.2, and 3.3 above for the benefit of the Beneficiaries, and agrees to use such funds pursuant to the terms of this Agreement.

ARTICLE 4 DISTRIBUTIONS FROM THE TRUST

Section 4.1 Distributions. (a) The Settlor shall direct the Trustee to make Distributions to Aqua Wastewater from time to time in accordance with the Rate Stabilization

Agreement. The Trustee shall have no duty to determine whether or not the amounts or timing of such Distributions are proper under the Rate Stabilization Agreement.

(b) The Trustee shall make Distributions to the Distribution Agent from time to time in accordance with written directions received by the Trustee from a duly authorized representative of the Settlor (each a "Distribution Order"). *Provided, however*, that the Trustee shall make such Distribution no later than ten (10) business days after the date on which the Trustee receives the Distribution Order. Such Distributions will be made to the Distribution Agent solely for the purpose of reimbursing the Distribution Agent for rate reductions made pursuant to the Rate Stabilization Agreement. For purposes of this Section 4.1, written notification of the identity and contact information of the duly authorized representative of the Settlor shall be provided to the Trustee in writing at least annually on January 1, or upon any subsequent change in such authorized representative, within five (5) days thereof, in accordance with the requirements of Section 9.3 below.

Section 4.2 No Right of Reversion. Under no circumstances shall the Settlor or any successor thereto have any rights of reversion under this Trust Agreement. All Trust Assets shall be disbursed in furtherance of the purposes set forth in Section 2.2.

ARTICLE 5 TRUSTEE

Section 5.1 Trustee Resignation, Removal, and Succession. (a) Any Trustee serving hereunder shall have the right, upon ninety (90) days' prior written notice delivered to the Settlor, to resign as Trustee of this Trust. At any time after the sixth (6th) anniversary of the Closing Date, the Settlor shall have the right, upon ninety (90) days' prior written notice to the Trustee, and upon payment of all amounts due and owing hereunder, to remove such Trustee as a trustee. Upon notice of such resignation or removal, the Settlor shall appoint a successor Trustee in writing within thirty (30) days of the expiration of the ninety (90) day notice period, such appointment to be accepted in writing by the successor trustee so designated. If the Settlor fails to appoint a successor trustee, the Trustee may secure the appointment of a successor trustee in any manner permitted by law, including by petition or application to the appropriate court of jurisdiction. The resignation or removal of Trustee shall only become effective upon the appointment and qualification of the successor trustee. *Provided, however*, that the entity serving as Trustee hereunder shall at all times be a corporate trustee having assets of no less than one billion dollars (\$1,000,000,000).

(b) Upon the appointment, and timely written acceptance of the appointment of a successor trustee as provided herein, the Trustee shall transfer and convey to the successor Trustee all Trust Assets held by the Trustee. When such transfer and conveyance are completed, the Trustee shall be released and discharged from all liability relating to further administration and investment of the Trust.

(c) No Trustee taking office shall be liable in any way for the acts or omissions of any Trustee prior to such Trustee's assumption of office, or shall have any duty to review the performance of a Trustee prior to that date.

(d) Except as specifically authorized hereunder, all powers of the Trustee shall be exercised by the Trustee alone.

Section 5.2 Duties of Trustee. The Trustee undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, subject to and in accordance with the provisions of this Agreement. No implied duties, covenants, or obligations shall be read into this Agreement against the Trustee, the Settlor, or any Affiliate of either the Trustee or the Settlor. The Trustee shall oversee the conduct of the activities of the Trust, make and execute contracts and other instruments on behalf of the Trust, and may sue and be sued on behalf of the Trust in the name of the Trust, subject to the terms of this Agreement.

Section 5.3 Acceptance of Trust and Duties. (a) Except as otherwise provided in this Article 5, in accepting the trust hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust Assets for payment or satisfaction thereof. The Trustee accepts the trust hereby created and agrees to perform its duties hereunder, but only in accordance with the express terms of this Agreement.

(b) In carrying out its duties hereunder, the Trustee shall exercise the rights and powers vested in it hereunder in good faith, but only on the terms expressly set forth herein. Neither the Trustee nor any of its officers, directors, employees, agents or affiliates shall have any implied duties (including fiduciary duties) or liabilities otherwise existing at law or in equity with respect to the Trust, which implied duties and liabilities are hereby eliminated. No provision of this Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, its own bad faith, its own breach of its representations, warranties or covenants given in its individual capacity or its own willful misconduct. In addition:

(i) The Trustee shall be liable for its willful misconduct or gross negligence in acting or failing to act, except that the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in accordance with a direction received by it from the Settlor or Calculation Agent pursuant to this Agreement;

(ii) The Trustee shall not be liable for any error of judgment, or for any action taken, suffered or omitted to be taken by it, in good faith, nor for any act or omission of any predecessor and/or successor Trustee;

(iii) The Trustee shall not be deemed to have notice or knowledge of any matter unless written notice thereof is received by the Trustee in accordance with this Agreement;

(iv) The Trustee shall have no duty to monitor or supervise, or be liable for anything done or omitted by any other person, including the Settlor, the Distribution Agent or the Calculation Agent;

(v) The Trustee shall not be liable for the default or misconduct of the Settlor, the Distribution Agent, the Calculation Agent or any other person, and the Trustee shall not be deemed to have knowledge of any default on the part of any such person unless the Trustee receives written notice of such default in accordance with this Agreement; nor shall the Trustee be responsible for performing, monitoring or supervising the performance of any such person's obligations under this Agreement or any related agreement;

(vi) Under no circumstance shall the Trustee be liable for any representation, warranty, covenant, obligation or indebtedness of the Trust, or any other payment or distribution obligations evidenced by or arising under this Agreement;

(vii) The Trustee shall not be liable for or in respect of, and makes no representation with respect to, the validity or sufficiency of any provision of this Agreement, or the due execution hereof or thereof by any person, other than itself, or the value of the Trust Assets, or the efficacy of the Trust or its ability to generate the amounts intended to be distributed for the benefit of the Beneficiaries;

(viii) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document;

(ix) The Trustee shall not be liable for (x) any special, consequential or punitive damages, however styled, including, without limitation, lost profits, (y) the acts or omissions of any nominee, correspondent, clearing agency or securities depository through which it holds the Trust's securities or assets, or (z) any losses due to forces beyond the reasonable control of the Trustee, as applicable, including, without limitation, strikes, lockouts, riots, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances;

(x) Other than with respect to any report or information that the Trustee has an express duty to review under this Agreement, receipt by the Trustee of any report or other information delivered or otherwise made available to the Trustee pursuant to the terms of this Agreement or any other document related to the Trust shall not be deemed to constitute knowledge by the Trustee of such information, unless the Trustee receives written notice with respect thereto;

(xi) Except as otherwise expressly set forth in this Agreement, knowledge or information acquired by (x) Univest Bank and Trust Co. in any of its

respective capacities hereunder or under any other document related to this transaction shall not be imputed to Univest Bank and Trust Co. in any of its other capacities hereunder or under such other documents, and (y) any Affiliate of Univest Bank and Trust Co. shall not be imputed to Univest Bank and Trust Co. in any of its respective capacities hereunder and vice versa;

(xii) The right of the Trustee to perform any discretionary act enumerated in this Agreement or in any other document to which the Trust is a party shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct in the performance of any such act; the Trustee shall be under no obligation to exercise any of the discretionary rights or powers vested in it by this Agreement;

(xiii) The Trustee shall have no duty to recompile, recalculate or otherwise verify the accuracy of any information provided to it by the Settlor except as otherwise expressly set forth in this Agreement, and may conclusively rely thereon in good faith;

(xiv) The Trustee may consult with counsel, accountants and other experts, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants, or other experts selected by it in good faith, and any opinion of counsel shall be full and complete protection in respect of any action taken or suffered or omitted by it under this Agreement in good faith and in accordance with such opinion of counsel;

(xv) The Trustee shall be under no obligation to institute, conduct or defend any litigation under this Agreement or otherwise in relation to the Trust at the request, order or direction of the Settlor or any other person, unless such requesting person(s) shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby;

(xvi) The Trustee may execute any of the trusts or powers under this Agreement, or perform any duties under this Agreement, either directly or by or through agents or attorneys or one or more custodians (any of which may be Affiliates of the Trustee) and the Trustee shall not be liable for the acts or omissions of any agent, attorney or custodian selected by such Trustee in good faith;

(xvii) The Trustee shall have no duty or obligation to manage, make any payment in respect of, register, record, sell, dispose of or otherwise deal with the Trust Assets, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Trustee is a party, except as expressly provided by the terms of this Agreement; and

(xviii) The Trustee shall have no responsibility to record this Agreement, to prepare or file any financing or continuation statement in any public office at any time or otherwise to perfect or maintain the perfection of any ownership or security interest or

lien or to prepare or file any tax, qualification to do business or securities law filing or report except as expressly provided by the terms of this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, the Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties under this Agreement, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Agreement or any other document to which the Trust is a party, shall in any event require the Trustee, to perform, or be responsible for the manner or omission of performance of, any of the duties or obligations of the Settlor under any other agreement or document.

(d) Each of the parties hereto hereby agrees, and each Beneficiary, as evidenced by its acceptance of any benefits hereunder, understands and agrees, that the Trustee, in any capacity, has not provided and will not in the future provide, any advice, counsel or opinion regarding the tax, financial, investment, securities law or insurance implications and consequences of the formation, funding and ongoing administration of the Trust.

(e) Each of the parties hereto hereby agrees, and each Beneficiary, as evidenced by its acceptance of any benefits hereunder, understands and agrees, that that the Trustee, in any capacity, has not (i) made any investigation as to the accuracy of any representations, warranties or other obligations of the Trust under this Agreement or any other document contemplated hereby, and shall have no liability in connection therewith and (ii) prepared or verified, and shall have no liability for, any information, disclosure or other statement made in any document issued or delivered in connection with the transactions contemplated by this Agreement or any related document or agreement.

Section 5.4 Refrain from Certain Actions. The Trustee shall not be required to take any action under this Agreement if the Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of the Trustee, is contrary to the terms of this Agreement, or is otherwise contrary to applicable law.

Section 5.5 Reliance. The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond, facsimile transmission, or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by an authorized representative of the proper party or parties, and need not investigate any fact or matter in any such document. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate signed by an authorized officer of the Settlor, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

Section 5.6 Compensation and Expenses. (a) The Trustee shall be entitled to compensation and reimbursement from Trust Assets for all expenses incurred in the course of discharging its duties thereunder, as provided in the schedule attached hereto as Exhibit A.

(b) Trust Assets may be used to pay compensation and expenses of the Calculation Agent, upon receipt by the Trustee of written directions to this effect from the Settlor.

Section 5.7 Investment of Trust Assets. (a) The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Assets invested, without distinction between principal and income, in Permitted Investments that comply with the Investment Guidelines. The Trustee may, however, reserve from investment and keep, either as uninvested contributions or the proceeds of sale of investments, such amounts as it may from time to time it deems advisable in order to provide for anticipated Distributions or other expenditures from the Trust Fund, notwithstanding the provisions of 20 Pa. C.S. §7207. The Trustee does not guaranty any positive return on any such investment and the Trustee shall not be liable for any loss, including without limitation any loss of principal or interest, or for any breakage fees or penalties, in connection with the purchase or liquidation of any investment made hereunder.

(b) The Settlor shall provide a draft set of Investment Guidelines to the Trustee no later than February 28, 2020, and the parties shall mutually agree in writing on final Investment Guidelines no later than the Closing Date. Such final Investment Guidelines may be subsequently revised by mutual written agreement of the Settlor and the Trustee, but only with the written approval of Aqua Wastewater.

Section 5.8 Trustee Powers. Except as otherwise specifically provided in this Trust Agreement, the Trustee shall have authority; in addition to and not in limitation of any authority given it by law, but shall have no obligation to exercise the following powers:

(a) To acquire or dispose of Permitted Investments which may from time to time or at any time constitute the Trust Fund for such prices and on such terms as the Trustee may deem proper, and to make, execute, and deliver to the purchasers thereof good and sufficient deeds of conveyance therefor and all assignments, transfers, and other legal instruments, either necessary or convenient for passing the title and ownership thereto, free and discharged of all trusts and without liability on the part of such purchasers to see to the application of the purchase money.

(b) To cause any Permitted Investment to be registered in or transferred into (i) its name as the Trustee, (ii) the name of the Trust, or (iii) the name or names of their nominee or nominees or to retain same unregistered or in form permitting transfer by delivery, and to maintain all such investments through such agents, custodians, and other means as it deems appropriate, *provided* that the books and records of the Trustee at all times shall show that all such investments are part of the Trust Fund.

(c) To vote upon any stocks, bonds, or other securities, and to give general or special proxies or powers of attorney with or without power of substitution; provided that the Trustee shall vote in favor of management or recommended proposals in all instances unless otherwise directed in writing by the Settlor.

(d) To exercise any option, to accept in exchange or to subscribe for additional securities, to exercise any conversion privileges, and to make any necessary payments therefor.

(e) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Trust, without liability for interest thereon.

(f) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(g) To determine what is principal and what is income hereunder, and, in its sole discretion, to allocate or apportion gains and losses realized from the sale or other disposition of any assets between principal and income.

(h) Generally to exercise all rights of ownership and disposition over the Trust Fund and to do all acts and things which the Trustee may consider in the best interests of the Trust Fund.

Section 5.9 Indemnity of Trustee.

To the fullest extent permitted by applicable law, the Trustee and each of its directors, officers, employees, agents, affiliates, successors, assigns and legal representatives, (each an “Indemnified Person”) shall be indemnified, defended and held harmless by, and entitled to reimbursement from, the Trust out of Trust Assets with respect to any loss, liability, obligation, damages, penalty, tax, claim, action, investigation, proceeding, cost, expense or disbursement, including reasonable attorneys’, experts’ and other professionals’ fees and expenses of any kind or nature whatsoever (collectively “Costs”), arising out of or incurred in connection with this Agreement, the Trust Fund, the Trust Assets, the administration of the Trust Fund and the Trust Assets or any action or inaction of the Trustee hereunder, except to the extent that such Costs arise out of or result from the Trustee’s own willful misconduct, bad faith or gross negligence. The indemnities contained in this Section 5.9 shall survive the resignation or removal of the Trustee or the termination of this Agreement.

Section 5.10 Interpretation and Direction.

To the extent the Trustee determines that any substantial ambiguity exists in the interpretation of any definition, provision or term contained in this Agreement pertaining to the performance of its duties hereunder, or to the extent more than one methodology can be used to make any of the determinations or calculations to be performed by any Trustee hereunder, the Trustee may request written direction from the Settlor as to the interpretation or methodology it should adopt with respect thereto. The Settlor shall promptly provide such written direction, and the Trustee shall be entitled conclusively to rely upon, and shall be protected and held harmless in acting upon, such written direction.

Section 5.11 Books and Records. (a) The Trustee shall direct the preparation and maintenance of full and accurate accounts of all receipts, investments, disbursements, and other transactions of the Trust Fund. All such accounts, books, and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Settlor.

(b) The Trustee shall retain records relating to the Trust Fund for as long as necessary for the proper administration thereof, and at least for any period required by applicable law.

Section 5.12 Accounting and Reports. (a) The Trustee shall provide to the Settlor customary quarterly or monthly written reports of all receipts and expenditures made from the Trust Fund during the month, in such detail and format as may be agreed upon by the Trustee and the Settlor from time to time. Unless otherwise determined by the Trustee, the Trustee shall (a) maintain (or cause to be maintained) the books of the Trust on a calendar-year basis and on the cash method of accounting. The financial records of the Trust shall be kept in conformity with generally accepted accounting principles applied on a consistent basis, and with such other requirements as may reasonably be required by the Trustee or the Settlor.

(b) The Trustee shall as soon as practicable, but in no event later than three (3) months after the end of each fiscal year of the Trust, provide to the Settlor or its designee (i) the Trust's revenue and expense statement for such fiscal year and (ii) the Trust's balance sheet as of the end of such fiscal year, each accompanied by the certificate or opinion of a firm of independent certified public accountants selected by the Trustee and approved by the Settlor.

(c) Within ninety (90) days after termination of the duties of the Trustee, and at such other times (if any) as the Settlor may determine in its discretion, the Trustee shall render to the Settlor or its designee a written account setting forth all transactions effected by the Trustee since the period covered by its last such preceding account and showing at its then fair market value all property held at the end of the accounting period. Upon the expiration of ninety (90) days from the date such account is rendered, the Trustee shall be released and discharged from accountability to the Settlor as respects the same, unless the Settlor shall have filed with the Trustee a written statement claiming gross negligence, willful misconduct, or lack of good faith by the Trustee with respect thereto. If any such objection is filed and is not satisfactorily adjusted by the parties, the Trustee shall have the right to apply to a court of competent jurisdiction for judicial settlement of such account at the sole cost and expense of the Trust. Neither the Settlor nor any other person shall have the right to demand or be entitled to any further or different accounting by the Trustee, except as may otherwise be required by law.

(d) The Trustee shall also furnish to the Settlor or its designee such other reports as may be reasonably requested by the Settlor; provided that any costs or expenses incurred by the Trustee in preparing, directly or through a third party subcontractor, any reports that are outside of the scope of the trustee's usual and customary reporting shall be borne solely by the Trust .

Section 5.13 Third Party Reliance. (a) No person having any dealing with the Trust Fund or the Trustee shall be bound to inquire of the duty, authority, or power of the Trustee to perform any act which it undertakes to perform. No person purchasing or acquiring property or lending money to the Trustee shall be bound to see to the application of the purchase money or other property transferred or loaned to the Trustee, or to inquire into the propriety or validity of the said sale, disposition, or loan by the Trustee.

(b) Every instrument executed by the Trustee shall be conclusive in favor of any person, partnership, corporation relying thereon that (a) at the time of the delivery of the instrument the

Trust was in full force and effect, (b) the instrument was effected in accordance with the terms and conditions of this Agreement, and (c) the Trustee was duly authorized and empowered to execute the instrument.

Section 5.14 Interpretation; Rules. The Trustee shall have the power to construe the provisions of this Agreement and the terms used in this Agreement, and any construction adopted by the Trustee in good faith consistent with the purpose of the Trust shall be binding upon all persons.

ARTICLE 6 POWER OF SUBSTITUTION

Section 6.1 Power of Substitution. (a) The Settlor shall have the right to acquire any asset of the Trust (an "*Acquired Asset*") by transferring to the Trustee in exchange for the Acquired Asset one or more other assets (collectively the "*Substituted Asset*") having a fair market value that is no less than the fair market value of the Acquired Asset.

(b) To the extent (if any) that the fair market value of the Substituted Asset exceeds the fair market value of the Acquired Asset, the Settlor shall be deemed to have made an Additional Contribution to the Trust under Section 3.3 above.

Section 6.2 Confirmations. (a) The Trustee shall take such reasonable steps as may be necessary in order to confirm, prior to the exchange of assets, that the fair market value of the Acquired Asset is no greater than the fair market value of the Substituted Asset. If the Trustee determines that the fair market value of the Acquired Asset is greater than the fair market value of the Substituted Asset, the Trustee shall not transfer the Acquired Asset to the Settlor or accept the Substituted Asset from the Settlor.

(b) The Trustee shall not accept any Acquired Asset in substitution for a Substituted Asset unless it has previously received written confirmation from the Calculation Agent that such substitution will not adversely affect the ability of the Settlor to fund Distributions (*e.g.*, due to a reduction in the liquidity of the Trust).

ARTICLE 7 TERMINATION

Section 7.1 Termination. The Trust shall terminate when all of the assets of the Trust have been exhausted in furtherance of the purposes set forth in Section 2.2 above.

Section 7.2 Trust Irrevocable. Neither the Settlor nor any other person is entitled to revoke or terminate the Trust.

ARTICLE 8 AMENDMENTS

Section 8.1 Amendment of Agreement. Notwithstanding the irrevocability of the Trust, the Trustee is authorized to institute a judicial proceeding in a court of competent jurisdiction to reform this Trust for the sole purpose of meeting any and all federal statutory or regulatory requirements which may affect the taxability of the Trust and which were enacted or instituted subsequent to the inception of the Trust. *Provided, however,* that this provision shall not apply if its existence would result in the overall loss of favorable tax treatment, thereby defeating the purpose of this right of reformation.

ARTICLE 9 MISCELLANEOUS

Section 9.1 No Legal Title to Trust Property. No transfer, by operation of law or otherwise, of any right, title, or interest in the Trust assets shall operate to terminate this Agreement or the Trust, or shall entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Assets.

Section 9.2 Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Settlor, the Trustee, and the Beneficiaries, and nothing in this Agreement, whether express or implied, shall be construed to give to the Distribution Agent, any Affiliate of the Distribution Agent, any other person any legal or equitable right, remedy, or claim in the Trust Assets or under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

Section 9.3 Notices. All demands, notices and communications upon or to the Settlor or the Trustee under this Agreement (including Distribution Orders) shall be in writing, personally delivered, sent by electronic facsimile (with hard copy to follow via first class mail), sent by email (with hard copy to follow via first class mail), or mailed by certified mail return receipt requested, and shall be deemed to have been duly given upon receipt, to the following address (or to such other address as the notice party may direct):

To the Settlor:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Executive Director

with copies to:

DELCORA
100 East Fifth Street
Chester, PA 19013

Attention: Solicitor

and

AQUA WASTEWATER PENNSYLVANIA, INC.
762 Lancaster Avenue
Bryn Mawr, PA 19010
Attention: General Counsel

To the Trustee:

Univest Bank and Trust Co.
14 North Main Street
PO Box 559
Souderton, PA 18964
Attention: John C. Kazary, Esq., CTFA – Vice President and Wealth Trust Advisor

with a copy to:

Univest Bank and Trust Co.
14 North Main Street
PO Box 64197
Souderton, PA 18964
Attention: Megan Duryea Santana, General Counsel

Section 9.4 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9.5 Successors and Assigns. (a) Neither party hereto may assign any of its obligations or rights under this Agreement without the prior written consent of the other party except for obligations and rights delegated under 20 Pa. C.S. Section 7206.

(b) All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Settlor, the Trustee, and their respective successors and permitted assigns.

Section 9.6 Headings, etc. Titles for sections are for general information only, and this Agreement shall not be construed by reference to such titles. Wherever required by context, the singular of any word used in this Agreement shall include the plural and the plural may be read in the singular. Words used in the masculine shall be read and construed in the feminine where they would so apply.

Section 9.7 Governing Law. This agreement shall in all respects be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity, and performance.

Section 9.8 Consent to Jurisdiction and Service of Process. Each of the parties to this Agreement hereby irrevocably submits to the jurisdiction of any Pennsylvania state court sitting in Delaware County, Pennsylvania or the U.S. District Court for the Eastern District of Pennsylvania, and any appellate courts thereof, in any action or proceeding arising out of or relating to this Agreement, and each of the parties hereby irrevocably agrees, to the extent permitted by law, that all claims in respect of such action or proceeding may be heard and determined in such Pennsylvania state or U.S. federal court. Each of the parties hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding and any right of jurisdiction in such action or proceeding on account of the place of residence or domicile of such party. A final judgment in any such action or proceeding shall, to the extent permitted by law, be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court.

Section 9.9 Tax Status of the Trust. The Trust is intended to be a “grantor trust” of which the Settlor is treated as the owner for federal income-tax purposes under Code Sections 671 *et seq.* The Trust is intended to qualify as a governmental entity for state and local tax purposes.

Section 9.10 Entire Agreement. This Trust Agreement shall not be deemed to be varied, altered or amended by any other statement, representation or agreement by or between any person or persons whomsoever, whether written, oral or implied in any way, except as provided in this Agreement.

Section 9.11 Reliance on Trust Agreement. Any person dealing with the Trustee may rely upon a copy of this Agreement and any amendments thereto certified to be true and correct.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of Effective Date.

SETTLOR:

DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY

By: Robert J. Willert

Name: Robert J. Willert

Title: Executive Director

TRUSTEE:

UNIVEST BANK AND TRUST CO.

By: J. Matthew Holliday

Name: J. Matthew Holliday

Title: Sr. V.P. and Sr. Trust Officer

EXHIBIT A

TRUSTEE COMPENSATION AND REIMBURSEMENT

The Trustee shall be entitled to receive a monthly fee in an amount equal to one-twelfth of the product obtained by multiplying (a) 0.0006 by (b) the aggregate value of Trust Assets. The aggregate value of Trust Assets for any calendar month shall be equal to the sum of the average daily valuations of all Trust Assets for such month. The Trustee shall be permitted to deduct its fees and expenses from the Trust Assets.

The Trustee shall be reimbursed from the Trust Assets for third party tax preparation and filing fees and costs. Any and all taxes due shall be paid by the Settlor, provided, however, that in the event that the Trust is responsible for the payment of any taxes, such taxes shall be paid from the Trust Assets.

The Trustee shall be entitled to reimbursement for any and all Costs and other indemnity amounts from the Trust out of Trust Assets.

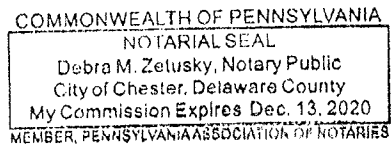
In addition, the Trustee shall have the right to be reimbursed from the Trust Assets for fees for extraordinary/administrative services, including, without limitation:

- Managing, selling or liquidating real estate
- Ascertaining the cost basis of securities for tax purposes
- Handling any assets outside the continental United States
- Assisting counsel with litigation
- Transferring securities from another account
- Preparation of court accountings and filings
- Preparation of any reports other than customary quarterly or monthly written reports

COMMONWEALTH OF PENNSYLVANIA :
 :
COUNTY OF : ss.

On this, the 20th day of December 2019, before me, the undersigned officer, personally appeared Robert J. Willert, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the Delaware County Regional Water Quality Control Authority for the purposes therein contained.

I have signed my name and affixed my seal.



Debra M. Zetuský
Notary Public
My Commission expires:

COMMONWEALTH OF PENNSYLVANIA

:

ss.

COUNTY OF

:
:
:

On this, the 27th day of December 2019, before me, the undersigned officer,
personally appeared J. Matthew Holiday who acknowledged himself to be a
Senior Trust officer of Univest Bank, and that he as such Senior Trust officer being
authorized to do so, executed the foregoing instrument for the purposes therein contained by
signing the name of the corporation by himself as trustee.

I have signed my name and affixed my seal.

Dana Granite
Notary Public

Commonwealth of Pennsylvania - Notary Seal
DANA GRANITE - Notary Public
Montgomery County
My Commission Expires Aug 5, 2023
Commission Number 1355575

DELCORA

TRUST FUNDING AGREEMENT

This DELCORA Trust Funding Agreement, dated as of the 27th of December, 2019 (this "Funding Agreement"), is by and between The Delaware County Regional Water Quality Control Authority, a body corporate and politic existing under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601, et seq. (the "Settlor"), and Univest Bank and Trust Co., as trustee (the "Trustee" and collectively, with the Settlor, the "Parties").

WITNESSTH:

WHEREAS, the Settlor currently owns and operates a sewer system (the "Sewer System") serving various residential, commercial, industrial, and municipal customers in Delaware County, Pennsylvania (the "DELCORA Customers");

WHEREAS, pursuant to that certain agreement dated September 17, 2019 (the "Sewer System Sale Agreement") between the Settlor and Aqua Pennsylvania Wastewater, Inc. ("Aqua Wastewater"), the Settlor has agreed to sell the Sewer System to Aqua Wastewater;

WHEREAS, the Settlor has agreed to devote a portion of the proceeds which it receives from the sale of the Sewer System to stabilizing the amounts which the DELCORA Customers will pay for sewer services during a period of years following the closing date under the Sewer System Sale Agreement (the "Closing Date");

WHEREAS, the Settlor and the Trustee have established the Delaware County Water Quality Control Authority Rate Stabilization Trust (the "Trust") by entering into the DELCORA Rate Stabilization Fund Trust Agreement bearing even date herewith (the "Trust Agreement") pursuant to which the Trustee will serve as trustee of the Trust;

WHEREAS, the Settlor and Aqua America, Inc. will enter into a rate stabilization agreement, of which Aqua Wastewater will be the designated third party distribution agent, pursuant to which (a) Aqua Wastewater will bill DELCORA Customers at reduced rates and (b) the Trust will reimburse Aqua Wastewater for such reductions, as and when so directed by the Settlor pursuant to the Trust Agreement; and

WHEREAS, the Settlor desires to contribute and transfer the Assets (as defined below) to the Trust on the Closing Date and wishes to obligate itself to the terms of this Funding Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants expressed herein, and intending to be legally bound, the Settlor and the Trustee hereby agree as follows:

1. **Contributions to the Trust.** Settlor hereby obligates itself as follows:

(a) Settlor shall contribute and transfer to the Trust on the date of this Trust Agreement one thousand dollars (\$1000.00) in cash.

(b) Settlor hereby obligates itself to contribute and transfer to the Trust on the Closing Date an amount equal to the total proceeds the Settlor receives from the sale of the Sewer System under the Sewer System Sale Agreement, less all of the Settlor's liabilities and obligations, expenses, and reasonable reserves (the "Net Closing Proceeds").

(c) Settlor hereby obligates itself to contribute and transfer to the Trust such amount (if any) as the Settlor may receive as a final distribution under Section 9 of that certain Escrow Agreement among Settlor, Trustee (acting as escrow agent), and Aqua Pennsylvania Wastewater, Inc. dated December __, 2019 (the "Net Escrow Proceeds").

(d) The Trustee shall be entitled to rely, without independent investigation, on any notice or instruction received from the Settlor pursuant to this Section 1 and shall have no duty or obligation to verify the amount or nature of the Net Closing Proceeds or the Net Escrow Proceeds (if any) in any respect.

2. **Application of Assets.** The Trustee shall hold the Net Closing Proceeds and the Net Escrow Proceeds (if any) in trust and shall apply such Assets in accordance with the Trust Agreement.

3. **Limitation of Liability.** The Settlor is put on notice and hereby acknowledges and agrees that (a) this Agreement is executed and delivered on behalf of the Trust by Univest Bank and Trust Co. ("Univest") as trustee of the Trust, not individually or personally but solely as trustee of the Trust, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Trust is made and intended not as a personal representation, undertaking or agreement of Univest, but is made and intended for the purpose of binding the Trust, (c) nothing herein contained shall be construed as creating any liability on Univest, individually or personally, to perform any covenant either expressed or implied contained herein of the Trust, all such liability, if any, being expressly waived by the parties hereto and by any person claiming by, through or under the parties hereto, (d) Univest has made no investigation as to the accuracy or completeness of any representations and warranties made by the Trust in this Agreement, and (e) under no circumstances shall Univest be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Agreement or any other related document.

4. **Successors.** All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Settlor, the Trustee, and their respective successors by operation of law.

5. **No Assignment.** The rights and obligations of the Parties under this Funding Agreement shall not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, and any action in violation of this Section 5 shall be void.

6. **Entire Agreement.** This Funding Agreement, together with the Trust Agreement, represents the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties relating to the subject matter hereof.

7. **Amendment.** The Parties may amend this Funding Agreement only by a written agreement signed by the Parties and Aqua Wastewater that identifies itself as an amendment to this Funding Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Funding Agreement will be effective only if it is in writing and signed by the Party giving it and by Aqua Wastewater, and only in the specific instance and for the specific purpose for which it has been given.

8. **Governing Law.** This agreement is governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity, and performance, including torts.

9. **Notices.** All demands, notices, and communications upon or to the Settlor and Trustee under this Funding Agreement shall be in writing, personally delivered, sent by electronic facsimile (with hard copy to follow via first class mail), or mailed by certified mail return receipt requested, and shall be deemed to have been duly given upon receipt, to the following address (or to such address as the notice party may direct):

To the Settlor:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Executive Director

with copies to:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Solicitor

and

AQUA WASTEWATER PENNSYLVANIA, INC.

762 W. Lancaster Ave.
Bryn Mawr, PA 19010
Attention: General Counsel

To the Trustee:

Univest Bank and Trust Co.
14 North Main Street
PO Box 559
Souderton, PA 18964
Attention: John C. Kazary, Esq., CTFA – Vice President and Wealth Trust Advisor

with a copy to:

Univest Bank and Trust Co.
14 North Main Street
PO Box 64197
Souderton, PA 18964
Attention: Megan Duryea Santana, General Counsel

10. **Headings, etc.** The section and paragraph headings in this Funding Agreement are for reference purposes only and do not affect the meaning or interpretation of this Funding Agreement.

11. **Third Party Beneficiary.** Aqua Wastewater Pennsylvania, Inc. is hereby designated as a third-party beneficiary of this Agreement.

12. **Counterparts.** This Funding Agreement may be executed by the Parties hereto in separate counter parts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Funding Agreement the day and year first set forth above.

SETTLOR:

DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY

By: *Robert J. Linnert*

Name: *Robert J. Linnert*

Title: *Executive Director*

TRUST:

DELCORA RATE STABILIZATION FUND
TRUST

By: Univest Bank and Trust Co., not in its
individual capacity but solely as Trustee

By: *J. Matthew Holliday*

Name: *J. Matthew Holliday*

Title: *Sr. V.P. and Sr. Trust Officer*

Exhibit I

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

AQUA STATEMENT NO. 5

**DIRECT TESTIMONY OF
ROBERT WILLERT
EXECUTIVE DIRECTOR
DELCORA**

**With Regard To
Description of DELCORA and Its Wastewater System
Overview of DELCORA's Sale Process
Public Benefits of the Proposed Transaction
DELCORA Customer Trust**

March 3, 2020

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF DELCORA AND ITS WASTEWATER SYSTEM	3
III.	BENEFITS OF THE PROPOSED TRANSACTION	5
IV.	CONCLUSION	14

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Robert Willert. My business address is 100 East Fifth Street, Chester, PA
4 19013.

5
6 **Q. In what capacity are you affiliated with the Delaware County Regional Water
7 Quality Control Authority (“DELCORA”)?**

8 A. I am the Executive Director of DELCORA.

9
10 **Q. Please provide a brief description of your education and work experience.**

11 A. I graduated from Saint Joseph’s University with a Bachelor of Science degree in 1981. I
12 have served as DELCORA’s Executive Director since January 2015. Prior to that, I was
13 the Township Manager for Concord Township, Delaware County from 2003 to 2014,
14 where my duties included oversight of the township’s ownership and operation of a 1.2
15 million gallons per day (“MGD”) wastewater treatment plant. I was also a member of
16 DELCORA’s Board of Directors from 2002 to 2014. As a board member, I served on the
17 Operations & Engineering committee from 2002-2012, the Finance committee from
18 2002-2014, the Strategic Planning and Goals committee from 2013-2014, as Legal
19 Liaison from 2009-2014, and as the 2014 Human Resources & Administration Chairman.

20
21 **Q. Have you testified before the Pennsylvania Public Utility Commission (“PUC” or
22 the “Commission”) before?**

23 A. No.

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

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Q. On whose behalf are you testifying in this proceeding?

A. My testimony is on behalf of DELCORA and in support of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) in this proceeding.

Q. What is the purpose of your direct testimony?

A. The purpose of my testimony is as follows: (1) to provide a description of DELCORA and its sanitary wastewater collection and conveyance system (the “System”) and (2) to provide a description of the anticipated benefits of the sale of the System assets to Aqua under and in accordance with an Asset Purchase Agreement (“APA”) between DELCORA and Aqua dated September 17, 2019, as amended via Amendment No. 1 to the APA on February 24, 2020 (the “Proposed Transaction”).

In particular, I will focus on the numerous benefits of the Proposed Transaction that are most important to DELCORA and the customers who use the System, including:

- After paying off outstanding debt, the majority of the sale proceeds will be placed into an irrevocable trust dedicated to provide customer assistance payments to DELCORA customer bills, which will benefit customers for years to come. A primary focus for DELCORA was on mitigating future bill impacts for its customers. As will be explained in greater detail, under the outlined plan, the Proposed Transaction results in the least impact and cost increase to customers than the other alternative courses of action considered by DELCORA;
- Aqua, and Aqua Pennsylvania, Inc. (“Aqua PA”), are familiar with the area as it currently serves nearly 500,000 people in Delaware County and approximately

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

200,000 people in Chester County, which provides economies of scale, including operational efficiencies, combined billing processes and capital replacement planning and execution;

- Customers will benefit from Aqua's long-standing capital improvement programs, its experience in improving and correcting systems with compliance issues, and its capability to make long-term investments in necessary capital improvements to the wastewater system;
- DELCORA's customers will benefit from protections provided by the Commission's regulations including access to Helping Hand and operational functions performed by Aqua's team of experienced water and wastewater professionals;
- Aqua has committed to preserving the jobs of DELCORA's employees; and
- Aqua has a proven record of environmental stewardship for the operation of wastewater systems.

Q. Are you sponsoring any Exhibits with your testimony?

A. No.

II. DESCRIPTION OF DELCORA AND ITS WASTEWATER SYSTEM

Q. Please provide a general overview of DELCORA.

A. DELCORA was created October 20, 1971, by a resolution of the Council of the County of Delaware, Pennsylvania, under the authority of the Municipality Authorities Act of 1945. DELCORA has since been serving Delaware and Chester County residents for over four decades by collecting, conveying and treating wastewater in a safe and effective

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 manner that prevents contamination of streams, rivers, and general water supply.

2 Through its extensive infrastructure, DELCORA has worked diligently to ensure that its
3 customers of Delaware and Chester Counties are provided quality wastewater service by
4 meeting and, in many cases, exceeding the water discharge mandates set by the
5 Pennsylvania Department of Environmental Protection (“DEP”) and the US
6 Environmental Protection Agency (“EPA”).

7
8 **Q. Please provide an overview of DELCORA’s wastewater system.**

9 A. DELCORA owns and operates an extensive system of pump stations, force mains, and
10 sewers that provide the core infrastructure for the transmission of wastewater to treatment
11 facilities in Delaware County and the City of Philadelphia. DELCORA also owns and
12 operates smaller systems in Chester County. DELCORA owns and operates over 180
13 miles of sewer infrastructure, the vast majority of which are sanitary in nature. These
14 flows are directed to two treatment facilities: one in Delaware County, and one in
15 Philadelphia. DELCORA currently serves approximately 16,000 customers, and overall
16 collects, conveys and treats approximately 197,000 Equivalent Dwelling Units (“EDUs”)
17 from all classes, including retail, wholesale, municipal, industrial, and commercial.

18 DELCORA’s system is divided into two service areas: Eastern and Western. The
19 facility located in, and owned by, Philadelphia – the Philadelphia Water Department’s
20 (“PWD”) Southwest Water Pollution Control Plant (“SWPCP”) – primarily serves the
21 Eastern service area, and the facility in Delaware County owned by DELCORA –
22 Western Regional Treatment Plant (“WRTP”) – primarily serves the Western service
23 area. The dividing line between the two areas generally tracks along Chester Creek.

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1
2 **Q. Is it always the case that water flow in the Eastern service area goes to the PSWPCP**
3 **and water flow in the Western service area goes to the WRTP?**

4 A. Not necessarily. In 2004, DELCORA undertook a diversion project to accommodate
5 increased water flows in DELCORA's Eastern service area. As a result, dry weather
6 flow and flow in a wet weather event less than 20 MGD from the Central Delaware
7 County Authority (located in the Eastern service area) goes to the WRTP. When a rain
8 event occurs, any water flow in excess of 20 MGD is split between service areas.
9

10 **III. BENEFITS OF THE PROPOSED TRANSACTION**

11 **Q. What prompted DELCORA to explore a sale of its wastewater system?**

12 A. Like many municipalities and authorities throughout the Commonwealth, DELCORA is
13 facing significant infrastructure improvements, increased expenses and more stringent
14 environmental regulations. DELCORA did not arrive at the decision to sell the System
15 lightly. The decision was the result of a confluence of factors and careful deliberation by
16 DELCORA in order to determine a path forward that would continue to provide safe and
17 reliable service while mitigating future rate increases. As described below, there were
18 two factors that primarily contributed to the decision: (1) the prohibitively high expense
19 that DELCORA will face if it continues to have its Eastern service area treated by PWD;
20 and (2) the costs DELCORA will incur to repair its Delaware County infrastructure in
21 order to comply with current requirements and regulations set out by the EPA. Given
22 these facts and circumstances, DELCORA began considering a partnership with a utility

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 like Aqua that has extensive experience in large scale capital investment projects over
2 multi-year periods.

3
4 **Q. Please provide a general overview of DELCORA's current reliance on PWD's**
5 **treatment of its wastewater.**

6 A. DELCORA has worked with PWD via a contractual relationship since the 1970s. When
7 three of DELCORA's treatment plants in its Eastern service area were taken out of
8 service in the early 1970s, DELCORA contracted with PWD to treat its wastewater in
9 that service area.

10 DELCORA's initial contract with PWD was originally for a term of at least thirty
11 years, running through 2004. Through various amendments, DELCORA and PWD
12 extended the contract until 2013. In 2013, DELCORA and PWD entered into a new 15-
13 year contract, which will expire in 2028.

14
15 **Q. What is DELCORA's plan for treatment in the Eastern service area after 2028?**

16 A. DELCORA intends to leave PWD and expand our operational capacities, upgrading the
17 WRTP and conveying all wastewater from the Eastern service area to it.

18
19 **Q. Please provide background on DELCORA's decision to leave PWD.**

20 A. Like other wastewater providers that send flow to PWD, DELCORA has proactively
21 endeavored to act in the best interests of its customers in planning for future capacity
22 needs controlled by PWD and federal environmental regulations. In 2004, the time when
23 DELCORA's initial contract with PWD would have expired, PWD began discussions

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 with the EPA about its own system capabilities and Long-Term Control Plan (“LTCP”).
2 Because of the uncertainty involved in that process, PWD informed DELCORA that it
3 did not wish to enter into another long-term contract. Instead, PWD and DELCORA
4 extended the terms of the then-existing contract, agreeing to revisit the issue once PWD
5 had a better idea of the costs involved of any LTCP that would result from its discussions
6 with the EPA.

7 PWD and the EPA ultimately agreed upon a LTCP. Subsequently, and in
8 connection with that, PWD and DELCORA agreed on a new fifteen-year contract in
9 2013. As part of that contract, DELCORA agreed to pay a share of the costs involved
10 with the implementation of the LTCP. At the time, PWD stated that it would implement
11 the LTCP by way of a 25-year capital investment plan, the total costs of which were
12 estimated to be approximately \$2.4 billion. Based on flow and the capacity of PWD’s
13 system, PWD projected that this would result in a cost to DELCORA of \$178 million
14 over 25 years.

15 At the same time, DELCORA engaged an engineering consultant to perform an
16 analysis of what it would cost if it disconnected from PWD and expanded the WRTP.
17 The analysis concluded that it would cost \$350-\$400 million. Based on those projected
18 costs as compared to the projected costs provided by PWD at the time, DELCORA
19 decided to remain in partnership with PWD. DELCORA entered into the new 15-year
20 agreement with PWD as a result.

21 This changed in December 2017, when PWD informed DELCORA that its
22 projected costs for its LTCP had dramatically increased to approximately \$4.5 billion.
23 PWD revised its estimate of DELCORA’s share of those costs to approximately \$606

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 million. This was only an estimate and was provided without any assurance that those
2 costs would not actually be higher than projected. In addition, PWD stated that it would
3 now take 25 years from 2017 (until 2042) to implement the plan. As a result, DELCORA
4 took another look at whether it would make more sense from a cost perspective for it to
5 end its partnership with PWD and expand its operational capabilities at the WRTP.
6 DELCORA determined that this was indeed the case.

7
8 **Q. Has DELCORA had its own interactions with the EPA?**

9 A. Yes, and these interactions impacted DELCORA's decision to explore a sale of its
10 System. DELCORA has been faced with the challenge of how to maintain the excellent
11 quality of services it provides to its customers while now incurring the significant
12 expenses that come with compliance with significant EPA requirements.

13 DELCORA's first long-term control plan for Delaware County was approved by
14 the EPA and implemented in 1999. In 2008, DELCORA received correspondence from
15 the EPA requesting information pursuant to Section 308 of the Clean Water Act, which
16 provides the authority for the EPA to make such a request due to suspected non-
17 compliance with NPDES permit limits. After DELCORA complied with this request, the
18 EPA informed DELCORA that it was not in compliance with the Clean Water Act.

19 During the ensuing years, DELCORA and the EPA engaged in discussions as to
20 what a new long-term control plan would entail. Initially, DELCORA focused on
21 remedying wet weather issues in its Western service area, particularly in Chester.
22 DELCORA's initial projections indicated that the repairs needed in Chester would cost a
23 reasonable amount of approximately \$12 million. Ultimately, however, DELCORA

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 came to realize that the costs involved to remedy the wet weather issues identified by the
2 EPA were considerably more. At the moment, the LTCP projects that it would cost \$87
3 million dollars over 15 years. The LTCP is currently under review with the DEP and
4 EPA and is not final.

5
6 **Q. How did these issues lead to the transaction with Aqua?**

7 A. Due to the challenges described above (both with respect to the PWD and the EPA), in
8 2018 DELCORA began to explore alternative solutions to address the infrastructure
9 challenges and likely rate impacts. That process involved meeting with municipalities
10 and stakeholders, as well as determining how much investment would be needed to leave
11 PWD at the end of DELCORA's current contract with it in 2028. In order to be in a
12 position to do that, an immediate investment of \$450 million is required in order to (a)
13 build a new pipeline to convey all wastewater from the Eastern service area to the WRTP,
14 and (b) upgrade and upsize the WRTP so that it can accommodate this increase in
15 volume. This process will take approximately eight years, which is why DELCORA
16 must begin working toward these goals immediately to be positioned to disconnect from
17 PWD in 2028.

18 As a result, in the summer of 2019, DELCORA entered into discussions with
19 Aqua for the purchase of DELCORA's system. Aqua is a large provider of
20 water/wastewater utility service in Delaware and Chester Counties, making it a logical
21 partner for DELCORA.

22 The parties sought a partnership whereby they would both realize benefits from
23 necessary capital and financial obligations, growth in overall customers, and economies

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 of scale from similar geographic areas served. After arms-length negotiations,
2 DELCORA and Aqua entered into the APA on September 17, 2019.

3
4 **Q. Did DELCORA bid out the sale of its System?**

5 A. No. DELCORA decided not to bid out the sale of the System because it did not want to
6 engage in a bidding war that would lead to a scenario that could ultimately be detrimental
7 to customers. In our view, a bidding process would not guarantee the best outcome for
8 our customers and would likely only focus on a result promoting the highest possible
9 purchase price. Instead, the transaction with Aqua will create a DELCORA Customer
10 Trust Fund (“Trust”) that will provide for customer assistance payments to be applied to
11 the DELCORA customer bills. At the same, time, the transaction will preserve jobs and
12 maintain the high quality of service to which our customers are accustomed. DELCORA
13 wanted to find the right partner, one with financial fitness and significant operational
14 capabilities along with a fair price for the System.

15
16 **Q. What is the purchase price agreed upon by DELCORA and Aqua?**

17 A. \$276.5 million.

18
19 **Q. How will the proceeds be used?**

20 A. The sale proceeds will first be used to satisfy DELCORA’s outstanding debt. Once that
21 occurs, the bulk of the sale proceeds will be placed into the irrevocable Trust. Our goal,
22 through Trust payments to customers, is that bills for DELCORA customers will be
23 stabilized at an annual increase of 3% for 8-12 years.

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

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Q. How did DELCORA communicate the Proposed Transaction with stakeholders?

A. DELCORA engaged in a robust communications and outreach effort. I note that in 2016, DELCORA initially began having meetings related to the costs of its own LTCP. Meetings were held for the purpose of informing DELCORA’s stakeholders about the process that it was undertaking with respect to the LTCP. More recently, DELCORA held a series of meetings in September and October 2019, including multiple public meetings, to discuss the Proposed Transaction with stakeholders. This process included conducting over 20 meetings with employees, municipal officials and the Delaware County Council, and two public meetings with customers.

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. Given the considerable remedial costs expected over the next 15 years, rates will be increasing no matter who owns and operates the System.

Q. Please explain how the Proposed Transaction addresses future bill impacts for DELCORA customers.

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 A. The Proposed Transaction creates an irrevocable trust fund that will contain the majority
2 of the sale proceeds, which will be used to ensure that DELCORA customer bills will
3 increase gradually for an extended period of time. I am not a lawyer, but I have been
4 advised that the Commission does not have jurisdiction over the Trust. However, as this
5 is a component of the Proposed Transaction, I will give a general overview. The Trust's
6 sole purpose is to make monetary distributions to be applied to DELCORA customer bills
7 as a customer assistance payment for the benefit of the DELCORA customers.

8 The Trust will be established as an irrevocable trust to ensure that the money
9 contributed to it will only ever be used for the benefit of DELCORA's customers. It will
10 have one independent, institutional trustee. The Trust will automatically terminate when
11 all money has been distributed for DELCORA customer bills and related expenses.

12 In summary, the impact of the Trust is expected to be a significant benefit to
13 DELCORA customers, particularly when compared with the bills that DELCORA's
14 customers would face if it either remained with the PWD or ended its partnership with
15 PWD but did not enter into the Proposed Transaction with Aqua.

16
17 **Q. How will the proceeds of the Trust be distributed to DELCORA customers?**

18 A. The Trust will be set up to provide monetary distributions to be applied to DELCORA
19 customer bills as a customer assistance payment line item. These payments will be for
20 the benefit of the DELCORA customers during the existence of the Trust.

21
22 **Q. Please describe any further benefits from the Proposed Transaction.**

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 A. First, Aqua already has an operational presence in the areas currently served by
2 DELCORA. By merging its existing operations with DELCORA's System, Aqua will be
3 able to create a larger-scale, efficiently operated water and wastewater utility.
4 Operational efficiencies will include combined billing processes and capital replacement
5 planning and execution. It is my understanding that the efficiencies and long-term
6 viability will only increase over time. Due to the fact that Aqua already serves nearly
7 500,000 people in Delaware County and approximately 200,000 people in Chester
8 County, it has strong existing community relationships as well.

9 Second, Aqua was chosen as a partner for this transaction because it is uniquely
10 qualified to address needed capital improvements and build the infrastructure needed to
11 disconnect from PWD in 2028. Aqua has significant experience in large scale, complex
12 projects, such as the one that is needed to be in a position to leave PWD. DELCORA's
13 customers will benefit from Aqua's experience and fitness in deploying resources
14 towards capital improvements, as well as its experience in improving and correcting
15 systems with compliance issues.

16 Third, although DELCORA's customers currently receive excellent service, they
17 will receive enhanced customer service from Aqua, including protections provided by the
18 Commission's regulations including access to Helping Hand and operational functions
19 performed by Aqua's team of experienced water and wastewater professionals.

20 Fourth, Aqua has made a commitment to preserving jobs by hiring all DELCORA
21 employees. It is of critical importance to us to be able to proceed in a way that is in the
22 best interest of our customers while, at the same time, avoiding employment disruption

AQUA STATEMENT NO. 5
DIRECT TESTIMONY OF ROBERT WILLERT

1 for our employees to the greatest extent possible. We are extremely pleased to see that
2 Aqua has committed to this.

3 Finally, the Proposed Transaction provides environmental benefits. In addition to
4 Aqua's proven record for environmental stewardship, disconnecting from PWD and
5 partnership with Aqua will provide for water discharge into the Delaware River at a
6 location that is less environmentally sensitive.

7
8 **Q. Do you believe that the Proposed Transaction is in the public interest?**

9 A. Yes. For the reasons set forth above, I believe that the Proposed Transaction is in the
10 public interest. I urge the Commission to approve the Proposed Transaction.

11
12 **IV. CONCLUSION**

13 **Q. Does this conclude your testimony?**

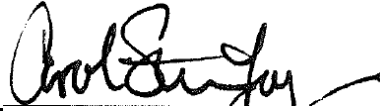
14 A. Yes, it does. However, I reserve the right to file additional testimony at a later date as
15 may be necessary or appropriate.

Exhibit J

_____, J.

TO: DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY,
and NICHOLAS PODUSLENKO, ESQ., its attorney:

You are hereby notified to file a written response to the enclosed Preliminary
Objections within twenty (20) days from service hereof or a judgment may be entered
against you.

By:  _____
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Date: August 12, 2020

Plaintiff, The County of Delaware, Pennsylvania (the "County"), files these Preliminary Objections to Counts II and III of the Counterclaims of Defendant Delaware County Regional Water Quality Control Authority ("DELCORA") and in support thereof avers as follows:

I. PROCEDURAL HISTORY

1. The County filed an Amended Complaint in this action on June 15, 2020.
2. Count V of the Amended Complaint seeks a writ of mandamus compelling DELCORA to comply with the terms of Ordinance No. 2020-4 and the Municipality Authorities Act in order to effectuate the orderly windup and termination of DELCORA.
3. On July 23, 2020, DELCORA filed an Answer with New Matter and Counterclaims.
4. Count II of DELCORA's Counterclaims seeks declaratory and injunctive relief related to the County's statutory right to terminate DELCORA.
5. Count III of DELCORA's Counterclaims seek declaratory and injunctive relief related to the Asset Purchase Agreement between DELCORA and Aqua Pennsylvania Wastewater, Inc.
6. The County submits these preliminary objections and requests that the Court dismiss Counts II and III of DELCORA's Counterclaims with prejudice for the following reasons: 1) the Pennsylvania Rules of Civil Procedure prohibit counterclaims in a mandamus action; 2) DELCORA has failed to name all indispensable parties, in violation of the Declaratory Judgment Act ("DJA"); and 3) the DJA precludes the relief requested because at this point in time, the Pennsylvania Public Utility Commission has

exclusive jurisdiction over review of the Asset Purchase Agreement ("APA") (i.e., the proposed transaction between DELCORA and Aqua).

FIRST PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER

**THE PENNSYLVANIA RULES PROHIBIT COUNTERCLAIMS IN MANDAMUS
ACTIONS AND COUNTS II AND III MUST BE DISMISSED**

7. The Pennsylvania Rules of Civil Procedure permit a party to file preliminary objections for "legal insufficiency of a pleading (demurrer)." Pa.R.C.P. 1028(a)(4).

8. A "preliminary objection in the nature of a demurrer tests the legal sufficiency of the complaint." *Kelly v. Kelly*, 887 A.2d 788, 790 (Pa. Super. 2005), *appeal denied*, 905 A.2d 500 (Pa. 2006) (per curiam). "A court should sustain preliminary objections in the nature of a demurrer only where it appears from the face of the complaint that recovery upon the facts alleged is not permitted as a matter of law." *Id.*

9. The Pennsylvania Rules of Civil Procedure prohibit counterclaims in a mandamus action. See Pa.R.Civ.P. 1096.

10. Counts II and III of DELCORA's Counterclaims constitute counterclaims to the mandamus action because they directly challenge the County's right to mandamus relief.

WHEREFORE, The County of Delaware, Pennsylvania respectfully requests this Court to sustain its Preliminary Objections in the nature of a demurrer to Counts I and II of DELCORA's Counterclaims, and dismiss those Counts with prejudice.

SECOND PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER

THE CLAIM FOR DECLARATORY JUDGMENT IN COUNT III MUST BE DISMISSED BECAUSE DELCORA HAS FAILED TO JOIN ALL INDISPENSIBLE PARTIES

11. Section 7540(a) of the Declaratory Judgment Act ("DJA"), 42 Pa.C.S. § 7540(a), states: "General rule. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration...."

12. The Declaratory Judgment Act's requirement that all who have an interest in the declaration be made parties to the action is mandatory. *HYK Const. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Commw. Ct. 2010) (citation omitted).

13. DELCORA ties the APA directly to the mandamus action in both Counts II and III. In paragraph 264 of Count II, DELCORA avers that the Ordinance was not lawfully adopted because it "does not provide for the assumption of all of DELCORA's obligations, including its obligations under the Asset Purchase Agreements with Aqua, which the County refuses to assume and honor."

14. Although the County is not a party to the Asset Purchase Agreement ("APA") between Aqua and DELCORA, the APA lists over 100 agreements to be assigned to Aqua on the closing of Aqua's acquisition of DELCORA.

15. While some of these interested parties have intervened in this proceeding, the majority have not done so. More importantly, DELCORA did not join any of them as parties to its counterclaims.

16. Accordingly, the County's Preliminary Objections to DELCORA's request for declaratory judgment in Count III should be sustained, and those claims dismissed with prejudice.

WHEREFORE, The County of Delaware, Pennsylvania respectfully requests this Court to sustain its Preliminary Objections in the nature of a demurrer to Count III of DELCORA's Counterclaims, and dismiss Count III with prejudice.

THIRD PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER

**THE CLAIM FOR DECLARATORY JUDGMENT IN COUNT III MUST BE DISMISSED
BECAUSE THE PUC HAS EXCLUSIVE JURISDICTION OVER THE APA**

16. Count III of DELCORA's Counterclaim seeks relief in the form of "(a) a declaratory judgment that (i) the APA is a valid, enforceable agreement that must be formally assumed and honored by the County before it can terminate DELCORA, and (ii) the transaction contemplated by the APA must proceed without interference from the County, subject to the approval by the Pennsylvania *[sic]* Utilities *[sic]* Commission; and (b) permanent injunction requiring same."

17. Section 7541 of the Declaratory Judgments Act states that "[r]elief shall not be available under this subchapter with respect to any: ... (2) [p]roceeding within the exclusive jurisdiction of a tribunal other than a court." 42 Pa. C.S. § 7541(c)(2). See *Faldowski v. Eighty Four Mining Co.*, 725 A.2d 843 (Pa. Commw. 1999); *Commw., Dep't of General Services v. Frank Briscoe Company, Inc.*, 466 A.2d 1336 (Pa. 1983) (declaratory relief barred as it "would exceed the proper scope of the Declaratory Judgments Act").

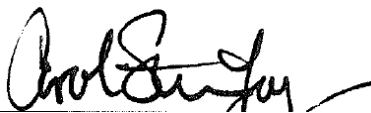
18. The Pennsylvania Public Utility Commission is such a tribunal. See 42 Pa. C.S. § 102 ("The term includes a government unit, other than the General Assembly and its officers and agencies, when performing quasi-judicial functions.").

19. There is no doubt whatsoever that the Asset Purchase Agreement is subject to the Commission's exclusive jurisdiction over public utilities, as Aqua's

application before the PUC seeks Commission approval of its APA with DELCORA under at least three separate provisions of the Public Utility Code.

20. Accordingly, there is no question that Section 7541 of the Declaratory Judgments Act bars the relief sought in Count III of DELCORA's Counterclaims.

WHEREFORE, The County of Delaware, Pennsylvania respectfully requests this Court to sustain its Preliminary Objections in the nature of a demurrer to Count III of DELCORA's Counterclaims.

By: 

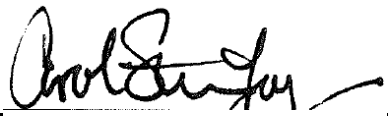
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Date: August 12, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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Date: August 11, 2020

CERTIFICATE OF SERVICE

I certify that I have this date served a true and correct copy of the foregoing document by email, addressed as follows:

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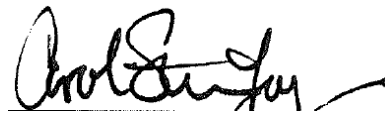
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A handwritten signature in black ink, appearing to read "Carol Steinour Young", with a long horizontal flourish extending to the right.

Dated: August 12, 2020

Carol Steinour Young