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April 27, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
rchiavetta@pa.gov

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

Dear Secretary Chiavetta:

We are counsel for Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Petition for Interlocutory Review of Order Staying Proceeding. Copies of the Petition are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable F. Joseph Brady, Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2019-3015173
Wastewater, Inc. Pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code :

**PETITION OF AQUA PENNSYLVANIA WASTEWATER, INC.
FOR INTERLOCUTORY REVIEW OF ORDER STAYING PROCEEDING**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), by its attorneys, and, pursuant to 52 Pa. Code § 5.301, *et seq.*, petitions the Public Utility Commission (“Commission”) for interlocutory review of the Order of Administrative Law Judge F. Joseph Brady Staying Proceeding (“Stay Order”) and, in respect thereto, review and answer a Material Question. Aqua submits as follows in support of interlocutory review:

I. INTRODUCTION

1. This proceeding concerns the Application of Aqua, filed with the Commission pursuant to Sections 1329, 1102 and 507 of the Public Utility Code (“Code”). The Application asks the Commission to approve, *inter alia*, Aqua’s acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”).

2. By Recommended Decision issued January 12, 2021, Judge Brady and Judge Angela T. Jones recommended that the Commission deny the Application. Subsequently, the Commission, by Opinion and Order entered March 30, 2021 (“March 30 Order”), vacated the Recommended Decision and, in Ordering Paragraph 2, directed:

That this matter is remanded to the Office of Administrative Law Judge for such further proceedings as deemed necessary and the issuance of a Recommended Decision on Remand consistent with this Opinion and Order.

3. The March 30 Order explains that the Commission’s decision to vacate the Recommended Decision, reopen the record and remand the proceeding is a result of new

developments in the case. “After conducting any further proceedings as deemed necessary, [the Commission directed] the presiding office to prepare a Recommended Decision on Remand evaluating and recommending the disposition of the entire Application.”¹

4. On April 16, 2021, Judge Brady *sua sponte* issued the Stay Order staying the proceeding “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.”

II. MATERIAL QUESTION

5. Aqua respectfully disagrees with the Stay Order and submits that it should be reversed as it is inconsistent with the clear language and intent of the March 30 Order. The Commonwealth Court proceeding provides no basis for Judge Brady to stay the proceeding when the Commission did not do so. The Commission was aware of the Commonwealth Court proceeding when it issued its Order.²

6. Aqua presents the following Material Question for Commission review and submits that the Question should be answered in the affirmative.

Should the Commission reverse the Stay Order because it is inconsistent with the March 30 Order and direct the OALJ to promptly schedule hearings and briefing in the remanded proceeding, thereby allowing (i) the Parties the opportunity to present appropriate evidence as deemed necessary so as to permit a full evaluation of the Application pursuant to Sections 1102, 1329, and 507 of the Code, and (ii) the presiding officer to prepare a Recommended Decision on Remand evaluating and recommending the disposition of the Application.

III. INTERLOCUTORY REVIEW WILL PREVENT SUBSTANTIAL PREJUDICE AND EXPEDITE THE CONDUCT OF THE PROCEEDING

7. The March 30 Order concludes that it is in the public interest to reopen the record with the purpose of providing the Parties with the due process opportunity to present evidence concerning

¹ Footnote 7 of the March 30 Order notes that, “[b]y directing the reopening of the record and remaining the proceeding, we are affording the Parties the opportunity to present appropriate evidence as deemed necessary in light of the recent developments so as to permit a full evaluation of the Application pursuant to Sections 1102, 1329, and 507 of the [Public Utility] Code.”

² See March 30 Order at 15.

“recent filings”³ and “averments”⁴ that are “not part of the evidentiary record.”⁵ In doing so, the March 30 Order intends to prevent prejudice to any Party that might occur as a result of the Commission’s consideration of non-record matters while, at the same time, presenting the Commission with additional evidence material to the Application and its evaluation of the public interest.

8. The Stay Order delays the due process opportunity specifically afforded the Parties by virtue of the March 30 Order, thus prejudicing their respective interests. Equally significant, the Order delays the reopening of the record which the Commission found to be in the public interest.⁶ Removing the stay is a compelling reason for interlocutory review. Removing the stay will prevent substantial prejudice to the Parties and further the public interest consistent with the March 30 Order.

9. Removing the stay will also expedite the conduct of the proceeding by allowing it to move forward without delay as, Aqua submits, was intended by the Commission in the March 30 Order.

WHEREFORE Aqua Pennsylvania Wastewater, Inc. requests that Public Utility Commission grant this Petition for Interlocutory Review and answer the Material Question in the affirmative.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: April 27, 2021

³ See March 30 Order at 13 listing various notices of withdrawal and stipulations resolving several protests to the Application.

⁴ See March 30 Order at 14 re extra-record assertions related to the rate stabilization plan.

⁵ See March 30 Order at 15.

⁶ See March 30 Order at 15.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2019-3015173
Wastewater, Inc. Pursuant to Sections :
1102, 1329 and 507 of the Public Utility :
Code :

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of April, 2021, served a true and correct copy of the foregoing Petition of Aqua Pennsylvania Wastewater, Inc. for Interlocutory Review, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

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