



COMMONWEALTH OF PENNSYLVANIA

August 24, 2020

E-FILED

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

**RE: Aqua Pennsylvania Wastewater, Inc.'s Acquisition of Delaware County Regional
Water Quality Control Authority, Delaware and Chester Counties Sanitary
Wastewater Collection and Treatment System / Docket No. A-2019-3015173**

Dear Secretary Chiavetta:

Enclosed please find the Answer and Verification, on behalf of the Office of Small Business Advocate ("OSBA"), to the Expedited Motion of The Office of Consumer Advocate For an Extension of The Statutory Suspension Period, filed August 14, 2020, in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc.’s	:	
Acquisition of Delaware County Regional	:	
Water Quality Control Authority,	:	Docket No. A-2019-3015173
Delaware and Chester Counties Sanitary	:	
Wastewater Collection and Treatment	:	
System		

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO THE
EXPEDITED MOTION OF THE OFFICE OF CONSUMER ADVOCATE
FOR AN EXTENSION OF THE STATUTORY SUSPENSION PERIOD**

I. Introduction

On March 3, 2020, Aqua Pennsylvania Wastewater (“Aqua” or “Company”) filed an application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Pennsylvania Public Utility Commission (“Commission”) approval of the acquisition of the Delaware County Regional Water Quality Control Authority’s (“DELCORA”) wastewater system assets.

On August 14, 2020, the Office of Consumer Advocate (“OCA”) filed its *Expedited Motion for an Extension of the Statutory Suspension Period for Aqua Pennsylvania Wastewater Company’s Application to Acquire Delaware County Regional Water Quality Control Authority’s Wastewater System Assets* (“*Motion*”).

On August 18, 2020, Administrative Law Judge (“ALJ”) Angela T. Jones issued a Procedural Order setting the date for any response to the OCA’s *Motion*.

The Office of Small Business Advocate (“OSBA”) submits this response to the *Motion* in accordance with the ALJ’s August 18th Order.

II. The Legal Authority for Extending the Procedural Schedule

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued the Proclamation of Disaster Emergency pursuant to Section 7301(c) of the Emergency

Management Services Code, 35 Pa. C.S. §§ 7101, *et seq.* (“*Executive Order*”) to address the exigencies created by the COVID-19 global pandemic.

On March 20, 2020, the Commission issued the *Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (“*Emergency Order*”), to provide guidance on the conduct of Commission proceedings during the COVID-19 disaster emergency.

On April 13, 2020, the Pennsylvania Supreme Court addressed the Governor’s *Executive Order*, as well as the authority granted to the Governor, in *Friends of DeVito v. Wolf*, 2020 Pa. LEXIS 1987.

The Pennsylvania Supreme Court, exercising its King’s Bench jurisdiction, ruled, as follows:

[W]e conclude that the COVID-19 pandemic triggered the Governor's authority under the Emergency Code and that as a result of the COVID-19 pandemic, the Governor had the authority under the Emergency Code to declare the entirety of the Commonwealth a disaster area.

DeVito, at 35. The Supreme Court continued, as follows:

As to the predicate requirements that the interests of the public justify the Governor's assertion of its authority, the nature of this emergency supports it.

DeVito, at 37.

The Supreme Court also observed:

The Emergency Code specifically recognizes that under its auspices, the Governor has the authority to issue executive orders and proclamations which shall have the full force of law. 35 Pa.C.S. § 7301(b).

DeVito, 42.

Finally, the Supreme Court stated, as follows:

Upon the declaration of a disaster emergency, the Emergency Code vests with the Governor expansive emergency management powers, including, inter alia, to ‘***[s]uspend 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 the emergency...’

DeVito, at 25 (emphasis added).

Therefore, the Pennsylvania Supreme Court has ruled that the Governor’s March 6th *Executive Order* is a legal, valid exercise of authority granted to the Governor. The Pennsylvania Supreme Court has also ruled that statutes “prescribing the procedures for conduct of Commonwealth business,” as well as the Commission’s “orders, rules or regulations” may be suspended while the Governor’s *Executive Order* is in effect. The Governor’s *Executive Order* remains in effect as of the time of this filing, as the *Executive Order* was renewed through the Governor’s June 3, 2020, *Amendment to Proclamation of Disaster Emergency*.¹

On August 6, 2020, the Commission entered its Option and Order, Docket R-2020-3018835, in the Columbia Gas base rates case (“*Columbia Order*”). The Commission stated, as follows:

[W]e must first acknowledge that our authority under the *Emergency Order* is derived from the authority conferred by the Governor’s *Executive Order*. The Governor’s *Executive Order* was issued pursuant to the Emergency Management Services Code, 35 Pa. C.S. § 7101.

Columbia Order, at 18 (formatting in original). The Commission continued, as follows:

As the Pennsylvania Supreme Court stated in *Devito, supra*, that, regulatory statutes ‘prescribing the procedures of the conduct of Commonwealth business,’ as well as ‘orders, rules or regulations’ may be suspended while the Governor’s *Executive Order* is in effect ‘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 the emergency.’

We acknowledge that the *Executive Order* applies to regulatory statutes and that the suspension authority conferred by the *Executive Order* applies if: (1) the regulatory statute that is subject to suspension is one ‘prescribing the procedures for the conduct of Commonwealth business....’ and (2) only if ‘strict compliance’ with the statute would ‘in any way prevent, hinder, or delay necessary action in coping with this emergency.’ The Commission, in its *Emergency Order* expounded on those criteria by noting that suspension of deadlines would be appropriate if adhering to the deadline would “hinder, rather than further, the mission of the Commission, after consultation with all interested parties, as deemed necessary and appropriate.”

Initially, we note that the provisions of the *Executive Order* are applicable to the Code since it is a regulatory statute. Therefore, the Commission, as the agency with the oversight and enforcement of the Code, may exercise the authority conferred by the *Executive Order*.

Columbia Order, at 18-19 (citations omitted).

The Commission concluded, as follows:

In particular we note that the *Emergency Order* grants the CALJ the authority to suspend, extend, waive or change a statutory or regulatory deadline *which may hinder, rather than further, the mission of the Commission*, after consultation with all interested parties, as deemed necessary and appropriate.

Columbia Order, at 20 (formatting in original).

Therefore, the Chief ALJ has the legal authority to extend the procedural schedule in this proceeding if it is “deemed necessary and appropriate.”

III. The ALJ’s Proposed Procedural Schedule

On August 17, 2020, ALJ Jones issued her Further Corrected Prehearing Conference Order. In the ALJ’s August 17th Order, she set forth a default procedural schedule. *See* August 17th Order, at Paragraph 6.

Under normal circumstances, back in the day when there was no COVID-19 pandemic, the OSBA would be challenged to meet the ALJ’s proposed schedule.

Today, the OSBA's attorneys, paralegals, staff, and expert witnesses are all "teleworking" from home. Although everyone at the OSBA is able to continue working in this fashion, it is highly inefficient and adds significant time to each and every task.

Consequently, the OSBA submits that the *Motion's* proposal to add an additional 60 days to the procedural schedule is necessary and appropriate to allow the OSBA to fully participate in this proceeding. It would literally be impossible for the OSBA to submit testimony if the ALJ's proposed procedural schedule was adopted. This is simply a result of the COVID-19 pandemic and having the entire OSBA working from home.

IV. Conclusion

The OSBA respectfully requests that the Chief ALJ and ALJ Jones approve the OCA's *Motion* for an extension of the procedural schedule by 60 days.

Respectfully submitted,

/s/ Steven C. Gray

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For:

John R. Evans
Small Business Advocate

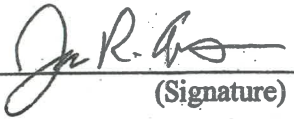
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Dated: August 24, 2020

VERIFICATION

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 08/24/2020


(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Aqua Pennsylvania Wastewater, Inc.'s :
Acquisition of Delaware County Regional :
Water Quality Control Authority, : Docket No. A-2019-3015173
Delaware and Chester Counties Sanitary :
Wastewater Collection and Treatment :
System :**

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: August 24, 2020

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