



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 31, 2020

Via Electronic Filing

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

Re: Application of Aqua Pennsylvania Wastewater Inc. pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority
Docket No. A-2019-3015173
I&E Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's (I&E) **Prehearing Memorandum** for the above-referenced proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic Service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Erika L. McLain".

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 320526
(717) 783-6170
ermclain@pa.gov

ELM/jfm
Enclosures

cc: Hon. Angela T. Jones, Office of Administrative Law Judge (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater	:	
Inc. for Approval of its Acquisition of	:	
Delaware County Regional Water Quality	:	Docket No.: A-2019-3015173
Control Authority's Wastewater Assets, inter	:	
alia, Pursuant to Sections 507, 1102 and 1329	:	
of the Public Utility Code	:	

**PREHEARING MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:

In accordance with the Prehearing Conference Order dated August 3, 2020, the Bureau of Investigation and Enforcement ("I&E") hereby submits this Prehearing Memorandum. The I&E prosecutors assigned to this proceeding are Gina L. Miller and Erika L. McLain. Ms. Miller and Ms. McLain may be contacted as follows:

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I. BACKGROUND

On March 3, 2020, Aqua Pennsylvania Wastewater, Inc. filed with the Pennsylvania Public Utility Commission (“Commission”) its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), for (1) approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”) situated within all or part of 49 municipalities within portions of Chester and Delaware Counties, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of Delaware County and Chester County, Pennsylvania; and (3) an order approving the acquisition that includes the ratemaking rate base of the DELCORA wastewater system assets pursuant to Section 1329(c)(2) of the Code. Request for Approval of Contracts; and (4) assignments of Contracts, between Aqua and DELCORA, pursuant to Section 507 of the Code.

By Secretarial Letter dated June 11, 2020 the Commission acknowledged receipt of Aqua’s Application but indicated that the Application would be accepted for filing only on a conditional basis. The conditions included, inter alia, satisfying the Commission’s requirements that Aqua (1) certify service of its Application to designated entities; (2) provide individualized notice of the proposed acquisition to all potentially affected water and wastewater customers in accordance with the Commission’s Final Supplemental Implementation Order entered February 28, 2019, at Docket No. M-2016-2543193; (3) publish notice of the Application once a week for two consecutive weeks in

a newspaper of general circulation in the impacted area; and (4) notify the Commission after such publication occurred.

On June 26, 2020, County of Delaware, Pennsylvania (“Delaware County” or “County”) filed a Petition for Reconsideration of Staff Action (“Petition”) which sought to rescind the June 11, 2020 Secretarial Letter conditionally accepting Aqua’s Application. On July 9, 2020, Aqua filed an Answer to Delaware County’s Petition. On July 14, 2020, the Commission issued a Secretarial Letter notifying Parties that the docket at the time was inactive and that when the docket becomes active Delaware County’s Petition and any responsive pleadings will be accepted into the docket and assigned for formal action and disposition. On July 15, 2020, the County filed an Answer and Reply to Aqua’s Answer to Delaware County’s Petition, or in the alternative Amended Petition. On August 27, 2020, the Commission issued an Order denying the County’s Petition and the Amended Petition.

On April 2, 2020, I&E filed its Notice of Appearance in this case. On July 23, 2020, Aqua served the Commission’s Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of June 11, 2020; therefore, Aqua requested that its Application be accepted for filing. By way of a Secretarial Letter of July 27, 2020, the Commission informed Aqua that its Application was accepted for filing. On August 15, 2020, the Commission published notice of Aqua’s Application in the Pennsylvania Bulletin, and it established a protest deadline of August 31, 2020. Thereafter, Aqua’s Application was assigned to the Office of Administrative Law Judge, with Administrative Law Judge Angela T. Jones (“ALJ Jones”) presiding.

On April 2, 2020, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement in this case. Additionally, the following parties filed Petitions to Intervene in this Matter: (1) on May 18, 2020, Delaware County filed a Petition to Intervene in this proceeding; (2) on June 15, 2020, Edgmont Township filed a Petition to Intervene¹; and (3) on June 25, 2020, DELCORA filed a Petition to Intervene. Protests in this matter have been filed by the following parties: (1) on July 17, 2020, Southwest Delaware County Municipal Authority filed a Protest; (2) on July 30, 2020, Treasure Lake Property Owners Association filed a Protest; (3) on July 31, 2020, Ross F. Schmucki filed a Protest; (4) on August 7, 2020, Upland Borough and (5) Lower Chichester Township filed Protests; (6) on August 11, 2020, C&L Rental Properties, LLC filed a Protest; (7) on August 17, 2020, Trainer Borough filed a Protest; (8) on August 21, 2020, Edgmont Township filed a Protest; and (9) on August 28, 2020, Sunoco Partners Marketing & Terminals, L.P/Energy Transfer filed a Protest.

On August 7, 2020, Delaware County filed Petition for Stay and Request for Commission Review and Answer to a Material Question. On August 13, 2020, I&E filed a letter in support of the County’s Petition for Stay. On August 14, 2020, the OCA filed a Brief in Support of the Petition for Stay. On August 17, 2020, Aqua and DELCORA filed Briefs in Opposition to the Petition for Stay. Answers in Opposition to the Petition for Stay were filed by Aqua and DELCORA on August 27, 2020.

¹ Edgmont Township filed a Petition to Withdraw its Petition to Intervene on August 21, 2020.

On August 14, 2020, the OCA filed an Expedited Motion for Extension of the Suspension Period (“Motion”) requesting the Commission to grant a 60 day extension of the Statutory Suspension Period of Aqua’s Application due to challenges resulting from the COVID-19 pandemic. On August 18, 2020, ALJ Jones issued a Procedural Order Regarding the Expedited Motion to Extend Statutory Deadline requesting parties to address the Motion in writing by no later than close of business on August 24, 2020. On August 20, 2020, Edgmont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, Trainer Borough, and Upland Borough filed a Joint Answer in Support of the OCA’s Motion. On August 24, 2020, Delaware County filed its Answer in Support of the OCA’s Motion and both Aqua and DELCORA filed Answers Opposing the OCA’s Motion.

A telephonic Prehearing Conference is now scheduled for Wednesday, September 2, 2020, at 10:00 a.m., before ALJ Jones. In accordance with the Prehearing Conference Order issued by ALJ Jones on August 3, 2020, I&E now respectfully submits this prehearing memorandum.

II. ISSUES

Based upon a preliminary review of the filing, I&E has identified the following areas of inquiry, representing a listing of potential issues at this time. However, I&E reserves the right to address such other issues when those issues arise:

1. Errors and omissions in the Fair Market Appraisal done by Gannett Fleming Valuation and Rate Consultants;

2. Errors and omissions in the Fair Market Appraisal done by AUS Consultants, Inc.;
3. Ratemaking issues implicated by the acquisition;
4. Benefits and detriments of the acquisition;
5. Whether the transaction is in the public interest under 66 Pa. C.S. § 1102 of the Public Utility Code;
6. Whether the public benefits alleged in Aqua's Application may be compromised or altered as a result of pending litigation against DELCORA;
7. Evaluation of Aqua's claimed rate base;
8. The cost of service for the acquired customers;
9. Establishment of the DELCORA Trust and the intended use of the sale proceeds that will comprise it; and
10. Whether Aqua's stated intention to apply DELCORA Trust proceeds as a bill credit for certain acquired customers violates the Public Utility Code.

I&E notes that this listing of issues is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway.

Accordingly, I&E necessarily reserves the right to supplement its issue list, to remove issues from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full record in this case. Additionally, most of the issues raised by I&E will be supported by the Direct Testimony of I&E witnesses. If there are issues of Commission policy or legal interpretation that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony, I&E

reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed in Brief.

III. WITNESSES

It is currently expected that I&E may call the following witnesses without being limited thereto:

- Lisa Gumby, Technical Manager
- Holly Gilliland, Fixed Utility Valuation Engineer

The I&E witnesses may be contacted through the contact information listed above for Ms. Miller and Ms. McLain. I&E notes that this listing of witnesses is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway. Accordingly, I&E necessarily reserves the right to supplement its witness list, and to remove witnesses from this list, as necessary to facilitate the development of a full record in this case. The ALJ and all active parties will be notified of any amendments to the I&E witness list.

IV. SCHEDULE

Page 3 of the ALJ's Prehearing Conference Order includes a schedule that will be adopted in the event that parties cannot agree upon a procedural schedule for this case. I&E has engaged in discussions with multiple parties in an attempt to develop a mutually agreeable schedule, but those discussions were, in part, impacted by parties' positions regarding the need for a stay of this case and/or an extension of time in this case and a consensus was not achieved. Accordingly, if this proceeding is not stayed or its statutory

timeline is not otherwise extended, I&E proposes the following schedule² for consideration of the parties and ALJ Jones:

Non-Company Direct	September 4, 2020
Rebuttal	September 15, 2020
Surrebuttal	September 23, 2020
Hearings (Oral Rejoinder)	September 28-29, 2020
Main Briefs	October 6, 2020
Reply Briefs	October 13, 2020
Public Meeting	January 14, 2021

I&E's proposed schedule is intended to ensure that parties have an adequate opportunity to build a comprehensive record in this truncated and complex proceeding. However, I&E recognizes the need for further feedback from all parties and the ALJ; therefore, I&E will stand ready to address that input during the Prehearing Conference and will work with all parties and the ALJ to develop a mutually agreeable schedule.

V. DISCOVERY

On pages 3-4 of the Prehearing Conference Order dated August 3, 2020, ALJ Jones ordered an enumerated list of modifications to the Commission's regulations related to the discovery process. I&E understands, supports, and has adopted those modifications.

² I&E's proposed schedule should not be construed as an abandonment of its position that a stay of this proceeding is appropriate and warranted, as set forth in letter I&E filed in this case on August 13, 2020. Instead, I&E offers its proposal only as a contingency in the event that this case is not stayed or its timeline is not otherwise extended.

VI. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties in an attempt to reach a resolution of any or all issues.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'G. L. Miller', is positioned above the typed name.

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Dated: August 31, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater Inc. pursuant to Sections 507,	:	
1102 and 1329 of the Public Utility Code for	:	Docket No. A-2019-3015173
Approval of its Acquisition of the	:	
Wastewater System Assets of the Delaware	:	
County Regional Water Quality Control	:	
Authority	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated August 31, 2020, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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