**BEFORE THE**

**PENNSYLVANIA PUBLIC UTLIITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. :

for Approval of its Acquisition of Delaware County :

Regional Water Quality Control Authority’s : A-2019-3015173

Wastewater Assets, *inter alia*, Pursuant to Sections :

507, 1102 and 1329 of the Public Utility Code :

**ORDER**

**STAYING PROCEEDING**

Abbreviated Procedural History

This matter concerns the Application of Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed on March 3, 2020, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (Code), 66 Pa. C.S. §§ 1102, 1329 and 507. In its Application, Aqua requested the issuance of an Order and Certificates of Public Convenience for the: (1) approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (DELCORA) situated within all or part of 49 municipalities within portions of Chester and Delaware Counties, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of Delaware County and Chester County, Pennsylvania; and (3) assignments of 163 municipal contracts, between Aqua and DELCORA, pursuant to Section 507 of the Code, approval of the Asset Purchase Agreement (APA), and approval of the terms of a Memorandum of Understanding (MOU) it has entered with DELCORA. In its Application, Aqua also requested, pursuant to Section 1329(c)(2), the approval of the Pennsylvania Public Utility Commission (Commission) of a ratemaking rate base value of the assets to be acquired by Aqua in the amount of $276,500,000. 66 Pa. C.S. § 1329(c)(2).

On May 14, 2020, the County of Delaware, Pennsylvania (County) filed a complaint against DELCORA and the DELCORA Rate Stabilization Trust in the Delaware County Court of Common Pleas, docketed at CV-2020-003185 (County lawsuit). Thereafter, the County amended its lawsuit to enforce an ordinance that would dissolve DELCORA, and Aqua intervened in the County lawsuit seeking to protect its interests in its APA with DELCORA.

On May 18, 2020, the County filed a Petition to Intervene in the Application proceeding.[[1]](#footnote-1) DELCORA filed a Petition to Intervene on June 6, 2020. Thereafter, by Secretarial Letter dated June 11, 2020 (*June 2020 Secretarial Letter*), the Commission notified Aqua of the conditional acceptance of the Application for filing.

On December 28, 2020, the Court of Common Pleas of Delaware County issued an Order in the County lawsuit at No. CV-2020-003185. No party objected to the ALJs’ taking notice of the County Court’s Order.

On January 12, 2021, Administrative Law Judge (ALJ) Angela T. Jones and I issued a Recommended Decision denying the Application because of Aqua’s failure to meet its burden of proof.

On January 22, 2021, Aqua, DELCORA, and Sunoco filed their respective Exceptions.

On January 29, 2021, the County filed a Petition for Official and Judicial Notice of Facts pursuant to 52 Pa. Code §§ 5.41 and 5.408 (County Appeal Notice Petition). The County requested the Commission to take notice of its filing of a Notice of Appeal to the Commonwealth Court of Pennsylvania of the Order of the Court of Common Pleas in the County lawsuit. County Appeal Notice Petition at 2.

On March 10, 2021, Aqua filed a letter stating that it is voluntarily waiving the deadline for the Commission’s issuance of a final order as set forth in Section 1329(d)(2) of the Code to permit the issuance of a final order beyond March 26, 2021.

On March 30, 2021, the Commission entered an Opinion and Order vacating the Recommended Decision, reopening the record, remanding the proceeding to the OALJ for such further proceedings as may be deemed appropriate, and directing the issuance of a Recommended Decision on Remand, consistent with its Opinion and Order.

Discussion

Section 5.483(a) of the Commission’s regulations provides Presiding Officers the authority to regulate the course of a proceeding. 52 Pa.Code § 5.483(a). Furthermore, Section 1.2 provides that the Commission’s rules shall be “liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding.” 52 Pa.Code § 1.2(a).

In this matter, the County lawsuit is currently pending before the Commonwealth Court. The issues in the County lawsuit are the legality, enforceability, and integrity of the APA between DELCORA and Aqua, the enforcement of the County Ordinance 2020-04, and the funding of the Rate Stabilization Fund Trust between DELCORA and Aqua. All of these issues are also threshold issues in this Application. For example, if it is determined that the APA is illegal and unenforceable, the entire Application becomes moot.

In its Opinion and Order, the Commission specifically highlighted the County Appeal Notice Petition filed on January 29, 2021, stating: “[t]his submission indicates that outstanding litigation remains which may need to be considered when evaluating this Application.” Opinion and Order at 15. Furthermore, the Commission also noted that Aqua’s voluntary waiver of the statutory deadline in this matter allows the Commission the opportunity to reopen the record and remand the matter for further proceedings as necessary. Id.

Considering the impact that the outstanding litigation will have on Aqua’s Application, I find it reasonable to stay this Application until the County lawsuit is concluded. Staying this matter until the outcome of the County litigation will ensure the avoidance of duplicative litigation that may result from the Application being rendered moot or substantially altered by County lawsuit. Therefore, pursuant to the ordering paragraphs below, the Application will be stayed pending a final unappealable decision in the County lawsuit.

THEREFORE;

IT IS ORDERED:

1. That the Application of Aqua Pennsylvania Wastewater, Inc at Docket No. A-2019-3015173 is stayed pending a final unappealable decision in the County of Delaware’s lawsuit against DELCORA currently before the Commonwealth Court at Docket No. 148 CD 2021; and
2. That the County of Delaware shall file and serve a written status report detailing the procedural status and litigation schedule for the matter at Docket No. 148 CD 2021 with the presiding officer, parties of record, and the Commission’s Secretary every ninety (90) days from the date of this order.

Date: April 16, 2021 /s/

F. Joseph Brady

Administrative Law Judges

**A-2019-3015173 - APPLICATION OF AQUA PA PURSUANT TO SECTIONS 1102 AND 1329 OF THE PA CODE FOR THE ACQUISITION BY AQUA OF THE WASTEWATER SYSTEM ASSETS OF DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**

*R****evised 4/16/21***

ALEXANDER R. STAHL ESQUIRE

AQUA PENNSYLVANIA, INC

762 W LANCASTER AVE

BRYN MAWR PA 19010

**610.645.1130**[astahl@aquaamerican.com](mailto:astahl@aquaamerican.com)

Accepts eService  
*Representing Aqua Pa Wastewater*  
  
THOMAS NIESEN ESQUIRE

THOMAS, NIESEN & THOMAS, LLC

212 LOCUST STREET STE 302

HARRISBURG PA 17101

**717.255.7600**[tniesen@tntlawfirm.com](mailto:tniesen@tntlawfirm.com)

Accepts eService  
*Representing Aqua Pa Wastewater*  
  
STEVEN C. GRAY ESQUIRE\*  
OFFICE OF SMALL BUSINESS ADVOCATE

FORUM PLACE

555 WALNUT STREET 1ST FLOOR

HARRISBURG PA 17101

**717.783.2525**  
[sgray@pa.gov](mailto:sgray@pa.gov)  
***\*Via e-mail only due to   
Emergency Order at M-2020-3019262***

CHRISTINE M. HOOVER ESQUIRE  
ERIN L. GANNON ESQUIRE  
HARRISON W. BREITMAN ESQUIRE  
OFFICE OF CONSUMER ADVOCATE

5TH FLOOR FORUM PLACE

555 WALNUT STREET

HARRISBURG PA 17101

**717.783.548**[choover@paoca.org](mailto:choover@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)

[hbreitman@paoca.org](mailto:hbreitman@paoca.org)

Accepts eService

GINA MILLER ESQUIRE  
ERIKA MCLAIN ESQUIRE

PA PUBLIC UTILITY COMMISSION  
BUREAU OF INVESTIGATION & ENFORCEMENT  
400 NORTH STREET

HARRISBURG PA 17120

**717.783.8754**[ginmiller@pa.gov](mailto:ginmiller@pa.gov)

[ermclain@pa.gov](mailto:ermclain@pa.gov)

Accepts eService

ADEOLU A. BAKARE ESQUIRE  
KENNETH R. STARK ESQUIRE  
ROBERT F. YOUNG ESQUIRE

MCNEES, WALLACE & NURICK, LLC

100 PINE STREET

PO BOX 1166

HARRISBURG PA 17108-1166

**717.237.5290**[abakare@mwn.com](mailto:abakare@mwn.com)

[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)

[ryoung@mcneeslaw.com](mailto:ryoung@mcneeslaw.com)  
Accepts eService  
*Representing Delaware County*

KENNETH KYNETT ESQUIRE\*  
CHARLES G. MILLER ESQUIRE

PETRIKIN, WELLMAN, DAMICO   
BROWN & PETROSA

WILLIAM PENN BUILDING

109 CHESLEY DRIVE

MEDIA PA 19063

**610.892.1876**[kdk@petrikin.com](mailto:kdk@petrikin.com)  
[cgm@petrikin.com](mailto:cgm@petrikin.com)

Accepts eService  
*Representing Edgemont Township, Delaware County, Pennsylvania*

THOMAS WYATT ESQUIRE  
MATTHEW OLESH ESQUIRE  
OBERMAYER REBMANN MAXWELL & HIPPEL LLP

CENTER SQUARE WEST

1500 MARKET STREET SUITE 3400

PHILADELPHIA PA 19102

**215.665.3200**[thomas.wyatt@obermayer.com](mailto:thomas.wyatt@obermayer.com)

[matthew.olesh@obermayer.com](mailto:matthew.olesh@obermayer.com)

Accepts eService  
*Representing* *Delaware County Regional Water Quality Control Authority*

SCOTT J. RUBIN ESQUIRE

333 OAK LANE

BLOOMSBURG PA 17815-2036

**570.387.1893**[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)

Accepts eService  
*Representing* *Southwest Delaware County Municipal Authority*

CYNTHIA PANTAGES\*

C & L RENTAL PROPERTIES, LLC

30 S LAKE DRIVE

P O BOX 516

LAKE HARMONY PAN18624

**570.956.0756**  
[cyndipantages@gmail.com](mailto:CYNDIPANTAGES@GMAIL.COM)

***” Via e-mail only due to   
Emergency Order at M-2020-3019262”***

ROSS SCHMUCKI\*  
218 RUTGERS AVE  
SWARTHMORE PA 19081  
**610.420.3430**[rschmucki@gmail.com](mailto:rschmucki@gmail.com)

**“*Via e-mail only due to  
 Emergency Order at M-2020-3019262”***

EDWARD CLARK JR.\*

TREASURE LAKE PROPERTY   
OWNERS ASSOCIATION

13 TREASURE LAKE

DUBOIS PA 15801

**814.371.0711**[gm@treasurelake.us](mailto:gm@treasurelake.us)

***“Via e-mail only due to   
Emergency Order at M-2020-3019262”***

THOMAS J. SNISCAK ESQUIRE

KEVIN J. MCKEON ESQUIRE

WHITNEY E SNYDER ESQUIRE

MELISSA CHAPASKA ESQUIRE

Hawke McKeon & Sniscak LLP

100 North Tenth Street

Harrisburg, PA 17101

**717.236.1300**

[tjsmoscal@hmslegal.com](mailto:tjsmoscal@hmslegal.com)

[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)

[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Accepts eService

*Representing Sunoco Partners Marketing & Terminals, L.P./Energy Transfer*

JOHN F. POVILAITIS ESQUIRE

ALAN M. SELTZER ESQUIRE

BUCHANAN INGERSOLL & ROONEY

409 NORTH SECOND STREET

SUITE 500

HARRISBURG PA 17101-1357

717.237.4825  
[John.Povilaitis@BIPC.com](mailto:John.Povilaitis@BIPC.com)

[alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com)

Accepts eService

JUSTIN G. WEBER ESQUIRE

MICHELLE M. SKJOLDAL ESQUIRE

TROUTMAN, PEPPER, HAMILTON & SAUNDERS, LLP

100 MARKET STREET

SUITE 200

PO BOX 1181

HARRISBURG PA 17108

**717.255.1170**

[justin.weber@troutman.com](mailto:justin.weber@troutman.com)  
[michelle.skjoldal@troutman](mailto:michelle.skjoldal@troutman)

Accepts eService  
*Representing Kimberly-Clark Corp*

JASON T. KETELSEN ESQUIRE

TROUTMAN, PEPPER, HAMILTON & SAUNDER, LLP

3000 TWO LOGAN SQUARE

18TH & ARCH STREET

PHILADELPHIA PA 19103

**215. 981.4791**[jason.ketelsen@troutman](mailto:jason.ketelsen@troutman)

Accepts eService  
*Representing Kimberly-Clark Corp.*

MARC MACHLIN ESQUIRE\*

TROUTMAN, PEPPER, HAMILTON & SAUNDER, LLP

2000 K STREET

SUITE 600

WASHINGTON DC 20006

**202.220.1465**[marc.machlin@troutman.com](mailto:marc.machlin@troutman.com)  
***” Via e-mail only due to   
Emergency Order at M-2020-3019262”***

*Representing Kimberly Clark Corp*

ROBERT W. SCOTT ESQUIRE

ROBERT W. SCOTT, P.C.

205 NORTH MONROE STREET

P.O. BOX 468

MEDIA PA 19063

**610.891.0108**[rscott@robertwscottpc.com](mailto:rscott@robertwscottpc.com)

***” Via e-mail only due to   
Emergency Order at M-2020-3019262”***

*Representing Borough of Ambler*

PATRIRICIA KOZEL

15 HAZZARD RUN ROAD

LAKE HARMONY PA 18624

**213.632.0332**

[pattyk6@icloud.com](mailto:pattyk6@icloud.com)  
***” Via e-mail only due to   
Emergency Order at M-2020-3019262”***

LAWERENCE AND SUSAN POTTS

11 CHESTUNT STREET

P.O. BOX 522

LAKE HARMONY PA 18624

**215.300.0257**

[susie01213@aol.com](mailto:susie01213@aol.com)

***” Via e-mail only due to   
Emergency Order at M-2020-3019262”***

PETER GINOPLUS

P.O. BOX 197

LAKE HARMONY PA 18624

**570.772.2529**

[pete@kiddertax.com](mailto:pete@kiddertax.com)

***” Via e-mail only due to   
Emergency Order at M-2020-3019262”***

HONORABLE H ANTHONY WILLIAMS

ROOM 366

MAIN CAPITOL BUILDING

HARRISBURG PA 17120

[williams@pasenate.com](mailto:williams@pasenate.com)

HONORABLE JOHN KANE

PA STATE SENATE

458 MAIN CAPITOL BUILDING

SENATE BOX 203009

HARRISBURG PA 17120 3009

**717.787.4712**

[kane@pasenate.com](mailto:kane@pasenate.com)

HONORABLE TIM KEARY

PA STATE SENATE

463 MAIN CAPITOL BUILDING

SENATE BOX 203026

HARRISBURG PA 17120 3026

**717.787.1350**

[keary@pasenate.com](mailto:keary@pasenate.com)

GREG VITALI

ROOM 388- E WING

PO BOX 202166

HARRISBURG PA 17120

[gvitali@pahouse.net](mailto:gvitali@pahouse.net)

1. Subsequently, on August 31, 2020, the County filed a Protest to the Application. [↑](#footnote-ref-1)