

**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

**PREHEARING MEMORANDUM OF THE DELAWARE  
COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**

The Delaware County Regional Water Quality Control Authority (“DELCORA”), by and through its undersigned attorneys, submits this prehearing memorandum pursuant to the Prehearing Conference Order in advance of the September 2, 2020 Prehearing Conference in this matter.

**I. Background**

This proceeding concerns the March 3, 2020 application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) for approval to acquire the wastewater system assets of DELCORA pursuant to Sections 1102, 1329 and 507 of the Pennsylvania Public Utility Code.

By Secretarial Letter dated June 11, 2020, the Commission, *inter alia*, conditionally accepted the application. By Secretarial Letter dated July 27, 2020, the Commission, *inter alia*, accepted the application for filing.

Administrative Law Judge Angela T. Jones was assigned to preside over the proceeding. An Initial Prehearing Conference has been noticed for September 2, 2020. Judge Jones issued the Prehearing Conference Order on August 3, 2020, as amended on August 17, 2020, which requires the parties to file and serve their prehearing memoranda by 12:00 PM on August 31, 2020.

On June 25, 2020, DELCORA submitted a Petition to Intervene in this matter, and consequently submits this prehearing memorandum.

## **II. Issues**

### **A. Approval of Application**

Issue: Should the Pennsylvania Public Utility Commission approve Aqua's application to (i) acquire DELCORA's wastewater system assets and (ii) begin to offer, render, furnish and supply wastewater service to the public in DELCORA's service area?

DELCORA's Position: The Commission should issue a Certificate of Public Convenience approving the acquisition because Aqua's acquisition of DELCORA's wastewater system assets is necessary and/or proper for the service, accommodation, convenience or safety of the public.

1. DELCORA currently provides wastewater service to approximately 16,000 customers (equating to approximately 197,000 Equivalent Dwelling Units) within its service area. The Commission has a longstanding policy in favor of consolidation and regionalization of local water and wastewater systems in order to allow the industry to institute better management practices and achieve greater economies of scale. This acquisition will permit DELCORA to take advantage of Aqua's expertise in operating wastewater utility systems and regulatory compliance.
2. Aqua is a viable operator of DELCORA's wastewater system, its viability will not be impaired by the acquisition, and it maintains the managerial, technical, and financial capabilities to safely and adequately operate the DELCORA's system in compliance with 66 Pa.C.S. (relating to the Public Utility Code), the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1--721.17) and other requisite regulatory requirements.

3. After receiving extensive input from the public, DELCORA determined that the sale of its wastewater system is in the best interest of its ratepayers, and they therefore agreed to the sale to Aqua pursuant to a heavily negotiated Asset Purchase Agreement.
4. Aqua is a regulated public utility that furnishes water and wastewater to the public in various counties throughout Pennsylvania, and it has the experience necessary to demonstrate that it is able to operate wastewater collection systems in a safe, reliable and efficient manner.
5. Pursuant to the Asset Purchase Agreement, the acquisition will not have any immediate impact on the rates of the DELCORA customers. In fact, DELCORA will be using the proceeds of the transaction to make customer assistance payments to help offset any future rate increases.

**B. Ratemaking Rate Base**

Issue: Pursuant to Section 1329 of the Public Utility Code, what is the ratemaking rate base of the wastewater system assets of DELCORA?

DELCORA's Position: Under Section 1329 of the Public Utility Code, the ratemaking rate base of the wastewater system assets is set based on the lower of the purchase price or the average of two fair market value appraisals. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$276,500,000, being the lesser of the purchase price of \$276,500,000 negotiated by Aqua and DELCORA and the average of the fair market value appraisals, \$358,538,503 — the average of the \$308,194,006 valuation presented in the appraisal of ScottMadden, Inc. ("ScottMadden") and the \$408,883,000 valuation presented in the appraisal of Gannett Fleming Valuation and Rate Consultants, LLC.

**C. Validity of Contracts**

Issue: Pursuant to Section 507 of the Public Utility Code, are the contracts, including assignments of contracts, between Aqua and DELCORA valid?

DELCORA's Position: The contracts, including assignment of contracts between Aqua and DELCORA are valid under Section 507 of the Public Utility Code.

**D. Stay of Proceedings**

Issue: Should this proceeding be stayed pending the completion of litigation between the County of Delaware, Pennsylvania (the "County"), DELCORA and Aqua, among other parties, in the Court of Common Pleas of Delaware County, Pennsylvania, Docket No. CV-2020-003185 (the "Common Pleas Action"), which the County filed in an effort to (a) challenge the trust created by DELCORA to hold the transaction proceeds and (b) illegally terminate DELCORA?

DELCORA's Position: This proceeding should not be stayed. The County has conceded on multiple occasions that it is not challenging the transaction at issue in this proceeding by way of the Common Pleas Action, and the determination of issues in that action has no bearing on the Commission's review of this proceeding. DELCORA incorporates by reference its August 17, 2020 brief in opposition to the County's petition to stay this proceeding, which articulates why there is no legal basis for the stay request and to ignore the requirements of 66 Pa.C.S.A § 1329(d)(2).

**E. Extension of the Statutory Suspension Period**

Issue: Should the deadline for completion of this proceeding be extended by sixty days?

DELCORA's Position: No, DELCORA respectfully submits that all parties are able to complete this proceeding in accordance with the time requirements set forth in 66 Pa.C.S.A § 1329(d)(2). All parties have been working to serve DELCORA and Aqua with numerous sets of discovery

and proceed in accordance with those requirements, and there is no indication that they have been or will be unable to do so.

**III. Witnesses**

DELCORA does not presently anticipate calling any witnesses. DELCORA witnesses Robert Willert, Executive Director, John Pileggi, Chief Financial Officer, Michael DiSantis, Director of Operations and Maintenance, and Dylan D'Ascendis of ScottMadden, DELCORA's Utility Valuation Expert, provided direct testimony with the Application as Exhibits W1, W2, W3 and Y. DELCORA reserves its right to call witnesses, if necessary, and agrees to notify Administrative Law Judge Jones and the parties promptly should it determine that any witnesses will be called.

**IV. Litigation Schedule**

DELCORA is willing to work with the administrative law judge and the parties to develop an agreed upon litigation schedule.

**V. Settlement**

DELCORA is willing to address settlement of all or part of the proceeding with the other parties.

**VI. Discovery**

DELCORA has no objection to the modifications of the discovery rules presented in the Prehearing Conference Order.

**VII. Protective Order**

DELCORA has no objection to the proposed Protective Order.

Respectfully submitted,

/s/ Thomas Wyatt

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Dated: August 31, 2020

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## **CERTIFICATE OF SERVICE**

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing Prehearing Memorandum 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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