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August 24, 2020

VIA ELECTRONIC FILING

Honorable Judge Charles E. Rainey, Jr.
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265

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

Dear Judge Rainey:

Tom Wyatt and I are counsel for the Delaware County Regional Water Quality Control Authority (“DELCORA”) in this matter. Attached please find DELCORA’s Response in Opposition to the Petition of the Office of Consumer Advocate for an Extension of the Statutory Suspension Period in the above-referenced proceeding.

Respectfully yours,

Matthew S. Olesh

MSO/lar

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

RESPONSE OF THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY IN OPPOSITION TO THE PETITION OF THE OFFICE OF CONSUMER ADVOCATE FOR AN EXTENSION OF THE STATUTORY SUSPENSION PERIOD

The Delaware County Regional Water Quality Control Authority (“DELCORA”) is sympathetic to everyone impacted by the current pandemic. This proceeding is taking place in extraordinary times the likes of which no participant or counsel has ever seen. However, DELCORA questions (a) whether the Commission has the authority to grant the requested relief and (b) whether the relief is actually necessary.

The Governor’s Proclamation of Disaster Emergency states:

I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.

It is unclear how compliance with the statutory deadline “would in any way prevent, hinder, or delay necessary action in coping with this emergency.”

Moreover, the Commission’s Emergency Order states that deadlines may be waived or modified when “strict adherence to an established deadline will interfere with its ability to administer the Public Utility Code.” Again, it remains unclear how the administration of the Public Utility Code will be interfered with here by proceeding in accordance with the statutory

deadline set forth in 66 Pa.C.S.A § 1329(d)(2).

DELCORA fails to see why this proceeding cannot proceed in accordance with the six-month deadline set forth in 66 Pa.C.S.A § 1329(d)(2). In terms of the ability to move forward, DELCORA notes that the Office of Consumer Advocate has already served six (6) sets of discovery requests in this proceeding. Most recently, DELCORA filed a response to the petition of the County of Delaware, Pennsylvania to stay this proceeding. OCA served interrogatories related to issues raised in that response less than forty-eight (48) hours later. Similarly, the Municipal Protestants have had no issue serving discovery (in the case of SWDCMA, multiple sets).

Respectfully, OCA seems fully capable of continuing to do its job, just as the parties to this litigation and their counsel continue to do theirs. Discovery has been proceeding in due course and can continue to do so, as can all briefing. Hearings can be held remotely if needed. Despite the challenges that all parties and counsel face (and undersigned counsel work and live in a major city and are particularly sensitive to this), this proceeding can proceed in accordance with 66 Pa.C.S.A § 1329(d)(2) in a way that does not prevent, hinder, or delay necessary action in coping with the ongoing pandemic emergency, and which also does not interfere with the administration of the Public Utility Code.

Present circumstances are unprecedented and challenging – this cannot be disputed. All lawyers and tribunals are facing similar challenges. However, court systems have found a way to move forward with proceedings. Even in the action proceeding in the Delaware County Court of Common Pleas, the parties – including DELCORA, Aqua and the County – are proceeding in accordance with an expedited litigation schedule. There have been no issues adhering to it.

The administration of the Code and due process will be unimpaired if 66 Pa.C.S.A §

1329(d)(2) is followed. DELCORA respectfully requests that this proceeding continue in accordance with the requirements set forth in that statute.

Respectfully submitted,

/s/ Matthew S. Olesh

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Dated: August 24, 2020

CERTIFICATE OF SERVICE

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing motion response 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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Dated: August 24, 2020