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December 1, 2020

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg PA 17105-3265

Re: Application of Aqua Pennsylvania Wastewater,  
Inc. pursuant to Sections 507, 1102, and 1329 of  
the Public Utility Code for, inter alia, approval of  
the acquisition of the wastewater system assets of  
the Delaware County Regional Water Quality  
Control Authority, Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed for filing please find the Main Brief of Edgmont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, Trainer Borough, and Upland Borough (collectively "Municipal Protestants") in the above-referenced proceeding.

This document is being served on the Administrative Law Judges and all parties of record. The document was filed electronically with the Commission on this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

Enclosure

cc: Angela Jones, Administrative Law Judge  
F. Joseph Brady, Administrative Law Judge  
All parties of record

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CERTIFICATE OF SERVICE

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I hereby certify that I have this day served a true copy of the Main Brief of Edgmont Township, et al., in Docket No. A-2019-3015173 upon the following parties by electronic mail. Service by first-class mail will be provided to any party that requests such service.

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December 1, 2020  
Date

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Scott J. Rubin, Counsel for  
Edgmont Township, et al.

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, inter alia, approval of	:	
the acquisition of the wastewater system assets of	:	Docket No. A-2019-3015173
the Delaware County Regional Water Quality	:	
Control Authority	:	

**MAIN BRIEF  
OF  
EDGMONT TOWNSHIP  
LOWER CHICHESTER TOWNSHIP  
SOUTHWEST DELAWARE COUNTY MUNICIPAL AUTHORITY  
TRAINER BOROUGH  
UPLAND BOROUGH  
(COLLECTIVELY “MUNICIPAL PROTESTANTS”)**

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Dated: December 1, 2020

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## **I. Statement of the Case**

### **A. Procedural History Related to Municipal Protestants<sup>1</sup>**

On September 17, 2019, Aqua Pennsylvania Wastewater, Inc. (Aqua or Applicant) and the Delaware County Regional Water Quality Control Authority (DELCORA) entered into an Asset Purchase Agreement (APA) that is attached to Aqua's Application as Exhibit B1. The purpose of the APA is for Aqua to purchase various DELCORA assets used to provide wastewater service in portions of Delaware and Chester Counties, and for Aqua to begin providing wastewater service to the public in DELCORA's service territory.

By Secretarial letter dated December 30, 2019, the Pennsylvania Public Utility Commission (Commission) acknowledged receipt of Aqua's Letter/Notice of Licensed Engineer and Utility Valuation Expert Engagement Concerning Acquisition of the DELCORA, Delaware and Chester Counties Sanitary Wastewater Collection and Treatment System, filed on December 26, 2019 at this docket. Aqua requested Commission approval of its acquisition of the wastewater system assets of DELCORA and approval of the ratemaking rate base of these assets as determined by Sections 1102 and 1329 of the Public Utility Code. 66 Pa. C.S. § 1102 and 66 Pa. C.S. § 1329. Aqua also requested approval of contracts, including assignments of contracts pursuant to Section 507 of the Public Utility Code. 66 Pa. C.S. § 507. Aqua sent several requests for extension of time to file the requisite data for the application which were granted.

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<sup>1</sup> The Procedural History is taken from the Order Denying Motion for Summary Judgment dated October 30, 2020, pp. 3-4, except for events occurring after that date.

On July 27, 2020, the Commission by Secretarial Letter accepted the application as complete for review. This matter was assigned to the Office of Administrative Law Judge and ultimately to Administrative Law Judges Angela Jones and F. Joseph Brady.

The following five municipal corporations protested the Application:

- On July 17, 2020, Southwest Delaware County Municipal Authority (SWDCMA) filed a Protest to the Application;
- On August 7, 2020, Upland Borough (Upland) filed a Protest to the Application;
- On August 7, 2020, Lower Chichester Township (Lower Chichester) filed a Protest to the Application;
- On August 17, 2020, Trainer Borough (Trainer) filed a Protest to the Application; and
- On August 21, 2020, Edgmont Township (Edgmont) filed a Protest to the Application.

These municipal corporations are collectively referred to as the Municipal Protestants.

On September 2, 2020, an Initial Prehearing Conference convened where, among other things, a procedural schedule was developed for this proceeding. By Order dated September 4, 2020, the procedural schedule was confirmed.

On September 25, 2020, Municipal Protestants filed a Motion for Summary Judgment. After the receipt of answers filed by Aqua, DELCORA, and Delaware County, Administrative Law Judge Jones denied the motion by order dated October 30, 2020.

Evidentiary hearings were held on November 9 and 10, 2020, via video conference.

This Main Brief is filed on behalf of Municipal Protestants.

**B. Overview of the Proposed Transaction as it Relates to Municipal Protestants<sup>2</sup>**

The Application requests Commission approval of the purchase of DELCORA's assets and assignment to Aqua of the listed contracts of DELCORA.

DELCORA provides retail wastewater service (collection, transmission, and treatment) to approximately 16,000 individual residences and businesses. Application ¶ 8. In addition, DELCORA provides wholesale wastewater service (transmission and treatment) to numerous municipal corporations, as defined at 66 Pa. C.S. § 102 (municipal corporation), that own and operate wastewater collection systems in portions of 49 municipalities. Application ¶ 8.

Wholesale service is provided by DELCORA under contracts with each municipal corporation, copies of which are attached to the Application as the "F" exhibits. The DELCORA assets proposed to be sold to Aqua include physical assets (such as treatment plants, sewer mains, pump stations, and related facilities), and DELCORA's contractual rights under each of the contracts listed in Exhibit 4.15 to the APA and included in the "F" exhibits to the Application. APA Section 2.01.

Aqua's Application seeks a certificate of public convenience (CPC) to provide wastewater service to the entire service territory of DELCORA's service area. Application at 20. DELCORA's right to provide wastewater service in various locations, including in the areas governed by Municipal Protestants, is based on the terms and conditions of the contracts between numerous municipal corporations and DELCORA.

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<sup>2</sup> The Overview of the Proposed Transaction is taken from the Order Denying Motion for Summary Judgment dated October 30, 2020, pp. 1-2.

## **II. Burden of Proof**

As a general matter, as the “proponent of a rule or order,” Aqua bears the burden of proof in this proceeding. 66 Pa. C.S. § 332(a). In particular, the Pennsylvania Supreme Court has held that the applicant in a proceeding under what is now Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, must “demonstrate that the merger will affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972).

Of particular importance to this case, Aqua has the burden of proving that it has the lawful right to acquire the assets listed in the Asset Purchase Agreement (Application Exh. B1). Aqua also has the burden of proving that the exclusion of certain assets from the transaction would not have a material effect on either the transaction or the valuation of the transaction.

## **III. Statement of Questions Involved**

Whether an application for a CPC under Sections 1102 and 1329 should be denied where it purports to involve the purchase of material assets, including contract rights, that the selling party does not have the legal right to sell. (Suggested answer in the affirmative)

Whether an application for a CPC under Sections 1102 and 1329 should be conditioned to require the selling party to have the right to transfer all assets needed to serve the public, including contract rights, prior to closing. (Suggested answer in the affirmative)

Whether permitting an acquiring utility under Section 1329 to include in rate base the value of contributed property, when such property was contributed by municipal corporations pursuant to contracts that predated the enactment of Section 1329, would be

an unconstitutional impairment of a contractual obligation under Article I, Section 17, of the Pennsylvania Constitution. (Suggested answer in the affirmative)

## **IV. Summary of Argument**

The claims of the Municipal Protestants are based on a well-established legal (and common-sense) principle: you can't sell what you don't own. Each of the Municipal Protestants has a contract with DELCORA that restricts, and in some cases prohibits, DELCORA from selling the underlying assets or assigning the contract to a third party. Neither the Commission, Aqua, nor DELCORA has the unilateral right to ignore or void those contract rights.

Importantly, those contract rights existed when Aqua and DELCORA entered into the Asset Purchase Agreement. They continued to exist throughout the pendency of this case, up through the close of the record. They will continue to exist up through and beyond March 26, 2021, the statutory deadline (as extended due to the pandemic emergency) for the Commission to issue a final decision in this proceeding.

Municipal Protestants had filed a Motion for Summary Judgment on September 25, 2020, alleging that because of their undisputed contract claims, their contracts and underlying assets could not be sold to Aqua, as a matter of law. Administrative Law Judge Jones denied the motion by Order dated October 30, 2020, solely because she found that additional facts were necessary to determine the extent of Municipal Protestants' rights and how their exercise of those rights would affect the proposed transaction. That Order agrees with the relevant legal principle. In the Administrative Law Judge's words:

Additionally, if any municipal corporation should determine that it will exercise its rights, which are protected by contract with DELCORA, then DELCORA does

not possess the rights to transfer the facilities or the customers it serves to Aqua at this time. Therefore, the valuation of the assets and future income included in utility valuation expert appraisals included in the Application, the service territory of this Application and the rates to be charged by Aqua in the requested territory for direct retail and wholesale customers may not be correct as presented, specifically Aqua's tariff at Exhibit G of the Application will need to be modified. In the opinion of the undersigned, this situation would require the Application to be amended and resubmitted, as appropriate, and the statutory timeframe would begin anew.

Order Denying Motion for Summary Judgment (Oct. 30, 2020), pp. 10-11.

The record in this proceeding closed on November 10, 2020. The record establishes that these contract rights exist, Municipal Protestants have the right to exercise them, and Municipal Protestants have taken and will continue to take actions to ensure that their rights are protected. Based on this uncontested evidence, the Commission must prohibit Aqua from acquiring any assets protected by Municipal Protestants' contracts, including the contracts themselves, unless and until Municipal Protestants consent to the assignment or amendment of those contracts.

As explained more fully below, Municipal Protestants represent a material part of the proposed transaction. For example, in 2019, DELCORA's total revenues from providing wastewater service were approximately \$59,818,000. Municipal Protestants collectively provided \$5,453,000, or approximately 9.1%, of DELCORA's total service revenues.

If the Commission determines that those assets are material to the transaction, then the Application must be denied. If the Commission determines that those assets are not significant enough to fundamentally alter the transaction, then the Commission must impose conditions that protect the contract rights of each of Municipal Protestants, including prohibiting closing of the transaction unless and until DELCORA has the legal right to transfer those assets and contracts to Aqua.

Finally, based on the specific facts of this case, the Commission cannot permit Aqua to include in rate base millions of dollars' worth of assets that were contributed by Municipal Protestants to DELCORA. While Sections 1329(c)(2) and 1329(d)(5) purport to permit this to occur, interpreting the statute in that manner would result in an unconstitutional impairment of certain of Municipal Protestants' contracts with DELCORA that predated the enactment of Section 1329.

## **V. Argument**

### **A. Section 1329**

#### ***1. Introduction***

Act 12 of 2016 added Section 1329 to the Public Utility Code, 66 Pa. C.S. § 1329. Act 12 was enacted on April 14, 2016, and became effective on June 12, 2016.<sup>3</sup> As the Commission knows, Section 1329 is an optional method of valuation that can be used by a water or wastewater utility that purchases a “selling utility.” The statute defines “selling utility” as a “water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm’s-length transaction between the buyer and seller.” 66 Pa. C.S. § 1329(g).

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<sup>3</sup> Act 12 of 2016, P.L. 76, § 2.

## **2. Section 1329 - Legal Principles**

The details of the proposed transaction between Aqua and DELCORA raise two important legal issues: (1) whether the Commission can approve a transaction that involves the sale of property to a public utility when the seller does not have the right to sell that property; and (2) whether it is constitutional to permit Aqua to include in rate base the full purchase price of certain DELCORA assets without regard to how DELCORA obtained those assets.

### **a. The Commission cannot approve a transaction where the seller does not have the right to sell the property**

The Commission cannot approve a CPC where the seller does not have the legal right to sell the property that is subject to the transaction. While this seems to be an obvious principle, there actually is an appellate case that raised precisely that set of facts.

Almost 60 years ago, the Superior Court decided *Bobtown Sewage Co. v. Pa. PUC*, 195 Pa. Super. 330, 171 A.2d 625 (1961). In that case, a coal company was attempting to sell a sewer system it constructed to serve housing for approximately 300 of its employees, and for which it did not charge a fee. The proposed acquiring company was to be a new public utility that would charge a fee for service, and thus would be regulated by this Commission. While the application for a CPC was pending before the Commission, however, a municipal authority initiated proceedings to take the sewer system by eminent domain. The eminent domain proceeding was being litigated in civil court while approval of the sale and the granting of a CPC were pending before the Commission.

The Commission denied the application for a CPC because the buyer lacked the ability to acquire the property needed to provide the requested service. As the Superior Court summarized, the Commission rejected the application “upon the ground that it [the buyer] did



not have and was not in a position to acquire the facilities necessary to render the proposed service.” Id., 195 Pa. Super. at 332, 171 A.2d at 626.

The Superior Court affirmed the Commission’s decision holding: “since the plaintiff is not now in a position to render the service, there is ample evidence to sustain the order of the commission and it must be affirmed.” Id. The court noted that future events may cause this to change; for example, if the court were to rule that eminent domain were improper. If that were to happen and “the plaintiff is again in a position to acquire the facilities, it may file a new application. Until that time, obviously no certificate can be granted ...” Id., 195 Pa. Super. at 333, 171 A.2d at 626. As the court concluded: “All we have before us is a situation in which the applicant cannot presently render the service.” Id.<sup>4</sup>

b. The Commission must interpret Section 1329’s provisions concerning the treatment of contributed property so that they do not impair certain Municipal Protestants’ contracts

Municipal Protestants recognize that Section 1329(d)(5) states that the “original source of funding for any part of the water and sewer assets of the selling utility shall not be relevant to determine the value of said assets.” Further, Section 1329(c)(2) states that the “ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.”

Those provisions, however, must be interpreted to not violate the Pennsylvania Constitution. Specifically, one of Pennsylvania’s primary rules of statutory construction is that

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<sup>4</sup> The Dunkard-Bobtown Municipal Authority was ultimately successful in acquiring the assets (see *Balazick v. Dunkard-Bobtown Municipal Authority*, 414 Pa. 182, 199 A.2d 430 (1964)).

“the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.” 1 Pa. C.S. § 1922(3).

The Pennsylvania Constitution prohibits the General Assembly from enacting “any law impairing the obligation of contracts.” Pa. Const. Art. I, § 17. If Section 1329 is interpreted to permit Aqua to ignore the contractual obligations it claims to be acquiring from DELCORA, then Section 1329 would be unconstitutional as applied.<sup>5</sup>

The Pennsylvania Supreme Court has adopted a three-part test to determine whether a statute violates the impairment of contract clause of Pa. Const. Art. I, § 17. Specifically, in *Foster v. Mut. Fire*, 531 Pa. 598, 615 n.4, 614 A.2d 1086, 1094 (1992), cert. denied, 506 U.S. 1080, 113 S. Ct. 1047, 122 L. Ed. 2d 356 (1993), the Court described the test as follows:

In determining when state law may impair a contractual right, the United States Supreme Court in *Energy Reserves Group, Inc. v. Kansas Power and Light*, 459 U.S. 400, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983), established a three-part test. The threshold inquiry is to determine whether the state statute in reality has operated to substantially impair a contractual relationship. *Id.* at 411, 103 S.Ct. at 704. Should it be determined that a substantial impairment has occurred, the state must set forth a legitimate and significant public purpose. *Id.* at 412-13, 103 S.Ct. at 704-05. Once that purpose is identified, the final inquiry concerns whether the adjustment of contractual rights is reasonable and of a nature appropriate to the public purpose justifying the legislation's adoption; however, if the state is not a contracting party, deference is given to the state's enunciated purpose. *Id.*

... As our impairment of contract provision, Art. I, § 17 of the Pennsylvania Constitution, mirrors that of the United States Constitution, we are guided by the United States Supreme Court's analysis in *Energy Reserves v. Kansas Power & Light*.

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<sup>5</sup> Aqua and DELCORA were given notice that the constitutionality of Aqua's proposed application of Section 1329(d)(5) was an issue in this case. See the Protests filed by SWDCMA (§ 23 and 24.F) and Lower Chichester (§ 22 and 23.F). Further, those Protests were served on the Attorney General of Pennsylvania as required by the Commonwealth Attorneys Act, 71 P.S. § 732-204.

### 3. *Aqua's Application*

- a. DELCORA does not have the right to sell, and Aqua does not have the right to buy, various assets associated with serving Municipal Protestants

Each of the five Municipal Protestants has a contract with DELCORA. Each contract is listed in Schedule 4.15 to the APA as a contract to be assigned by DELCORA to Aqua.

Complete copies of each contract were filed by Aqua as part of the "F" exhibits to its Application. In particular, the following contracts govern the relationship between DELCORA and each of the Municipal Protestants:

- Edgmont: DELCORA provides retail service to a portion of Edgmont known as the Crum Creek Sewer District. The terms and conditions of that service are governed by an agreement between Edgmont and DELCORA dated October 17, 2012, which is appended to the Application as Exhibit F81 ("the DELCORA/Edgmont Contract").
- Lower Chichester: Lower Chichester is a wholesale customer of DELCORA. Lower Chichester owns the wastewater collection system in the township and transports wastewater to DELCORA for treatment pursuant to the terms of a contract entered into by Lower Chichester and DELCORA dated April 12, 1977, which is attached to the Application as Exhibit F84 ("DELCORA/Lower Chichester Contract").
- SWDCMA: SWDCMA is a wholesale customer of DELCORA. SWDCMA owns the wastewater collection system in its service area and transports wastewater to DELCORA for treatment pursuant to the terms of a contract dated December 21, 2009, as amended on December 17, 2013 (collectively

“DELCORA/SWDCMA Contract”). The contracts are included in the record as Application Exhibits F110 and F111.

- Trainer: DELCORA provides retail service to residents and businesses in Trainer. On August 9, 2005, Trainer entered into an Agreement of Sale and Service which, *inter alia*, provided for the sale of Trainer’s wastewater collection system to DELCORA (“the DELCORA/Trainer Contract”), subject to Trainer retaining certain rights. This agreement is appended to the Application as Exhibit F137.
- Upland: DELCORA provides retail service to residents and businesses in Upland. On July 22, 1975, Upland entered into a contract to sell its wastewater collection system to DELCORA, subject to Upland retaining certain rights. The agreement was subsequently amended on January 18, 1983, December 21, 1983, and February 12, 1985 (collectively "the DELCORA/Upland Contract"). The agreement and all amendments are appended to the Application as Exhibits F139 through F142.

Each of Municipal Protestants’ contracts contains provisions that, through various means, prohibit DELCORA from assigning the contract to a third party or otherwise ceasing the provision of wastewater service. Specifically, the contracts contain the following provisions:

Edgmont. The DELCORA/Edgmont Contract remains in effect until October 2037. Municipal Protestants Exh. 2, p. 1 no. 4. Under that contract, if DELCORA attempts to sell the collection system that serves portions of Edgmont, Edgmont has the right to purchase the collection-system assets in the township for the remaining balance on the loan between Edgmont and DELCORA. Id., pp. 2-3 no. 10. The proposed transaction between Aqua and DELCORA would constitute such a sale of the Edgmont collection system. Id., p. 3 no. 11. The contract

does not contain any time limit on when Edgmont can exercise that right, so presumably Edgmont may exercise that right at any time prior to closing.

In other words, DELCORA does not have the right to sell the Edgmont collection system to Aqua, unless Edgmont waives its right of first refusal. Edgmont has not done so. Indeed, the testimony of Edgmont witness Reiner succinctly summarizes Edgmont's position: "Edgmont Township is asking the PUC to reject the proposed deal between Aqua and DELCORA. DELCORA does not have the right to sell the property it uses to serve us, it does not have the right to assign our contract to Aqua, and it does not have the right to stop operating the system." Edgmont St. 1, p. 13.

Lower Chichester. The DELCORA/Lower Chichester Contract remains in effect until April 2022. Municipal Protestants Exh. 2, p. 6 no. 7. Under that contract, Lower Chichester is a wholesale customer of DELCORA. Id., no. 2. The contract states that, except for the assignment of revenues for financing purposes, "the Agreement may not be voluntarily assigned by either party without the consent of the other." Application Exh. F84, p. 23, § 8.13; Municipal Protestants Exh. 2, pp. 6-7, no. 8. Lower Chichester has not consented to the assignment. Municipal Protestants Exh. 2, p. 7, no. 9; Tr. 283-284 (Aqua witness Packer agreeing that Lower Chichester has not consented to the transfer). Thus, as of the close of the record, DELCORA does not have the right to sell or assign its contract with Lower Chichester to Aqua.

Lower Chichester's position is clear. Mr. Possenti testified: "We are asking the PUC to reject the proposed deal between Aqua and DELCORA. DELCORA does not have the right to sell the property it uses to serve the township, it does not have the right to assign our contract to Aqua, and it does not have the right to let someone else own or operate the system without our approval." Lower Chichester St. 1, p. 9. Further, on November 4, 2020, Lower Chichester filed

suit against DELCORA in the Delaware County Court of Common Pleas to enforce the terms of its contract with DELCORA.<sup>6</sup>

SWDCMA. The DELCORA/SWDCMA Contract remains in effect until December 2034. The contract states that, except for the assignment of revenues for financing purposes, “this Agreement may not be voluntarily assigned by either party without the consent of the other.” Application Exh. F110, p. 9, § 9.11. SWDCMA has not consented to the assignment. Municipal Protestants Exh. 2, p. 9, no. 10; Tr. 465 (DELCORA witness Pileggi agreeing that SWDCMA has not consented to the transfer). Thus, as of the close of the record, DELCORA does not have the right to sell or assign its contract with SWDCMA to Aqua. Further, on November 3, 2020, SWDCMA filed suit against DELCORA in the Delaware County Court of Common Pleas to enforce the terms of its contract with DELCORA.<sup>7</sup>

Trainer. The DELCORA/Trainer Contract was entered into in August 2005 and remains in effect today. Municipal Protestants Exh. 2, p. 12 nos. 3 and 6. Under that contract, if DELCORA “ceases to operate the system” it purchased from Trainer in 2005, the collection system in Trainer “shall revert to Seller’s [Trainer’s] ownership, unless Seller declines to accept such reversion, in which case they shall revert to the County of Delaware or any other agency, as may be dictated by operation of law.” Application Exh. F137, p. 11, § 12.4; Municipal

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<sup>6</sup> Lower Chichester Township v. Delaware County Regional Water Quality Control Authority, et al., Delaware County Court of Common Pleas Docket No. CV-2020-007552 (filed Nov. 4, 2020).

<sup>7</sup> Southwest Delaware County Municipal Authority v. Delaware County Regional Water Quality Control Authority, et al., Delaware County Court of Common Pleas Docket No. CV-2020-007469 (filed Nov. 3, 2020).

Protestants Exh. 2, p. 13, no. 9. Moreover, the contract provides that it “shall not be assigned by either party.” Application Exh. F137, p. 11, § 13.3; Municipal Protestants Exh. 2, p. 13, no. 10.

In other words, DELCORA does not have the right to assign the Trainer contract to Aqua. Further, if DELCORA stops operating the system, as would occur if the system is sold to Aqua, then the collection system in Trainer automatically reverts to Trainer’s ownership.<sup>8</sup>

Upland. The DELCORA/Upland Contract remains in effect until November 2022. Under that contract, if DELCORA “ceases to operate the system” in Upland, the collection system in Upland “shall revert to the Seller’s [Upland’s] ownership rather than to the County of Delaware or any other agency.” Application Exh. F139, unnumbered p. 15, § 13.6; Municipal Protestants Exh. 2, p. 16, no. 10. Moreover, the contract provides that it “shall not be assigned by either party.” Application Exh. F137, unnumbered p. 16, § 14.3; Municipal Protestants Exh. 2, p. 16, no. 11. Further, on November 6, 2020, Upland filed suit against DELCORA in the Delaware County Court of Common Pleas to enforce the terms of its contract with DELCORA.<sup>9</sup>

In other words, DELCORA does not have the right to assign the Upland contract to Aqua. Further, if DELCORA stops operating the system, as would occur if the system is sold to Aqua, then the collection system in Upland automatically reverts to Upland’s ownership.

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<sup>8</sup> DELCORA’s Executive Director, Mr. Willert, testified that the treatments plants, pump stations, transmission network, collection systems, and related facilities all would be transferred to Aqua at closing. Tr. 428-432. He also testified that DELCORA would no longer have any permits to “operate any aspect of the wastewater system after closing.” Tr. 438.

<sup>9</sup> Upland Borough v. Delaware County Regional Water Quality Control Authority, et al., Delaware County Court of Common Pleas Docket No. CV-2020-007596 (filed Nov. 6, 2020).

In summary, Municipal Protestants' contract rights are clear and unequivocal. There is no question that the contracts cannot be transferred to Aqua without Municipal Protestants' consent or, in several instances, without amending the contracts. Thus, as the record stands, the Superior Court's holding in *Bobtown* must be applied: DELCORA does not have the right to sell the property and Aqua does not have the right to acquire it. The Commission, therefore, lacks the authority to approve the transaction that involves the provision of service using assets the buyer cannot acquire.

b. Sections 2.06 and 12.01(c) of the APA do not cure this fundamental defect in the Application

Aqua and DELCORA have tried to concoct a convoluted scheme to try to cure this fundamental defect in the Application. Specifically, the APA contains a provision that appears to contemplate that certain DELCORA assets (including contracts) might not be assignable to Aqua. Section 2.06 of the APA states, in relevant part:

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a), Section 2.06(b) and Section 12.01(c), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a "Nonassignable Asset"). Following the Closing, the Seller and Buyer shall use its commercially reasonable efforts (at the cost and expense of the Party that is responsible for compliance with such Law or obtaining such consent, authorization, approval or waiver), and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; provided, however, that in no event shall Buyer be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, the Seller shall



sell, transfer, assign, convey and deliver to Buyer the relevant Acquired Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Any applicable sales, transfer and other similar Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid one-half by Buyer and one-half by the Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer and the Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as leasing/subleasing, licensing/sublicensing or contracting/subcontracting) to provide to the Parties the economic and, to the extent permitted under Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its obligations with respect thereto, and so long as the Seller transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under Law and the terms of any applicable contract that constitutes a Nonassignable Asset, as agent or subcontractor for the Seller, pay, perform and discharge the liabilities and obligations of the Seller thereunder from and after the Closing Date, but only to the extent that such liabilities and obligations would constitute Assumed Liabilities if the applicable consent or approval had been obtained on or prior to the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under Law, the Seller shall hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by the Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

Application Exhibit B1, § 2.06 (emphases added).

That provision, however, is not capable of being implemented. The contracts between DELCORA and each of Municipal Protestants require DELCORA to own and operate the wastewater treatment system. Specifically:

- DELCORA/Edgmont Contract: “the Crum Creek Sewer District System will be financed, designed, constructed, installed, owned, operated, maintained and repaired by DELCORA.” Application Exhibit F81, p. 1. “DELCORA represents and warrants to the Township that DELCORA has and will maintain the ability to treat and discharge the Township Capacity through the DELCORA System and

the Crum Creek Sewer District System, during the Term of this Agreement.” Id., § 12. “During the Term of this Agreement, DELCORA shall without limitation, maintain the sewers from any main up to the curb line.” Id., § 13.

- DELCORA/Lower Chichester Contract: “DELCORA agrees to provide at all times during the term of this Agreement ... sufficient conveyance and treatment capacity for all Wastewater emanating from Municipality ...” Application Exhibit F84, § 2.03. “During the term hereof, DELCORA will continuously operate, maintain and repair the Western Regional Treatment Plant and Marcus Hook Conveyance System (subject to Section 8.04) or cause them to be maintained and repaired so they will be at all times in efficient operating condition and in compliance with the standards prescribed by all appropriate regulatory agencies for the purpose of this Agreement.” Id., § 6.01.
- DELCORA/SWDCMA Contract: “DELCORA will then operate and maintain ‘The System’ in accordance with the provisions set forth in this Agreement.” Application Exhibit F110, p. 1. “After completion of the construction of the Pump Station and the Force Main, DELCORA will exercise best efforts to continuously operate, maintain and repair ‘The System’ or cause it to be maintained and repaired so that it will be at all times in efficient operating condition and in compliance with the standards prescribed by all appropriate regulatory agencies for the purpose of this Agreement.” Id., § 7.01.
- DELCORA/Trainer Contract: “If at any time in the future during the term of this Section 12 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the Sewer Properties, such as they may exist at

such time, shall revert to Seller's ownership ..." Application Exhibit F137, § 12.4.

- DELCORA/Upland Contract: "If, at any time in the future, during the term of this Section 13 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real Property ... shall revert to the Seller's ownership ..." Application Exhibit F139, § 13.6. "It is the intent of the parties that DELCORA will acquire, own, maintain, and operate the property of the Seller, and supply sewage treatment and collection service in accordance with the provisions of this Agreement ..." Id., § 14.5.

Importantly, while some of the contract provisions quoted above contemplate DELCORA contracting for maintenance or repair of the system, none of the contracts permit DELCORA to cease the actual operation of the system. There is no mechanism in those agreements to permit a third party to own and operate the system, but create the legal fiction that DELCORA retains those responsibilities.

Aqua and DELCORA acknowledged that the APA is based on ownership and operation of the entire DELCORA system being transferred to Aqua at closing. Tr. 428-432 (DELCORA witness Willert); Municipal Protestants Exh. 9 (Aqua witness Bubel). Further, Aqua is requesting the issuance of a CPC to do precisely that -- acquire all of DELCORA's physical facilities and contract rights used in the provision of wastewater service, including the right to own and operate those facilities to provide service to the public. See Application ¶¶ 3, 10, 27-29, and 72-73.

If that transfer of ownership and operation were to occur, however, that would immediately create the reversionary condition in the Trainer and Upland contracts. In addition,

the sale of the Edgmont assets (regardless of operation) gives rise to Edgmont's right of first refusal to purchase those assets. Thus, in all three of those retail service areas, Aqua lacks the right to acquire the assets needed to provide service.

The wholesale customers' rights are equally clear. The DELCORA/Lower Chichester and DELCORA/SWDCMA contracts cannot be assigned to Aqua without consent, and that consent has not been given. Indeed, as noted above, both Lower Chichester and SWDCMA have filed suit in Common Pleas court to try to enforce their rights under their respective contracts.

Further, the APA itself recognizes an important exception to Section 2.06. Section 12.01 of the APA states: "The obligation of Buyer to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before Closing, of the following conditions, any one or more of which may be waived in writing by Buyer in its sole discretion: ...

(c) Notwithstanding Section 2.06, the Assigned Contracts set forth on Schedule 12.01(c), shall be amended on terms acceptable to Buyer in its reasonable discretion." Application Exhibit B1, § 12.01(c). The contract between DELCORA and SWDCMA is one of the Assigned Contracts listed on Schedule 12.01(c). Thus, at least as to that contract, Aqua and DELCORA recognized that the transaction could not occur unless the contract is amended to permit Aqua to provide service.

Aqua witness Packer was asked on November 9, the day before the record closed: "Do you know what procedure will be used to provide service to Southwest Delaware County Municipal Authority if it does not consent to the transfer?" His answer was simple: "I don't know that." Tr. 287.

In summary, DELCORA lacks the ability to transfer, and Aqua lacks the ability to acquire, the contract rights used to serve more than 2,600 retail customers in Edgmont, Trainer, and Upland.<sup>10</sup> This represents approximately one-sixth of DELCORA's retail customer base.<sup>11</sup>

Further, DELCORA lacks the ability to transfer, and Aqua lacks the ability to acquire, the contract rights needed to provide wholesale service to Lower Chichester and SWDCMA.

Collectively, DELCORA's rights under those five contracts provided in excess of \$5.4 million of DELCORA's 2019 revenues, more than 9% of its total revenues from providing wastewater service, as shown in the following table.

<b>Service Area</b>	<b>2019 Revenues<sup>12</sup></b>
Edgmont	\$1,136,000
Lower Chichester	485,000
SWDCMA	2,909,000
Trainer	213,000
Upland	710,000
Subtotal for Municipal Protestants	\$5,453,000
DELCORA total service revenues	\$59,818,000
Municipal Protestants as % of total	9.1%

Municipal Protestants submit that depriving Aqua of more than one-sixth of the retail customers and more than 9% of its projected revenues constitutes a material change in the proposed transaction. The Commission cannot just assume that removing such a substantial

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<sup>10</sup> Municipal Protestants Exh. 10 shows that DELCORA has 734 customers in Edgmont, 685 customers in Trainer, and 1,236 customers in Upland, totaling 2,655 customers.

<sup>11</sup> DELCORA serves 15,411 retail customers. Municipal Protestants Exh. 10.

<sup>12</sup> 2019 revenues are from Application Exh. J3, unnumbered pages 4-6, rounded to the nearest \$1,000.

portion of revenues and retail customers would not affect the purchase price, valuation, or other aspects of the proposed transaction.<sup>13</sup>

Importantly, the Commission does not need to guess about what Aqua and DELCORA would consider to be a material change in the contract. That question is answered by Section 12.01(c) of the APA. That provision exempts six contracts from the general we'll-try-to-make-it-work provision for "non-assignable assets" in Section 2.06 of the APA. Rather, Section 12.01(c) considers each of those six agreements, representing the largest wholesale customers on DELCORA's system, to be so important that Aqua and DELCORA require each of the contracts to be modified on terms acceptable to Aqua before the transaction can close. Those contracts, and DELCORA's 2019 revenues from each contract, are shown in the following table.

<b>Wholesale Contract in Schedule 12.01(c)</b>	<b>2019 Revenues<sup>14</sup></b>	<b>% of DELCORA Service Revenues<sup>15</sup></b>
Central Delaware County Authority	\$9,620,000	16.1%
Darby Creek Joint Authority	\$18,781,000	31.4%
Muckinipates Authority	\$4,352,000	7.3%
Southern Delaware County Authority	\$2,136,000	3.6%
Middletown Township	\$1,939,000	3.2%
SWDCMA	\$2,909,000	4.9%

Municipal Protestants submit that Aqua and DELCORA, through this provision, have established the minimum threshold for materiality, which is approximately 3.2% of

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<sup>13</sup> Mr. Walker went to great lengths to explain why removing the collection systems in Edgmont, Trainer, and Upland would not affect his valuation estimate. Tr. 397-400. He did not discuss, however, the effect on his valuation of removing one of DELCORA's largest wholesale customers, SWDCMA.

<sup>14</sup> 2019 revenues are from Application Exh. J3, unnumbered pages 4-5, rounded to the nearest \$1,000.

<sup>15</sup> The percent of DELCORA's service revenues is the 2019 revenues from each service area divided by DELCORA's total service revenues for 2019 of \$59,818,000. Application Exh. J3, unnumbered page 6.

DELCORA's 2019 revenues. The collective revenues from the five Municipal Protestants' contracts is nearly three times that threshold.

Consistent with the *Bobtown* precedent, therefore, the Commission must deny the Application. Aqua lacks the ability to acquire material portions of DELCORA's system. Neither this Commission, Aqua, nor DELCORA has the right to abrogate Municipal Protestants' contract rights.

c. Section 1329's provisions concerning the treatment of contributed property must be interpreted in this case so that they do not impair certain Municipal Protestants' contracts

The contracts between certain Municipal Protestants and DELCORA create a binding, long-term contractual relationship under which a municipality, other government agency, customer, or developer gave property to DELCORA at no cost to DELCORA. For example, the contract between DELCORA and SWDCMA contains the following ratesetting provision:

4.01 Construction Costs/Debt Service. SOUTHWEST will pay costs associated with the design and construction of the infrastructure needed to convey the flow to the WRTP [Western Region Treatment Plant] amortized over a period to twenty (20) years ...

4.02 Service Charge. SOUTHWEST agrees to pay DELCORA in each calendar year or portion thereof during which this Agreement is in effect ... a service charge for the wastewater treatment and transportation services rendered by DELCORA to SOUTHWEST for wastewater emanating from SOUTHWEST. The service charge shall be based upon rates which are uniform for DELCORA's wholesale users. Costs may include pro rata shares of administrative and general expenses, costs of effective and reasonable operation, maintenance, repair, renewal, and replacement, ordinary improvements, costs of construction, costs of operating and maintaining flow monitoring and sampling equipment, all amounts required to carry and amortize temporary and bonded indebtedness including required payments to reserve funds, and reasonable reserves.

Application, Exh. F110, p. 3.

In other words, SWDCMA agreed to pay the entire cost of connecting its system to DELCORA, which DELCORA agreed to finance over a period of 20 years. That cost of connecting amounted to \$10.3 million. SWDCMA St. 1, p. 13. In exchange for that contribution of property, DELCORA committed to provide service at rates that excluded any return on that contributed property (other than SWDCMA's repayment of the debt).

DELCORA witness Pileggi testified that DELCORA received contributed property from SWDCMA and that this is part of the property DELCORA proposes to sell to Aqua. Tr. 466. SWDCMA witness Nelson estimated the value of that contributed property to be in the range of \$2.4 to \$2.5 million. SWDCMA St. 1 at 13. DELCORA witness Pileggi accepted that as being a reasonable estimate. Tr. 469.

Similarly, the contract between DELCORA and Edgmont provides that customers in Edgmont were responsible for financing the construction of the Crum Creek Sewer District in Edgmont. Edgmont and DELCORA agreed where possible to have the system "constructed by private developers ... without reimbursement for subsequent connections." They also agreed that Edgmont would try to obtain grant funds that DELCORA could use to help pay for construction of the system. Application, Exh. F81, pp. 2-3.

Edgmont and DELCORA were very successful in these endeavors. The Edgmont system cost \$11.3 million to construct. Municipal Protestants Exh. 2 (DELCORA admissions), p. 3 no. 14. Edgmont customers paid \$2.8 million in tap-in fees. Id., no. 15. Edgmont obtained almost \$900,000 in state grants that were paid over to DELCORA to fund the construction. Id., no. 16. Customers and developers have made additional contributions, resulting in the balance owed on that original \$11.3 million cost being reduced to just \$4.0 million as of the end of 2020. Id., p. 4



no. 20. In other words, DELCORA has received contributed property in Edgmont valued at \$7.3 million. Edgmont St. 1, p. 11.

Importantly, as is the case with the SWDCMA contract, the Edgmont contract contains a detailed ratesetting provision that limits the charges to Edgmont customers to system operating costs plus the costs of constructing the Crum Creek system “amortized over the life of, and at the rate of interest charged upon such financing as may be obtained by DELCORA for the construction of the Crum Creek Sewer District.” Application, Exh. F81, pp. 8-9.

In other words, Municipal Protestants have contracts that delineate how that contributed property will affect the rates paid by customers. In fact, both Edgmont and SWDCMA’s contracts require ongoing contributions of property to DELCORA through customers’ payment of principal through their rates and, in the case of Edgmont, through contributions from future developers.

DELCORA is now proposing to sell that contributed property to Aqua. Aqua’s and DELCORA’s valuation experts have included the full value of that property (ignoring the source of the property) in their analyses. Tr. 373-377 (Aqua’s valuation witness, Mr. Walker); Tr. 489 (DELCORA’s valuation witness, Mr. D’Ascendis).

Aqua is proposing to include the entire purchase price in rate base, without regard to the source of the property being acquired. Municipal Protestants Exh. 3 (Aqua’s admissions), p. 3 no. 7; p. 10 no. 9; p. 14 no. 9; and p. 18 no. 9. Further, Aqua has admitted that, because of the language in Section 1329, it will not be deducting from rate base the value of any contributions received by DELCORA, including grants, tap-in fees, third party reimbursements, or contributions made by customers. Id., p. 3 nos. 8-9; p. 4 nos. 10-11; p. 7 no. 9; p. 11 no. 10; p. 15 no. 10; p. 19 no. 10.

Granting Aqua's request to include the full purchase price in rate base, making no deduction for the value of contributed property, would violate the express terms of SWDCMA's and Edgmont's contracts and significantly impair the value of those contracts.

The very purpose of those contracts was to establish a long-term relationship between the SWDCMA or Edgmont and DELCORA. Under that relationship, SWDCMA and Edgmont made (and are continuing to make) millions of dollars of capital contributions to DELCORA. In exchange for those contributions, DELCORA promises to limit the charges to SWDCMA and Edgmont to the costs of operating the system, with no charges for the contributed property (other than paying the initial financing costs).

Aqua's proposal would violate those contracts, charging SWDCMA and Edgmont customers a full return of and on the very same property that customers (or developers or government agencies) already paid for and gave to DELCORA.

As an initial matter, there is no question that the contracts predated the enactment of Section 1329. The SWDCMA contract is dated September 21, 2009. The Edgmont contract is dated October 17, 2012. Section 1329 was enacted through Act 12 of 2016, effective June 12, 2016.

As discussed in Section V.A.2.b, above, the Pennsylvania Supreme Court has established a three-part test to determine whether a statute causes an unconstitutional impairment of a contract. Applying the three-part test demonstrates that the proposed application of Section 1329 to include the value of contributed property in Aqua's rate base would, in fact, be an unconstitutional impairment of SWDCMA's and Edgmont's contracts.

First, the impairment of contract rights is substantial. As demonstrated above, SWDCMA has contributed approximately \$2.5 million worth of property to DELCORA. Edgmont has contributed approximately \$7.3 million worth of property DELCORA. Aqua would require Edgmont customers and SWDCMA to pay a return on that property even though it already has been paid for by customers. Obviously, rates of return and tax rates vary over time, but even assuming a minimal pre-tax cost of capital of 7%, the proposed impairment of SWDCMA's contract would cost SWDCMA at least \$175,000 per year (\$2.5 million x 7%) for many years into the future. This compares to SWDCMA's 2019 revenues of \$2,909,000. Application, Exh. J3, unnumbered p. 4. That is, it would increase SWDCMA's costs by at least 6%, and perhaps by much more.

The effect on Edgmont would be even more severe. A 7% return on \$7.3 million in contributed property would total approximately \$511,000 per year. In 2019, Edgmont residents and businesses paid DELCORA a total of \$1.1 million. Application, Exh. J3, unnumbered p. 5. Thus, Aqua's proposal would increase Edgmont's costs by at least 45%.

Second, there is no "legitimate and significant" public purpose, as it applies to the current transaction, that would justify the impairment. Neither Section 1329 nor Act 12 as a whole<sup>16</sup> contains any statement of legislative purpose or the goals of the legislation. Thus, it is necessary to look to the legislative history to determine whether there is a "legitimate and significant" public purpose to the legislation. Rep. Godshall presented and defended the legislation during

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<sup>16</sup> Act 12 consisted of only two sections. Section 1 contains the text of new Section 1329. Section 2 has the effective date.

the floor vote on the legislation. House Legis. J., Session of 2015 No. 71 (Oct. 19, 2015), 1773-1775.<sup>17</sup> It appears that the purpose of the legislation is to “establish[] the true value of a facility” and to make it feasible for municipalities that do not “want to make the improvements or has not made the improvements” to “get rid of the asset.” Id., pp. 1774-1775.

That rationale does not apply to this transaction. DELCORA’s system is a large, well-functioning, properly maintained system. See Application Exh. D (Engineering Assessment), p. 1 (PDF p. 5) (“The overall condition of the WRTP [Western Regional Treatment Plant] and 3 remote WWTPs [wastewater treatment plants] is good. Conditions of the pump stations varies [sic] from poor to very good based on the age and/or completion of recent improvements.”) Any improvements that are needed to the system can be made by DELCORA and financed at rates that are significantly lower than Aqua’s cost of capital. Thus, the proposed transaction would not appear to be the type of transaction the legislation was designed to encourage.

Third, even if there were a legitimate and significant public purpose that could be affected by protecting SWDCMA’s and Edgmont’s contract rights, protecting the contract rights of certain Municipal Protestants would not significantly thwart that public purpose. There is no evidence that DELCORA would be unable to continue operating as an independent entity. In fact, the evidence demonstrates that DELCORA is on sound financial footing. For example, DELCORA’s 2018 audited financial statement shows that it generated net cash flow from operations of \$15.9 million and ended the year with cash and investments totaling more than \$110 million. Application Exh. J2, pp. 8 and 12. Thus, even if protecting SWDCMA’s and

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<sup>17</sup> A copy of these pages is attached to this brief as Appendix E.

Edgmont's contract rights would result in the failure of the entire transaction (and there is no evidence to that effect), there would be no harm to the public.

Further, Aqua's valuation witness, Mr. Walker, explained that the allowed rate base treatment of the assets, including the treatment of customer contributions, did not affect the valuation determination. Tr. 379-380.

It appears, therefore, that reducing Aqua's rate base by the value of property contributed to DELCORA by Edgmont and SWDCMA would not materially alter the valuation of the assets Aqua proposes to acquire, and would avoid the unconstitutional contract impairment. Such a result would be consistent with the public interest, give Edgmont and SWDCMA the benefit of their contracts with DELCORA, and be consistent with the legislature's apparent intention to "establish[] the true value of a facility" proposed to be acquired.

#### ***4. Challenges to UVE Appraisals***

Municipal Protestants are not addressing any issues in this section.

#### ***5. Conclusion***

For the reasons set forth above, the Commission cannot approve the transfer of assets, including contracts, DELCORA uses to serve Municipal Protestants. DELCORA does not have the unilateral right to assign or transfer those assets, and Aqua does not have the right to purchase them. The Commission does not have the authority to approve the transfer of assets the selling party does not have the right to sell. That principle was firmly established nearly 60 years ago in the *Bobtown* case and it remains the law today. Nothing in Section 1329 or any other provision of law changes that fundamental principle.

Moreover, even if it were permissible for DELCORA to sell the assets used to serve Municipal Protestants, the Commission must remove from Aqua's rate base the value of property contributed by SWDCMA and Edgmont to DELCORA. In that way, an unconstitutional impairment of SWDCMA's and Edgmont's contracts with DELCORA can be avoided while still fulfilling the intention of the legislature.

**B. Section 1102/1103 Standards – Public Interest**

Municipal Protestants are not addressing any issues in this section.

**C. Recommended Conditions**

As discussed above, Municipal Protestants submit that their contracts constitute a material aspect of the proposed transaction. The inability of DELCORA to transfer those material assets to Aqua should lead to the Commission denying Aqua's Application for a CPC.

If, however, the Commission disagrees and finds that Municipal Protestants' contracts are not a material aspect of the proposed transaction, or that Section 2.06 of the APA can be lawfully applied without impinging on Municipal Protestant's contract rights, then the Commission's approval of the transaction should include two conditions:

- After closing of the transaction, Aqua and DELCORA shall continue to abide by all terms and conditions of Municipal Protestants' unassigned contracts, including but not limited to all ratesetting and service-related provisions.
- In order to avoid an unconstitutional impairment of Municipal Protestants' contracts, Aqua's initial rate base from the acquisition of the DELCORA assets shall be calculated as the authorized purchase price less the amount of contributions received by DELCORA as of the date of closing from Southwest Delaware County Municipal Authority and customers in Edgmont Township.

(The estimated amounts of those contributions as of year-end 2020 are approximately \$2.5 million from SWDCMA and approximately \$7.3 million related to Edgmont).

#### D. Section 507 Approvals

##### *1. Legal Principles*

Section 507 of the Public Utility Code requires that any contract between a municipal corporation and a public utility (except for a contract for the provision of utility service at tariffed rates) must be “filed with the commission at least 30 days prior to its effective date.” 66 Pa. C.S. § 507. Further, if the Commission decides to investigate such a contract, then the contract cannot take effect until the Commission “grants its approval thereof.” *Id.*

##### *2. Municipal Protestants’ Contracts*

###### a. Introduction

Aqua’s Application includes the following request:

Aqua requests that the Commission, to the extent necessary, issue certificates of filing, pursuant to Section 507, for the Asset Purchase Agreement dated September 17, 2019 and First Amendment to the Asset Purchase Agreement dated February 24, 2020 by and among DELCORA and Aqua and for the assignment of the 163 contracts identified on Schedule 4.15 of the APA and provided with this Application as Exhibits FI through F163.

Application ¶ 73 (emphasis added).

In order for Section 507 to apply, however, there must first be “a contract between a public utility and a municipal corporation.” As explained more fully below, there are no such contracts between Aqua and any of the Municipal Protestants.

Municipal Protestants submit, therefore, that the Commission must deny Aqua’s request to issue certificates of filing for the Municipal Protestant’s contracts in Exhibits F81 (Edgmont),

F84 (Lower Chichester), F109 to F111 (SWDCMA), F135 and F137 (Trainer), and F139 to F142 (Upland). Those are all contracts between each of the Municipal Protestants and DELCORA. Aqua is not a party to any of those contracts and the Municipal Protestants have not consented to the assignment of any of those contracts to Aqua. The Commission, therefore, cannot accept those contracts for filing under Section 507.

b. Edgmont Township's Contract

The essential facts concerning the contract between Edgmont and DELCORA are not in dispute. Indeed, nearly all of those facts are conclusively established through DELCORA's responses to Edgmont's requests for admissions (Municipal Protestants Exh. 2, pp. 1-5),<sup>18</sup> other exhibits, or the unrebutted testimony of Edgmont witness Reiner. Edgmont St. 1.

Briefly, DELCORA provides retail service to 734 customers in Edgmont Township, pursuant to a 2012 contract between Edgmont and DELCORA. Municipal Protestants Exh. 2, p. 1 no. 2; Municipal Protestants Exh. 10. The contract remains in effect until October 2037. Municipal Protestants Exh. 2, p. 1 no. 4. Under that contract, if DELCORA attempts to sell the collection system that serves portions of Edgmont, Edgmont has the right to purchase the collection-system assets in the township for the remaining balance on the loan between Edgmont and DELCORA. Id., pp. 2-3 no. 10. The proposed transaction between Aqua and DELCORA would constitute such a sale of the Edgmont collection system. Id., p. 3 no. 11. The contract does

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<sup>18</sup> The Commission's Rules of Practice and Procedure provide that a matter admitted in response to a request for admissions "is conclusively established ... for the purpose of the pending action only and is not an admission by [the party] for another purpose." 52 Pa. Code § 5.350(f).



not contain any time limit on when Edgmont can exercise that right, so presumably Edgmont may exercise that right at any time prior to closing. Application Exh. F81, § 22(c).

In other words, DELCORA does not have the right to sell the Edgmont collection system to Aqua, unless Edgmont waives its right of first refusal. Edgmont has not done so. Indeed, the testimony of Edgmont witness Reiner succinctly summarizes Edgmont's position: "Edgmont Township is asking the PUC to reject the proposed deal between Aqua and DELCORA. DELCORA does not have the right to sell the property it uses to serve us, it does not have the right to assign our contract to Aqua, and it does not have the right to stop operating the system." Edgmont St. 1, p. 13.

c. Lower Chichester Township's Contract

The essential facts concerning the contract between Lower Chichester and DELCORA are not in dispute. Those facts are conclusively established through DELCORA's responses to Lower Chichester's requests for admissions (Municipal Protestants Exh. 2, pp. 6-7), other exhibits, or the unrebutted testimony of Lower Chichester witness Possenti. Lower Chichester St. 1.

Briefly, Lower Chichester and DELCORA are parties to a 1977 contract that remains in effect until April 2022. Municipal Protestants Exh. 2, p. 6 nos. 3 and 6. Under that contract, Lower Chichester is a wholesale customer of DELCORA. *Id.*, no. 2. Lower Chichester provides approximately 0.8% of DELCORA's revenues.<sup>19</sup> The contract states that, except for the

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<sup>19</sup> Application Exh. J3 shows that Lower Chichester's 2019 revenues were \$485,000, out of DELCORA's total service revenues of \$59,818,000.

assignment of revenues for financing purposes, “the Agreement may not be voluntarily assigned by either party without the consent of the other.” Application Exh. F84, p. 23, § 8.13; Municipal Protestants Exh. 2, pp. 6-7, no. 8. Lower Chichester has not consented to the assignment. Municipal Protestants Exh. 2, p. 7, no. 9; Tr. 283-284 (Aqua witness Packer agreeing that Lower Chichester has not consented to the transfer). Thus, as of the close of the record, DELCORA does not have the right to sell or assign its contract with Lower Chichester to Aqua.

Lower Chichester’s position is clear. Mr. Possenti testified: “We are asking the PUC to reject the proposed deal between Aqua and DELCORA. DELCORA does not have the right to sell the property it uses to serve the township, it does not have the right to assign our contract to Aqua, and it does not have the right to let someone else own or operate the system without our approval.” Lower Chichester St. 1, p. 9. Further, on November 4, 2020, Lower Chichester filed suit against DELCORA in the Delaware County Court of Common Pleas to enforce the terms of its contract with DELCORA.<sup>20</sup>

d. Southwest Delaware County Municipal Authority’s Contract

The essential facts concerning the contract between SWDCMA and DELCORA are not in dispute. Those facts are conclusively established through DELCORA’s responses to SWDCMA’s requests for admissions (Municipal Protestants Exh. 2, pp. 8-11), other exhibits, or the unrebutted testimony of SWDCMA witness Nelson. SWDCMA St. 1.

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<sup>20</sup> Lower Chichester Township v. Delaware County Regional Water Quality Control Authority, et al., Delaware County Court of Common Pleas Docket No. CV-2020-007552 (filed Nov. 4, 2020).

Briefly, SWDCMA and DELCORA are parties to a contract dated December 21, 2009, that was amended on December 17, 2013. Municipal Protestants Exh. 2, p. 8 nos. 3-4. The contract as amended remains in effect until December 2034. Id., no. 8. Under that contract, SWDCMA is a wholesale customer of DELCORA. Id., no. 2. SWDCMA provides approximately 4.9% of DELCORA's revenues.<sup>21</sup> The contract states that, except for the assignment of revenues for financing purposes, "this Agreement may not be voluntarily assigned by either party without the consent of the other." Application Exh. F110, p. 9, § 9.11. SWDCMA has not consented to the assignment. Municipal Protestants Exh. 2, p. 9, no. 10; Tr. 465 (DELCORA witness Pileggi agreeing that SWDCMA has not consented to the transfer). Thus, as of the close of the record, DELCORA does not have the right to sell or assign its contract with SWDCMA to Aqua. Further, on November 3, 2020, SWDCMA filed suit against DELCORA in the Delaware County Court of Common Pleas to enforce the terms of its contract with DELCORA.<sup>22</sup>

e. Trainer Borough's Contract

The essential facts concerning the contract between Trainer and DELCORA are not in dispute. Those facts are conclusively established through DELCORA's responses to Trainer's requests for admissions (Municipal Protestants Exh. 2, pp. 12-14) and other exhibits.

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<sup>21</sup> Application Exh. J3 shows that SWDCMA's 2019 revenues were \$2,909,000, out of DELCORA's total service revenues of \$59,818,000.

<sup>22</sup> Southwest Delaware County Municipal Authority v. Delaware County Regional Water Quality Control Authority, et al., Delaware County Court of Common Pleas Docket No. CV-2020-007469 (filed Nov. 3, 2020).

Briefly, DELCORA provides retail service to 685 customers in Trainer Borough pursuant to an August 2005 contract that remains in effect today. Municipal Protestants Exh. 10; Municipal Protestants Exh. 2, p. 12 nos. 3 and 6. Under that contract, if DELCORA “ceases to operate the system” it purchased from Trainer in 2005, the collection system in Trainer “shall revert to Seller’s [Trainer’s] ownership, unless Seller declines to accept such reversion, in which case they shall revert to the County of Delaware or any other agency, as may be dictated by operation of law.” Application Exh. F137, p. 11, § 12.4; Municipal Protestants Exh. 2, p. 13, no. 9. Moreover, the contract provides that it “shall not be assigned by either party.” Application Exh. F137, p. 11, § 13.3; Municipal Protestants Exh. 2, p. 13, no. 10.

In other words, DELCORA does not have the right to assign the Trainer contract to Aqua. Further, if DELCORA stops operating the system, as would occur if the system is sold to Aqua, then the collection system in Trainer automatically reverts to Trainer’s ownership.

f. Upland Borough’s Contract

The essential facts concerning the contract between Upland and DELCORA are not in dispute. Those facts are conclusively established through DELCORA’s responses to Upland’s requests for admissions (Municipal Protestants Exh. 2, pp. 15-16) and other exhibits.

Briefly, DELCORA provides retail service to 1,236 customers in Upland Borough pursuant to a July 1975 contract that remains in effect until November 2022. Municipal Protestants Exh. 10; Municipal Protestants Exh. 2, p. 15 nos. 3 and 7-8. Under that contract, if DELCORA “ceases to operate the system” in Upland, the collection system in Upland “shall revert to the Seller’s [Upland’s] ownership rather than to the County of Delaware or any other agency.” Application Exh. F139, unnumbered p. 15, §. 13.6; Municipal Protestants Exh. 2, p. 16, no. 10. Moreover, the contract provides that it “shall not be assigned by either party.”

Application Exh. F137, unnumbered p. 16, § 14.3; Municipal Protestants Exh. 2, p. 16, no. 11. Further, on November 6, 2020, Upland filed suit against DELCORA in the Delaware County Court of Common Pleas to enforce the terms of its contract with DELCORA.<sup>23</sup>

In other words, DELCORA does not have the right to assign the Upland contract to Aqua. Further, if DELCORA stops operating the system, as would occur if the system is sold to Aqua, then the collection system in Upland automatically reverts to Upland's ownership.

g. Conclusion

In conclusion, there are no contracts between Municipal Protestants and Aqua. Municipal Protestants have binding contracts with DELCORA that prohibit the assignment of those contracts to Aqua or anyone else -- in some instances, this is an absolute prohibition of assignment; in others, it prohibits assignment without express written consent. Municipal Protestants have not consented to an assignment of those contracts and have not entered into any new contracts with Aqua. Thus, those contracts -- specifically, Application Exhibits F81 (Edgmont), F84 (Lower Chichester), F109 to F111 (SWDCMA), F135 and F137 (Trainer), and F139 to F142 (Upland) must be removed from the list of contracts that Aqua asks to be treated as filed under Section 507.

## **VI. Conclusion with Requested Relief**

For the reasons set forth above, Edgmont Township, Lower Chichester Township, Southwest Delaware County Municipal Authority, Trainer Borough, and Upland Borough

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<sup>23</sup> Upland Borough v. Delaware County Regional Water Quality Control Authority, et al., Delaware County Court of Common Pleas Docket No. CV-2020-007596 (filed Nov. 6, 2020).

respectfully request the Commission to deny the Application for a CPC filed by Aqua. Denial of the Application is required because of Aqua and DELCORA's failure to amend or assign agreements between DELCORA and Municipal Protestants. Without such amendments or assignments, Aqua will not have the lawful right to provide service in significant portions of DELCORA's service area.

In the alternative, if the Commission disagrees and finds that Municipal Protestants' contracts are not a material aspect of the proposed transaction, or that Section 2.06 of the APA can be lawfully applied without impinging on Municipal Protestant's contract rights, then the Commission's approval of the transaction should include two conditions:

- After closing of the transaction, Aqua and DELCORA shall continue to abide by all terms and conditions of Municipal Protestants' unassigned contracts, including but not limited to all ratesetting and service-related provisions.
- In order to avoid an unconstitutional impairment of Municipal Protestants' contracts, Aqua's initial rate base from the acquisition of the DELCORA assets shall be calculated as the authorized purchase price less the amount of contributions received by DELCORA as of the date of closing from Southwest Delaware County Municipal Authority and customers in Edgmont Township. (The estimated amounts of those contributions as of year-end 2020 are approximately \$2.5 million from SWDCMA and approximately \$7.3 million related to Edgmont).

Finally, Application Exhibits F81 (Edgmont), F84 (Lower Chichester), F109 to F111 (SWDCMA), F135 and F137 (Trainer), and F139 to F142 (Upland) must be removed from the list of contracts that Aqua asks to be treated as filed under Section 507.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

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Counsel for Municipal Protestants

Dated: December 1, 2020

## **Appendix A: Municipal Protestants' Sponsored Testimony and Exhibits**

<b>Exhibit</b>	<b>Description</b>	<b>Admitted</b>
Municipal Protestants Exh. 1	DELCORA response to OCA III-12	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 2	DELCORA admissions	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 3	Aqua admissions	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 4	DELCORA response to KCC I-32	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 5	DELCORA response to KCC II-12	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 6	Aqua and DELCORA response to SWDCMA I-2	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 7	Aqua and DELCORA response to Upland I-7	11/10/2020 (Tr. 516)
Municipal Protestants Exh. 8	Aqua response to SWDCMA I-4 DELCORA response to SWDCMA I-8 Aqua and DELCORA response to SWDCMA I-9 DELCORA response to SWDCMA I-10 Aqua response to I&E I-1 Aqua response to OCA II-22	11/10/2020 (Tr. 470)
Municipal Protestants Exh. 9	Aqua response to SPMT III-16	11/10/2020 (Tr. 444)
Municipal Protestants Exh. 10	DELCORA response to Upland II-1	11/10/2020 (Tr. 470)
Edgmont St. 1	Direct testimony of Samantha Reiner	11/10/2020 (Tr. 516)
Lower Chichester St. 1	Direct testimony of Joseph Possenti, Jr., with Sch. JP-1	11/10/2020 (Tr. 516)
SWDCMA St. 1	Direct testimony of Cecelia Nelson, with Sch. CN-1	11/10/2020 (Tr. 516)
Upland St. 1	Direct testimony of Michael Ciach	11/10/2020 (Tr. 516)



## **Appendix B: Proposed Findings of Fact**

### Status of Contracts

1. Aqua has not entered into any contracts with Edgmont Township (Edgmont) and Edgmont has not agreed to an assignment of its contract with DELCORA. Edgmont St. 1, p. 13; Municipal Protestants Exh. 2, p. 2 no. 9.

2. Aqua has not entered into any contracts with Lower Chichester Township (Lower Chichester) and Lower Chichester has not agreed to an assignment of its contract with DELCORA. Lower Chichester St. 1, p. 9; Municipal Protestants Exh. 2, p. 7 no. 9.

3. Aqua has not entered into any contracts with Southwest Delaware County Municipal Authority (SWDCMA) and SWDCMA has not agreed to an assignment of its contract with DELCORA. Tr. 465; Municipal Protestants Exh. 2, p. 9 no. 10.

4. Aqua has not entered into any contracts with Trainer Borough (Trainer) and Trainer's contract with DELCORA does not permit either party to assign it. Trainer has not agreed to amend its contract with DELCORA to permit an assignment.. Municipal Protestants Exh. 2, p. 13 nos. 10-11.

5. Aqua has not entered into any contracts with Upland Borough (Upland) and has not agreed to an assignment of its contract with DELCORA. Municipal Protestants Exh. 2, p. 16 nos. 11-12.

### Edgmont

6. DELCORA provides retail service to 734 customers in a portion of Edgmont known as the Crum Creek Sewer District. Municipal Protestants Exh. 10.

7. Retail service in Edgmont is provided pursuant to a contract between Edgmont and DELCORA dated October 17, 2012. The contract is appended to the Application as Exhibit F81

(“the DELCORA/Edgmont Contract”). Municipal Protestants Exh. 2, p. 1 (DELCORA Responses to Edgmont Township’s Requests for Admissions, Set I, no. 2.).

8. The DELCORA/Edgmont Contract provides for residents of the Crum Creek Sewer District of Edgmont to be served as retail customers of DELCORA. Id., no. 1.

9. The facilities serving the Crum Creek Sewer District were constructed by DELCORA at an original cost of approximately \$11.3 million and entered service on or about February 1, 2016. Id., p. 3, nos. 13 and 14.

10. The entire cost of the collection system in Edgmont was, or is scheduled to be, contributed to DELCORA through a combination of grants, customer or developer contributions, and an obligation of Edgmont customers to pay the remaining balance on a loan from DELCORA. Edgmont St. 1, pp. 9-11; Municipal Protestants Exh. 2, pp. 3-4 nos. 15-19.

11. As of the end of 2020, the remaining balance on the loan from DELCORA to Edgmont is estimated to be \$4,002,364. Municipal Protestants Exh. 2, p. 4, no. 20.

12. The DELCORA/Edgmont Contract has an initial term of 25 years which expires on October 16, 2037, subject to Edgmont’s options to further extend the agreement. Id., p. 1, no. 4.

13. The DELCORA/Edgmont Contract is currently in effect. Id., no. 6.

14. DELCORA cannot assign the DELCORA/Edgmont Contract (except for an assignment of revenues for financing purposes) without Edgmont’s consent. Id., p. 2, no. 8.

15. Edgmont has not consented to the assignment of its contract to Aqua. Id., no. 9.

16. The DELCORA/Edgmont Contract prevents DELCORA from selling the Crum Creek Sewer District facilities without prior written approval of Edgmont. Application Exhibit F81, ¶ 22(c).

17. If DELCORA attempts to sell the facilities serving the Crum Creek Sewer District in Edgmont, Edgmont has a right of first refusal to purchase the facilities for the remaining balance on debt incurred by DELCORA to construct the facilities. Municipal Protestants Exh. 2, pp. 2-3, no. 10.

18. The APA constitutes an attempt by DELCORA to sell the facilities serving the Crum Creek Sewer District in Edgmont. Id., p. 3, no. 11.

19. The DELCORA/Edgmont Contract does not have a deadline by which Edgmont must exercise its right of first refusal. Application Exhibit F81, § 22(c).

20. Edgmont has not consented to the sale of the Crum Creek Sewer District facilities by DELCORA, and has not yet determined if it will exercise its right of first refusal to purchase the facilities. Edgmont St. 1.

Lower Chichester

21. DELCORA provides wholesale service to Lower Chichester for which Lower Chichester paid approximately \$485,000 in 2019. Application Exh. J3.

22. Wholesale service to Lower Chichester is provided pursuant to a contract between Lower Chichester and DELCORA dated April 12, 1977. The contract is appended to the Application as Exhibit F84 (“the DELCORA/Lower Chichester Contract”). Municipal Protestants Exh. 2, p. 6 no. 3.

23. The DELCORA/Lower Chichester Contract has an initial term of 45 years which expires on April 11, 2020, subject to renewal for an additional 50 years if both parties agree. Id., p. 6, no. 7.

24. The DELCORA/Lower Chichester Contract is currently in effect. Id., no. 6.

25. DELCORA cannot assign the DELCORA/Lower Chichester Contract (except for an assignment of revenues for financing purposes) without Lower Chichester's consent. Id., pp. 6-7 no. 8.

26. Lower Chichester has not consented to the assignment of its contract to Aqua. Id., p. 7 no. 9.

#### SWDCMA

27. DELCORA provides wholesale service to SWDCMA for which SWDCMA paid approximately \$2,909,000 in 2019. Application Exh. J3.

28. Wholesale service to SWDCMA is provided pursuant to a contract between SWDCMA and DELCORA dated December 21, 2009, which was amended on December 17, 2013. The contract and amendment are appended to the Application as Exhibits F110 and F111, respectively (together the "DELCORA/SWDCMA Contract"). Municipal Protestants Exh. 2, p. 8 nos. 3-4.

29. The DELCORA/SWDCMA Contract has an initial term of 25 years which expires on December 20, 2034, subject to renewal by either party for an additional 25 years. Id., no. 8.

30. The DELCORA/SWDCMA Contract is currently in effect. Id., no. 7.

31. DELCORA cannot assign the DELCORA/SWDCMA Contract (except for an assignment of revenues for financing purposes) without SWDCMA's consent. Id., p. 9 no. 9.

32. SWDCMA has not consented to the assignment of its contract to Aqua. Id., no. 10.

#### Trainer

33. DELCORA provides retail service to 685 customers in Trainer, including Trainer Borough. Municipal Protestants Exh. 10; Municipal Protestants Exh. 2, p. 12 no. 1.

34. On August 9, 2005, Trainer entered into an Agreement of Sale and Service which, *inter alia*, provided for the sale of its wastewater collection system to DELCORA ("the DELCORA/Trainer Contract"), which is appended to the Application as Exhibit F137. Municipal Protestants Exh. 2, p. 12 no. 3.

35. The DELCORA/Trainer Contract is currently in full force and effect. Id. no. 6.

36. The Contract states that if DELCORA fails to operate the wastewater system, then the collection system in Trainer reverts to Trainer's ownership, unless Trainer declines to take ownership in which case the Trainer system reverts to the County of Delaware or any other agency, as may be dictated by law. Id., p. 13 no. 9; Application Exhibit F137 § 12.4.

37. The Contract prohibits either party from assigning its interest in the Contract. Municipal Protestants Exh. 2, p. 13 no. 10.

38. Trainer and DELCORA have not amended the Contract since 2005. Id. no. 11.

39. Trainer and DELCORA have not entered into an agreement permitting the assignment of either party's interest in the Contract. Id., no. 12.

#### Upland

40. Upland provides retail services to 1,236 customers in Upland, including Upland Borough. Municipal Protestants Exh. 10; Municipal Protestants Exh. 2, p. 15 no. 1.

41. On July 22, 1975, Upland entered into a contract to sell its wastewater collection system to DELCORA, which was subsequently amended on January 18, 1983, December 21, 1983, and February 12, 1985 (collectively "the DELCORA/Upland Contract"), which documents are appended to the Application as Exhibits F139 through F142. Id., nos. 3-4.

42. The DELCORA/Upland Contract is currently in effect. Id., no. 7.

43. The current term of the DELCORA/Upland Contract runs until November 17, 2022, continuing thereafter as long as DELCORA is in existence unless either party gives a one-year notice of termination. Id., no. 8.

44. The Contract states that if DELCORA fails to operate the wastewater system, then the collection system in Upland reverts to Upland's ownership. Id., p. 16 no. 10; Application Exhibit F139 § 13.6.

45. DELCORA's rights and obligations under the DELCORA/Upland Contract cannot be assigned without the consent of Upland. Municipal Protestants Exh. 2, p. 16 no. 11.

46. DELCORA has not received Upland's consent to assign the DELCORA/Upland Contract to Aqua. Id., no. 12.

#### Materiality of Municipal Protestants' Agreements

47. In 2019, Edgmont retail customers provided DELCORA with revenues of approximately \$1,136,000, representing approximately 1.9% of DELCORA's annual service revenues of approximately \$59,818,000. Application Exhibit J3, unnumbered pages 5-6.

48. In 2019, Lower Chichester provided DELCORA with wholesale revenues of approximately \$485,000, representing approximately 0.8% of DELCORA's annual service revenues of approximately \$59,818,000. Application Exhibit J3, unnumbered pages 4 and 6.

49. In 2019, SWDCMA provided DELCORA with wholesale revenues of approximately \$2,909,000, representing approximately 4.9% of DELCORA's annual service revenues of approximately \$59,818,000. Application Exhibit J3, unnumbered pages 4 and 6.

50. In 2019, Trainer retail customers provided DELCORA with revenues of approximately \$213,000, representing approximately 0.4% of DELCORA's annual service revenues of approximately \$59,818,000. Application Exhibit J3, unnumbered pages 4 and 6.

51. In 2019, Upland retail customers provided DELCORA with revenues of approximately \$710,000, representing approximately 1.2% of DELCORA's annual service revenues of approximately \$59,818,000. Application Exhibit J3, unnumbered pages 4 and 6.

52. Collectively, then, Municipal Protestants accounted for approximately \$5,453,000 of DELCORA's revenues in 2019, representing approximately 9.1% of DELCORA's annual service revenues.

53. The APA requires six contracts to be amended to Aqua's satisfaction as a condition to closing. Application Exh. B1 § 12.01(c).

54. The smallest of those contracts represents approximately 3.2% of DELCORA's revenues from providing service. Application Exh. J3.

55. DELCORA and Aqua consider a contract or series of contracts to be material to the transaction if they represent at least 3.2% of DELCORA's service revenues.

56. Collectively, the five contracts between Municipal Protestants and DELCORA are material to the proposed transaction.

#### DELCORA's Contractual Duty to Operate the System

57. The DELCORA/Edgmont Contract requires DELCORA to own, operate, maintain, and repair the collection system in Edgmont. Application Exh. F81, p. 1.

58. The DELCORA/Lower Chichester Contract requires DELCORA to continuously operate, maintain, and repair the Western Regional Treatment Plant and Marcus Hook Conveyance System. Application Exhibit F84 § 6.01.

59. The DELCORA/SWDCMA Contract requires DELCORA to operate and maintain the portions of the transmission network and pump station that serve SWDCMA, and to use its best

efforts to continuously operate, maintain, and repair that system. Application Exh. F110, p.1 and § 7.01.

60. The DELCORA/Trainer Contract states that if DELCORA stops operating the system, then the collection system in Trainer reverts to Trainer's ownership. Application Exh. F137 § 12.4.

61. The DELCORA/Upland Contract states that the parties intend for DELCORA to own, maintain, and operate the collection system in Upland, and that if DELCORA stops operating the system, then the collection system in Upland reverts to Upland's ownership. Application Exh. F139 §§ 14.5 and 13.6.

62. Some of the contracts between DELCORA and Municipal Protestants permit DELCORA to contract with a third party to maintain or repair the system, but none of the contract permit DELCORA to outsource the operation of the system.

#### DELCORA's Contractual Obligations Concerning Contributed Property

63. DELCORA's contract with SWDCMA requires SWDCMA to pay the debt service on the facilities constructed to serve SWDCMA, amortized over a period of 20 years. Application Exh. F110, §§ 4.01-4.02.

64. SWDCMA has paid approximately \$2.5 million in principal on that debt, with approximately \$7.8 million remaining to be paid. SWDCMA St. 1, p. 13; Tr. 469.

65. DELCORA's contract with Edgmont requires customers or developers in Edgmont to pay the debt service on the facilities constructed to serving Edgmont. Application Exh. F81, pp. 2-3.

66. The Edgmont system cost \$11.3 million to construct. Municipal Protestants Exh. 2, p. 3 no. 14.



67. Edgmont customers have paid \$2.8 million in tap-in fees toward the debt principal. Id., no. 15.

68. Edgmont obtained almost \$900,000 in state grants that were paid to DELCORA to help fund the construction. Id., no. 16.

69. Customers and developers have made additional contributions, resulting in the balance owed on the original \$11.3 million debt being reduced to approximately \$4.0 million as of year-end 2020. Id., p. 4 no. 20.

70. As of the end of 2020, customers, developers, and other third parties have contributed \$7.3 million toward the cost of the Edgmont system. Edgmont St. 1, p. 11.

71. The agreement between Edgmont and DELCORA restricts DELCORA to charging Edgmont customers for the debt service on the construction loan. Application Exh. F81, pp. 8-9.

The APA Violates Municipal Protestants' Contracts with DELCORA

72. The APA is based on Aqua owning and operating the entire DELCORA system at closing. Tr. 428-432; Municipal Protestants Exh. 9.

73. Aqua's Application requests Commission approval of the ownership and operation of all of DELCORA's facilities to provide wastewater service to the public in the entirety of DELCORA's service area. Application ¶¶ 3, 10, 27-29, and 72-73.

74. Aqua's Application cannot be granted, and closing cannot occur, as long as one or more of Municipal Protestants have not either consented to the assignment of, or amended, their contracts with DELCORA.

75. The APA requires SWDCMA's contract to be amended to Aqua's satisfaction prior to closing. Application Exh. B1 § 12.01(c).

76. Aqua and DELCORA do not have a plan to serve SWDCMA if SWDCMA does not consent to the transfer. Tr. 287.

77. Aqua is proposing to include the entire purchase price in rate base, without regard to the source of the property being acquired. Municipal Protestants Exh. 3, p. 3 no. 7; p. 10 no. 9; p. 14 no. 9; and p. 18 no. 9.

78. Aqua does not plan to deduct from rate base the value of any property contributed by customers, developers, or third parties to DELCORA. Id., p. 3 nos. 8-9, p. 4 nos. 10-11; p. 7 no. 9; p. 11 no 10; p. 15 no. 10; and p. 19 no. 10.

Condition of DELCORA

79. DELCORA's system is properly functioning and well maintained. Application Exh. D, p. 1.

80. DELCORA is a financially stable municipal authority, generating net cash flow from operations of \$15.9 million in 2018 and having (as of December 31, 2018) more than \$110 million in cash and investments. Application Exh. J2, pp. 8 and 12.

## **Appendix C: Proposed Conclusions of Law**

1. Aqua bears the burden of proof in this proceeding. 66 Pa. C.S. § 332(a).
2. Aqua must “demonstrate that the merger will affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972).
3. Section 507 of the Public Utility Code requires that any contract between a municipal corporation and a public utility (except for a contract for the provision of utility service at tariffed rates) must be “filed with the commission at least 30 days prior to its effective date.” 66 Pa. C.S. § 507.
4. The contracts between DELCORA and Municipal Protestants in Exhibits F81 (Edgmont), F84 (Lower Chichester), F109 to F111 (SWDCMA), F135 and F137 (Trainer), and F139 to F142 (Upland) are not contracts between a public utility and a municipal corporation and, therefore, cannot be lawfully filed with the Commission under Section 507.
5. Aqua does not have any contracts with Municipal Protestants that can be lawfully filed with the Commission pursuant to Section 507.
6. DELCORA does not have the lawful right to assign to Aqua DELCORA’s contracts with Municipal Protestants in Exhibits F81 (Edgmont), F84 (Lower Chichester), F109 to F111 (SWDCMA), F135 and F137 (Trainer), and F139 to F142 (Upland).
7. DELCORA does not have the right to sell the Crum Creek Sewer District facilities in Edgmont to Aqua.
8. DELCORA does not have the right to sell the facilities used to serve Lower Chichester without Lower Chichester’s consent.
9. DELCORA does not have the right to sell the facilities used to serve SWDCMA without

SWDCMA's consent.

10. DELCORA does not have the right to sell the collection system in Trainer.

11. DELCORA does not have the right to sell the collection system in Upland.

12. The Commission cannot issue a CPC for a proposed transaction where the seller does not have the legal right to sell some or all of the property that would be used to serve the public.

*Bobtown Sewage Co. v. Pa. PUC*, 195 Pa. Super. 330, 171 A.2d 625 (1961).

13. The Pennsylvania Constitution prohibits the General Assembly from enacting a law that impairs the obligation of contracts in existence when the law is passed. Pa. Const. Art. I, § 17.

14. The Pennsylvania Supreme Court has adopted a three-part test to determine whether a statute constitutes a prohibited impairment of an existing contract: (1) whether the statute substantially impairs a contractual relationship; (2) whether the state sets forth a legitimate and significant public purpose; and (3) whether the adjustment of contract rights is reasonable and appropriate to the public purpose underlying the legislation. *Foster v. Mut. Fire*, 531 Pa. 598, 614 A.2d 1086, cert. denied, 506 U.S. 1080, 113 S.Ct. 1047, 122 L.Ed.2d 356 (1993).

15. Interpreting Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, to require Aqua to ignore the contributions of property made by Edgmont customers and developers would significantly impair the contract between Edgmont and DELCORA.

16. Interpreting Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, to require Aqua to ignore the contributions of property made by SWDCMA would significantly impair the contract between SWDCMA and DELCORA.

17. The public purpose to be furthered by Section 1329 concerns the sale of municipal water or wastewater utilities that are unable to provide reasonable, cost-effective service to their customers. House Legis. J., Session of 2015 No. 71 (Oct. 19, 2015), 1773-1775.

18. The legislative purpose to be furthered by Section 1329 does not apply to Aqua's proposal acquisition of DELCORA because DELCORA is a well-functioned, adequately capitalized municipal authority that is fully capable of providing reasonable, cost-effective service to the public.

19. Interpreting Section 1329 to require Aqua to ignore the contributions of property made by Edgmont and SWDCMA would impair those contracts in violation of Pa. Const. Art I, § 17.

## **Appendix D: Proposed Ordering Paragraphs**

1. For the reasons set forth above, the Application of Aqua Pennsylvania Wastewater, Inc., for approval of the acquisition of the wastewater system assets of Delaware County Regional Water Quality Control Authority is hereby denied.

2. The denial of the Application is without prejudice of the ability of the Applicant to file a new application for the acquisition of the same or similar property if the Delaware County Regional Water Quality Control Authority can obtain the legal right to sell the assets and facilities it purports to sell to Aqua.

**Appendix E: House Legis. J., Session of 2015 No. 71 (Oct. 19, 2015), 1773-1775**

# COMMONWEALTH OF PENNSYLVANIA

## LEGISLATIVE JOURNAL

MONDAY, OCTOBER 19, 2015

SESSION OF 2015

199TH OF THE GENERAL ASSEMBLY

No. 71

### HOUSE OF REPRESENTATIVES

The House convened at 1 p.m., e.d.t.

**THE SPEAKER PRO TEMPORE  
(MATTHEW E. BAKER) PRESIDING**

#### PRAYER

The SPEAKER pro tempore. The prayer will be offered by Rabbi Shloime Isaacson, Congregation Beth Solomon Community Center, Philadelphia. He is a guest of Representative Murt.

RABBI SHLOIME ISAACSON, Guest Chaplain of the House of Representatives, offered the following prayer:

I would like to take this opportunity to thank a close friend of our community center, a close friend of mine, Representative Tom Murt, for his friendship and commitment to our community. May he be blessed with many years of health, happiness, and strength to continue his devoted work each and every day. Thank you for inviting me here today.

(Prayer in Hebrew.)

He who grants salvation to kings and dominion to rulers, whose kingdom is a kingdom spanning all eternities; who releases David, His servant, from the evil sword; who places a road in the sea and a path in the mighty waters, may He bless, safeguard, preserve, help, exalt, make great, extol, and raise high the Representatives of the House of Representatives, the officials, the President, the Vice President, and all the officials of this land and the great city of Harrisburg.

The King who reigns over kings, in His mercy may He sustain them and protect them from every trouble, woe, and injury; may He rescue them; may He gather peoples under their sway and cause their enemies to fall before them. Wherever they turn, may they succeed.

The King who reigns over kings, in His mercy may He put into their heart and into the heart of all of their counsels and officials compassion to do good with us and with all Israel. In their days and in ours, may Judah be saved and Israel dwell securely. May the redeemer come to Zion so may be His will. Now let us respond: Amen.

### PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

### JOURNAL APPROVAL POSTPONED

The SPEAKER pro tempore. Without objection, the approval of the Journal of Wednesday, October 7, 2015, will be postponed until printed.

### JOURNALS APPROVED

The SPEAKER pro tempore. However, the following 2015 Journals are in print and, without objection, will be approved:

Wednesday, June 10, 2015;  
Monday, June 15, 2015;  
Tuesday, June 16, 2015;  
Wednesday, June 17, 2015;  
Thursday, June 18, 2015; and  
Monday, June 22, 2015.

### BILLS REPORTED FROM COMMITTEES, CONSIDERED FIRST TIME, AND TABLED

**HB 180, PN 2374** (Amended) By Rep. A. HARRIS

An Act providing for the Made in PA Program, for duties and authority of Department of Community and Economic Development, application process and for costs; establishing the Made in PA Program Fund; and providing for civil penalties, for injunctive relief and for rules and regulations.

#### COMMERCE.

**HB 946, PN 2371** (Amended) By Rep. TOEPEL

An Act providing for pharmacy audit procedures.

#### HEALTH.

**HB 947, PN 2372** (Amended) By Rep. TOEPEL

An Act providing for registration of pharmacy benefits managers and for maximum allowable cost transparency.

#### HEALTH.



Cutler	James	Murt	Taylor
Day	Jozwiak	Nesbit	Tobash
Delozier	Kampf	O'Neill	Toepel
Diamond	Kaufer	Oberlander	Toohil
DiGirolamo	Kauffman	Ortitay	Topper
Dunbar	Keller, F.	Parker, D.	Truitt
Dush	Keller, M.K.	Payne	Vereb
Ellis	Killion	Peifer	Ward
Emrick	Klunk	Petri	Warner
English	Knowles	Pickett	Watson
Evankovich	Krieger	Pyle	Wentling
Everett	Lawrence	Quinn	Wheeland
Farry	Lewis	Rapp	White
Fee	Mackenzie	Reed	Zimmerman
Gabler	Maher	Reese	
Gillen	Major	Regan	Turzai,
Gillespie	Maloney	Roae	Speaker
Godshall			

NOT VOTING—0

EXCUSED—8

Costa, D.	Gingrich	Mustio	Rader
DeLuca	Kotik	Quigley	Readshaw

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question,  
Will the House agree to the bill on second consideration?  
Bill was agreed to.

\* \* \*

The House proceeded to second consideration of **HB 1326, PN 1787**, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, in rates and distribution systems, providing for valuation of acquired water and wastewater systems for ratemaking purposes.

On the question,  
Will the House agree to the bill on second consideration?

The SPEAKER. Representative Schweyer has amendment 3661, which is filed late and it would require a motion to suspend.

Representative Schweyer, the floor is yours.

Mr. SCHWEYER. Thank you, Mr. Speaker.

My amendment today, A03661, would simply add a provision to HB 1326 that would mandate that any acquisition of a water and sewer company by a private entity would have to go through an RFP (request for proposal) or other competitive bidding process.

I understand this amendment was filed late, Mr. Speaker, so I am going to withdraw the amendment, but I appreciate the opportunity.

Thank you, sir.

The SPEAKER. Representative Schweyer, thank you.

The amendment has been withdrawn.

On the question recurring,  
Will the House agree to the bill on second consideration?

Mr. **GODSHALL** offered the following amendment  
No. **A03467**:

Amend Bill, page 1, lines 7 through 19; pages 2 through 5, lines 1 through 30; page 6, lines 1 through 17; by striking out all of said lines on said pages and inserting

Section 1. Title 66 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 1329. Valuation of acquired water and wastewater systems.

(a) Process to establish fair market value of selling utility.—Upon agreement by both the acquiring public utility or entity and the selling utility, the following procedure shall be used to determine the fair market value of the selling utility:

(1) The commission will maintain a list of utility valuation experts from which the acquiring public utility or entity and selling utility will choose.

(2) Two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.

(3) Each utility valuation expert shall determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.

(4) The acquiring public utility or entity and selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. The assessment shall be incorporated into the appraisal under the cost approach required under paragraph (3).

(5) Each utility valuation expert shall provide the completed appraisal to the acquiring public utility or entity and selling utility within 90 days of execution of the service contract.

(b) Utility valuation experts.—

(1) The utility valuation experts required under subsection (a) shall be selected as follows:

(i) one shall be selected by the acquiring public utility or entity; and

(ii) one shall be selected by the selling utility.

(2) The utility valuation experts shall not:

(i) derive any material financial benefit from the sale of the selling utility other than fees for services rendered; or

(ii) be an immediate family member of a director, officer or employee of either the acquiring public utility, entity or selling utility within a 12-month period of the date of hire to perform an appraisal.

(3) Fees paid to utility valuation experts may be included in the transaction and closing costs associated with acquisition by the acquiring utility or entity. Fees eligible for inclusion may be of an amount not exceeding 5% of the fair market value of the selling utility or a fee approved by the commission.

(c) Ratemaking rate base.—The following apply:

(1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

(d) Acquisitions by public utility.—The following apply:

(1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), the acquiring public utility shall include the following as an attachment to its application for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

(i) Copies of the two appraisals performed by the utility valuation experts under subsection (a).

(ii) The purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.

(iii) The ratemaking rate base determined pursuant to subsection (c)(2).

(iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.

(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

(2) The commission shall issue a final order on an application submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1).

(3) If the commission issues an order approving the application for acquisition, the order shall include:

(i) The ratemaking rate base of the selling utility, as determined under subsection (c)(2).

(ii) Additional conditions of approval as may be required by the commission.

(4) The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. The acquiring public utility may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.

(5) The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility's next base rate case proceeding. The original source of funding for any part of the water or sewer assets of the selling utility shall not be relevant to determine the value of said assets.

(e) Acquisitions by entity.—An entity shall provide all the information required by subsection (d)(1) to the commission as an attachment to its application for a certificate of public convenience filed pursuant to section 1102.

(f) Postacquisition projects.—The following apply:

(1) An acquiring public utility's postacquisition improvements that are not included in a distribution improvement charge shall accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier.

(2) Depreciation on an acquiring public utility's postacquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes.

(g) Definitions.—The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acquiring public utility." A water or wastewater public utility subject to regulation under this title that is acquiring a selling utility as the result of a voluntary arm's-length transaction between the buyer and seller.

"Allowance of funds used during construction." An accounting practice that recognizes the capital costs, including debt and equity funds that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring public utility.

"Entity." A person, partnership or corporation that is acquiring a selling utility and has filed or whose affiliate has filed an application with the commission seeking public utility status pursuant to section 1102.

"Fair market value." The average of the two utility valuation

expert appraisals conducted under subsection (a)(2).

"Rate-making rate base." The dollar value of a selling utility which, for postacquisition ratemaking purposes, is incorporated into the rate base of the acquiring public utility or entity.

"Rate stabilization plan." A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.

"Selling utility." A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller.

"Utility valuation expert." A person hired by an acquiring public utility and selling utility for the purpose of conducting an economic valuation of the selling utility to determine its fair market value.

Section 2. This act shall take effect in 60 days.

On the question,

Will the House agree to the amendment?

The SPEAKER. On the amendment. It is offered by Representative Godshall.

Representative Godshall is recognized.

Mr. GODSHALL. Thank you, Mr. Speaker.

This amendment establishes a voluntary process – I would like to repeat – a voluntary process used upon agreement by both the buyer and the seller to determine the value of a selling wastewater treatment system that will be included in the pro-acquisition rates of the buyer, a private utility company. The amendment narrowly tailors the use of process and contains consumer protections, such as ensuring that no rate changes will be put in place until the purchaser for the private utility goes to the PUC (Public Utility Commission) for a base rate case, requiring independently conducting appraisals of the value of the selling system used, and the PUC-approved evaluation experts.

Really what it does, it establishes the true value of a facility. And it is agreed to, worked out with the PUC. I would ask for a favorable vote.

The SPEAKER. Thank you, Representative.

Representative Pete Daley, on the amendment.

Mr. DALEY. Thank you, Mr. Speaker.

This amendment is a product of the stakeholders getting together and reaching a consensus on concerns and clarifications. While we were not able to get everyone on board, I think we have done a good job working through the issues. I want to thank everyone for their time and effort on this and commend Chairman Godshall for giving everyone this opportunity. I support this amendment and would ask my colleagues for an affirmative vote.

Thank you, Mr. Speaker.

The SPEAKER. Thank you, Representative.

Representative Harper, on the amendment.

Ms. HARPER. Thank you, Mr. Speaker.

Will the maker of the amendment stand for brief interrogation?

The SPEAKER. Chairman Godshall, will you stand for interrogation, please?

The Chair has indicated he will stand for interrogation.

You may proceed, Representative Harper.

Ms. HARPER. Thank you.

We have had a number of transactions occur in Montgomery County and Bucks County, where locally owned water systems were sold to stockholder-owned companies, and the rates increased dramatically shortly thereafter. What, if any,

protections are there in this amendment, or in this bill, for the consumer, for the people who are currently buying water from a local government municipal authority or from a local government in this process?

Mr. GODSHALL. The answer is very simple, that those acquisitions that were made by, in that case, Aqua, were systems that were bankrupt or almost bankrupt and the municipality and/or the municipal authority wanted to get rid of them, and that is why they were sold. When the buyer goes to the PUC for a base rate case following the acquisition, it will include the ratemaking rate base for the acquiring system into its rates.

No rate changes will take place until the amendment or as part of the PUC's order approving an acquisition. The rates of the selling system remain in place until changed through a base rate case, and this has happened in Bucks County. It is something I mentioned this morning at a meeting pertaining to it was an almost bankrupt system. I said bankrupt. It was changed to almost bankrupt. And it was good for the residents of that municipality, and it was also good for the buyer because the buyer needed the water that was there that that municipality had loads of.

Ms. HARPER. Mr. Speaker, the gentleman misperceived my question. I am not opposed to the free and voluntary sale of an asset like a water company if it is in the best interest of the people of a municipal government. My question was, what protection, if any, is in your bill or your amendment for the consumers? Because we have seen acquisitions in suburban Philadelphia of functioning water systems that were not bankrupt, where the rates increased substantially because they were purchased by a stockholder-owned company that needed to pay dividends. So what protections, if any, are in this bill or in this amendment for the people who buy the water right now?

Mr. GODSHALL. What protects, I guess, the consumer was mentioned to my interrogator this morning at the meeting that we had. The improvements to the system, the improvements to the system have got to be made by the municipality. In most cases, the municipality that is selling does not want to make the improvements or has not made the improvements, and so they want to get rid of the asset, which is going to cost them and their constituents a lot of money. And the PUC determines if acquisition is in the best public interest; the PUC determines if an acquisition is in the best public interest, and rates stay in place until all PUC rate cases are heard.

Ms. HARPER. I have another question. What protection, if any, is given to the local government or the local government municipal authority that is selling the asset, the water system – or in many cases, selling the customer base – which has a value far and beyond the pipes to the acquiring water company and its shareholders?

Mr. GODSHALL. I have answered that question three times, and that is enough. I am not going to go to four. Thank you.

Ms. HARPER. On the amendment then, Mr. Speaker.

The SPEAKER. On the amendment.

Ms. HARPER. Mr. Speaker, I oppose this amendment and I oppose this bill. Despite the chairman's best intentions, it provides absolutely no protection to the consumers presently served by the selling water company or municipality. It provides a salve or a benefit to the shareholder-owned company that wants to buy the customer base and raise the rates. It provides nothing at all to the people we represent up here.

So I would urge a "no" vote on the amendment and a "no" vote on the bill.

Thank you, Mr. Speaker.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

#### YEAS—171

Adolph	Everett	Krieger	Reese
Baker	Fabrizio	Krueger	Regan
Barbin	Farina	Lawrence	Roae
Barrar	Fee	Longietti	Roebuck
Benninghoff	Flynn	Mackenzie	Ross
Bishop	Frankel	Maher	Rothman
Bizzarro	Freeman	Mahoney	Rozzi
Bloom	Gabler	Major	Saccone
Boback	Gainey	Markosek	Sainato
Boyle	Galloway	Marshall	Sankey
Bradford	Gergely	Marsico	Santarsiero
Briggs	Gibbons	Masser	Santora
Burns	Gillespie	Matzie	Saylor
Carroll	Godshall	McClinton	Schemel
Causar	Goodman	McGinnis	Schlossberg
Christiana	Greiner	McNeill	Schreiber
Conklin	Grove	Mentzer	Schweyer
Corbin	Hahn	Metcalfe	Simmons
Costa, P.	Hanna	Metzgar	Sims
Cox	Harhai	Miccarelli	Snyder
Cruz	Harkins	Millard	Sonney
Culver	Harris, A.	Miller, B.	Stephens
Cutler	Harris, J.	Milne	Sturla
Daley, M.	Heffley	Moul	Tallman
Daley, P.	Helm	Mullery	Taylor
Davidson	Hennessey	Neilson	Thomas
Davis	Hickernell	Nesbit	Tobash
Dawkins	Hill	Neuman	Toepel
Day	Irvin	O'Brien	Toohil
Dean	James	O'Neill	Topper
Deasy	Jozwiak	Oberlander	Truitt
Delozier	Kampf	Ortitay	Vereb
Dermody	Kauffman	Parker, C.	Ward
Diamond	Kavulich	Parker, D.	Warner
DiGirolamo	Keller, F.	Pashinski	Wentling
Donatucci	Keller, M.K.	Payne	Wheatley
Driscoll	Keller, W.	Peifer	Wheeland
Dunbar	Killion	Petrarca	White
Dush	Kim	Pickett	Youngblood
Ellis	Kirkland	Pyle	Zimmerman
Emrick	Klunk	Rapp	
English	Knowles	Ravenstahl	Turzai,
Evankovich	Kortz	Reed	Speaker
Evans			

#### NAYS—24

Acosta	DeLissio	Kinsey	Petri
Brown, R.	Farry	Lewis	Quinn
Brown, V.	Gillen	Maloney	Samuelson
Bullock	Harhart	McCarter	Staats
Caltagirone	Harper	Miller, D.	Vitali
Cohen	Kaufer	Murt	Watson

#### NOT VOTING—0

#### EXCUSED—8

Costa, D.	Gingrich	Mustio	Rader
DeLuca	Kotik	Quigley	Readshaw