



THOMAS, NIESEN & THOMAS, LLC

*Attorneys and Counsellors at Law*

THOMAS T. NIESEN  
Direct Dial: 717.255.7641  
tniesen@tntlawfirm.com

August 31, 2020

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

In re: Docket No. A-2019-3015173  
Application of Aqua Pennsylvania Wastewater, Inc. – DELCORA

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Prehearing Memorandum in accordance with the Further Corrected Prehearing Conference Order dated August 17, 2020. Copies of the Prehearing Memorandum are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)  
The Honorable Angela T. Jones, Administrative Law Judge (via email, w/encl.)  
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Angela T. Jones, Presiding**

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<b>Application of Aqua Pennsylvania Wastewater, Inc., for</b>	<b>:</b>	<b>Docket No. A-2019-3015173</b>
<b>Approval of its Acquisition of Delaware County Regional</b>	<b>:</b>	
<b>Water Quality Control Authority's Wastewater Assets,</b>	<b>:</b>	
<b>inter alia, Pursuant to Sections 507, 1102 and 139 of the</b>	<b>:</b>	
<b>Public Utility Code</b>	<b>:</b>	

**PREHEARING MEMORANDUM OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. ("Aqua") and submits this Prehearing Memorandum in connection with the Call – In Telephone Prehearing Conference scheduled to be held in the above captioned matter on September 2, 2020.

**I. BACKGROUND**

This proceeding concerns the Application of Aqua, filed with the Public Utility Commission ("Commission") on March 3, 2020 for approval of its acquisition of the wastewater system assets of the Delaware County Regional Water Control Authority ("DELCORA") pursuant to Sections 1102 and 1329 of the Public Utility Code ("Code"). The Application also includes a request for approval of contracts, including assignment of contracts, pursuant to Section 507 of the Code.

By Secretarial Letter dated June 11, 2020, the Commission, *inter alia*, conditionally accepted the Application for filing and directed Aqua to serve copies of the Application upon designated entities, to provide individualized notice to affected customers and to publish notice of the filing of the Application in a newspaper of general circulation.

Aqua complied with the requirement of the conditional acceptance letter. The Commission, thereafter, by Secretarial Letter dated July 27, 2020, informed Aqua that it accepted the Application for filing and that the matter would be assigned to the Office Administrative Law Judge for disposition.

Administrative Law Judge Angela T. Jones was assigned to preside over the proceeding. A Call – In Telephone Prehearing Conference was noticed for September 2, 2020.

Judge Jones issued a Further Corrected Prehearing Conference Order on August 17, 2020.<sup>1</sup> Paragraph 7 of the Prehearing Conference Order directs parties to file and serve a prehearing memorandum on or before Noon (12:00 PM) on August 31, 2020.

## **II. LIST OF ISSUES AND AQUA’S POSITION IN REGARD TO THEM**

There are three central issues in this Application proceeding:

### **Issue:**

Is Aqua’s acquisition of the wastewater system assets of DELCORA necessary or proper for the service, accommodation, convenience or safety of the public?

### **Aqua’s Position:**

Aqua’s acquisition of the wastewater system assets of DELCORA is necessary or proper for the service, accommodation, convenience or safety of the public. The Commission should issue certificate(s) of public convenience approving the acquisition.

As summarized in Section X of the Application:

- a. The acquisition is consistent with the Commission’s long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term

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<sup>1</sup> The Further Corrected Prehearing Conference Order, dated August 17, 2020, followed the issuance of an initial Prehearing Conference Order dated August 3, 2020.

viability of the water and wastewater industry.”<sup>2</sup> The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired. Although it does not involve a small system, the Proposed Transaction embodies all of the principles noted in the Commission’s policy statement.

- b. Aqua provides utility service to approximately 35,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the DELCORA wastewater system.<sup>3</sup> Aqua has acquired 15 wastewater systems over the past 10 years. The inherent combining of systems and customers provides stability in the day to day utility operations, in that, these systems do not all require major capital investments at the same time and, therefore, the financial impacts of various discrete projects and investments can be spread over the long term operations of the acquiring utility as a whole.
- c. DELCORA’s customers will benefit by becoming part of a larger-scale, efficiently operated, water and wastewater utility. Aqua has operations in nearby and overlapping service areas and will be able to merge and integrate DELCORA’s customers by folding them into a larger-scale, efficiently operated water and wastewater utility that over time will likely yield further efficiencies and improve long-term viability as envisioned in the Commission policy statement. Aqua is projecting lower operating and maintenance costs that will likely be realized through reductions in cost for wastewater treatment through the investment in the expansion of the WRTP and force main to divert flows to the WRTP from PWD, as well as efficiencies in administrative and general costs, such as insurance, auditing, legal among others.
- d. DELCORA’s customers will also benefit through customer service enhancements and protections provided by Aqua. Aqua has procedures in place under Chapter 14 of the Public Utility Code, 66 Pa. C.S. 1401 *et seq.* and Chapter 56 of the Commission’s regulations, 52 Pa Code Chapter 56.1 *et seq.*, that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. By DELCORA becoming part of a regulated public utility, these protections will be available to DELCORA’s customers. DELCORA low income customers will be able to enroll in Aqua’s Helping Hand program.
- e. The acquisition will benefit Aqua’s existing customers and is significant to Aqua’s existing wastewater platform. The addition of the DELCORA

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<sup>2</sup> Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

<sup>3</sup> As a certificated provider of utility service, Aqua’s fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

customers will create the equivalent size of Aqua PA's Main Division. The addition of the DELCORA Wastewater system will increase Aqua's customer base by 45%. By virtue of the Aqua's larger combined customer base, future infrastructure investments across the Commonwealth driven by normal replacement cycles, emergency repairs, emergency response or compliance with new environmental regulations will be shared at a lower incremental cost per customer for all of Aqua's customers over time.

- f. The Proposed Transaction will not have any immediate impact on the rates of either DELCORA's customers or Aqua's existing customers. DELCORA sets its budget each year prior to December 1 and has increased rates charged to customers in each year. Through the Proposed Transaction, Aqua will implement DELCORA's existing base customer rates, which will remain in effect until Aqua's next base rate case is filed and concluded.
- g. Planned capital projects will provide benefits by removing significant and increasing costs of contributing to PWD's LTCP. The elimination of treatment expense to PWD will result in greater control over treatment costs in the future. By investing capital now to expand the WRTP, Aqua and DELCORA will, in essence, be in control of their own destiny.
- h. In *McCloskey v. Pa. P.U.C.*, No. 1624 C.D. 2017 (2018), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) to support a conclusion that there is a public benefit to a transaction. This same analysis supports the public benefit of this transaction.
- i. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or DELCORA customers. While the increase in rate base may ultimately require an increase in revenue, the hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Aqua is acquiring the DELCORA system at less rate base per customer than its existing systems, which indicates there are economies of scale that will be realized from the transaction. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

- j. DELCORA has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of DELCORA, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The DELCORA system will benefit from the support of wastewater professionals throughout Aqua's organization

**Issue:**

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

**Aqua's Position:**

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) of Gannett Fleming and ScottMadden.

**Issue:**

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

**Aqua's Position:**

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

**III. WITNESSES**

The following statements of written direct testimony were attached as Exhibit U1, Exhibit U2, Exhibit U3, Exhibit V, Exhibit W1, Exhibit W2, Exhibit W3, Exhibit X and Exhibit Y to the Application when it was submitted to the Commission on March 3, 2020.

<u>Application</u>	<u>Aqua Statement</u>	<u>Witness</u>	<u>Subject Matter</u>
Exhibit U1	Statement No. 1	Marc A. Lucca	An Overview of Aqua Pennsylvania Wastewater, Inc.; Overview and Reasons for Transaction; Fitness; and Public Benefits of the Transaction

Exhibit U2	Statement No. 2	William C. Packer	Rate Impact; Implementation of Rates; Public Benefits of the Transaction; and <i>Summary</i> of Public Benefits in the Application
Exhibit U3	Statement No. 3	Erin M. Feeney	Financial and Legal Fitness of Aqua; APA Rate Provision; An Overview of the Section 1329 Process; UVE Fees; and Transaction and Closing Costs
Exhibit V	Statement No. 4	Mark J. Bubel, Sr.	Operations; Combined System; Capital Projects; Technical Fitness; and DEP Requirements
Exhibit W1	Statement No. 5	Robert Willert	Description of DELCORA and Its Wastewater System; Overview of DELCORA's Sale Process; Public Benefits of the Proposed Transaction; DELCORA Customer Trust
Exhibit W2	Statement No. 6	John Pileggi	DELCORA's Rates
Exhibit W3	Statement No. 7	Michael DiSantis	Description of DELCORA's System; Operations; and Environmental Compliance
Exhibit X	Statement No. 8	Harold Walker, III	Gannett Fleming Fair Market Value Appraisal
Exhibit Y	Statement No. 9	Dylan D'Ascendis	ScottMadden Fair Market Value Appraisal

Aqua requests that any contact with witnesses be arranged through Counsel.

Aqua also will submit its Application as an Exhibit in support of Commission approval of the proposed acquisition and the proposed ratemaking rate base. The items listed in Section 1329(d) of the Public Utility Code, including fair market value appraisals of Gannett Fleming, Utility Valuation Expert, and ScottMadden, Utility Valuation Expert, were attached to the Section 1102 Application in accordance with Section 1329(d) when the Application was submitted to the Commission.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify Administrative Law Judge Jones and the parties promptly should Aqua determine that additional witnesses will be called.

#### **IV. LITIGATION SCHEDULE**

Aqua will cooperate with the presiding administrative law judge and the parties to arrive at a mutually acceptable schedule.<sup>4</sup>

#### **V. SETTLEMENT**

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

#### **VI. PROTECTIVE ORDER**

Information marked CONFIDENTIAL was provided with the Application. Aqua filed a Petition for Protective Order on August 31, 2020.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER, INC.**

By 

Thomas T. Niesen  
PA Attorney ID No. 31379  
Thomas, Niesen & Thomas, LLC  
212 Locust Street, Suite 302  
Harrisburg, PA 17101  
tniesen@tntlawfirm.com  
Tel. No. (717) 255-7600

*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: August 31, 2020

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<sup>4</sup> By Order dated August 31, 2020, Chief Administrative Law Judge Rainey extended the statutory suspension period in this case by sixty days or until March 26, 2021, subject to possible reconsideration pursuant to 52 Pa. Code §§ 1.31 and 5.44.



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Angela T. Jones, Presiding**

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<b>Water Quality Control Authority's Wastewater Assets,</b>	<b>:</b>	
<b>inter alia, Pursuant to Sections 507, 1102 and 139 of the</b>	<b>:</b>	
<b>Public Utility Code</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 31<sup>st</sup> day of August 2020 served a true and correct copy of the Prehearing Memorandum of Aqua Pennsylvania Wastewater, Inc., upon the persons and in the manner indicated below:

**VIA ELECTRONIC MAIL**

Gina L. Miller, Prosecutor  
Erika L. McLain, Prosecutor  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
ginmiller@pa.gov  
ermclain@pa.gov

Christine Maloni Hoover  
Erin L. Gannon  
Senior Assistant Consumer Advocates  
Harrison G. Breitman  
Santo G. Spataro  
Assistant Consumer Advocates  
Office of Consumer Advocate  
choover@paoca.org  
egannon@paoca.org  
hbreitman@paoca.org  
sspataro@paoca.org

Erin L. Fure  
Steven C. Gray  
Assistant Small Business Advocates  
Office of Small Business Advocate  
efure@pa.gov  
dasmus@pa.gov

Adeolu A. Bakare, Esq.  
Robert F. Young, Esq.  
Kenneth R. Stark, Esq.  
McNees Wallace & Nurick LLC  
abakare@mcneeslaw.com  
ryoung@mcneeslaw.com  
kstark@mcneeslaw.com

Kenneth D. Kynett, Esq.  
Charles G. Miller, Esq.  
Petrikin, Wellman, Damico, Brown & Petrosa  
kdk@petrikin.com  
cgm@petrikin.com

Scott J. Rubin, Esq.  
scott.j.rubin@gmail.com

Robert W. Scott, Esq.  
rscott@robertwscottpc.com

Thomas Wyatt, Esq.  
Matthew S. Olesh, Esq.  
Obermayer Rebmann Maxwell & Hippel, LLP  
Thomas.Wyatt@obermayer.com  
Matthew.Olesh@obermayer.com

Cynthia Pantages  
C&L Rental Properties, LLC  
cyndipantages@gmail.com

Thomas J. Sniscak, Esq.  
Kevin J. McKeon, Esq.  
Whitney E. Snyder, Esq.  
Melissa A. Chapaska, Esq.  
Hawke McKeon & Sniscak LLP  
tjsniscak@hmslegal.com  
kjmckeon@hmslegal.com  
wesnyder@hmslegal.com  
machapaska@hmslegal.com



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Thomas T. Niesen, Esq.  
PA Attorney ID No. 31379  
*Counsel for Aqua Pennsylvania Wastewater, Inc.*