

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120**

**Application of Aqua Pennsylvania
Wastewater, Inc. Pursuant to
Sections 1102, 1329 and 507 of the
Public Utility Code for Approval
of its Acquisition of the
Wastewater System Assets of the
Delaware County Regional Water
Quality Control Authority**

**Public Meeting of July 14, 2022
3015173-OSA
Docket No. A-2019-3015173**

STATEMENT OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Interlocutory Review of Order Staying Proceeding and Answer to Material Question (Petition) filed on April 27, 2021, by Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company). The Petition relates to Aqua's Application to acquire the wastewater system assets of the Delaware County Regional Water Quality Control Authority (DELCORA) pending at the instant docket.

On March 30, 2021, the Commission issued an Opinion an Order (March 30 Order) remanding the proceeding back to the Commission's Office of Administrative Law Judge (OALJ) for such further proceedings as deemed necessary and the issuance of a Recommended Decision on Remand. On April 16, 2021, presiding Administrative Law Judge F. Joseph Brady (ALJ or ALJ Brady) issued an Order Staying the Proceeding (Stay Order). In the Stay Order the ALJ referenced a pending complaint filed by the County of Delaware against DELCORA in the Delaware County Court of Common Pleas.

The crux of this Petition is whether or not the Commission should lift the Stay Order. In the Stay Order, ALJ Brady stated,

"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.”¹

The ALJ stayed the matter pending a final unappealable decision in the County lawsuit. At present, the County lawsuit referenced by ALJ Brady is remanded to the Delaware Court of Common Pleas and a final order has not yet been issued.²

This Commission’s March 30, 2021 Order is also under appeal at Commonwealth Court.³ While the Commission’s position before Commonwealth Court is that the March 30 Order is a non-appealable interlocutory order, the Court has yet to issue a decision.

While not unprecedented for the Commission to act on an underlying proceeding while it is under appeal, it is uncommon. In the Application of Laser Northeast Gathering Company (Laser Application) the Commission granted a Petition to Withdraw while the proceeding was still pending on remand at the Commission and while Petitions for Review were pending at Commonwealth Court.⁴ I emphasize here that we granted a withdrawal. Here the proceeding would be recommenced, making this a distinctly different set of circumstances from the Laser Application.

¹ The County filed a lawsuit against DELCORA, *et al* in the Delaware County Court of Common Pleas (Court of Common Pleas) in the matter of *County of Delaware, Pennsylvania v. Delaware County Regional Water Quality Control Authority, and DELCORA Rate Stabilization Fund Trust Agreement b/t The Delaware County Regional Water Quality Control Authority as Settlor and Univest Bank and Trust Co. as Trustee v. Darby Creek Joint Authority, Southern Delaware County Authority, and Aqua Pennsylvania Wastewater, Inc.* On December 28, 2020, the Court of Common Pleas issued a final order of the Court of Common Pleas of Delaware which was entered following a bench trial and disposed of all claims filed by the County and counterclaims filed by DELCORA and Aqua and ruled in favor of DELCORA et al. Subsequently, on January 21, 2021, the County filed an appeal in Commonwealth Court at Docket No. 148 CD 2021.

² On March 3, 2022, the Commonwealth Court issued a decision (*March 3 Decision*) holding that, Section 5622(a) of the Municipal Authorities Act, 53 Pa. C.S. § 5622(a), provides the County with the authority to enact Ordinance No. 2020-4 (Ordinance) and the Ordinance complies with the requisites necessary for the County to demand the termination of DELCORA and the conveyance of DELCORA’s assets and obligations to the County. Based on the stated reasons set forth in the decision, it concluded that the trial court erred in denying the County’s request for a writ of mandamus and in granting injunctive relief in favor of DELCORA and Aqua. Therefore, the court reversed the trial court’s order and remanded the matter to the trial court for the entry of an order consistent with the Commonwealth Court’s opinion.

³ *The County of Delaware, Pennsylvania v. Pa. PUC*, Docket No. 455 CD 2021.

⁴ Docket No. A-2010-2153371

It is squarely within a presiding officer's purview to manage the scope of evidence and the timing of a proceeding via the use of a stay⁵ or continuance⁶. Further, it is my opinion that the Commission should not interfere with the discretion of presiding officers unless extraordinary relief is required for the public interest. I believe it is entirely irregular for the Commission to lift a stay, as sought here, where the appellate court has expressly asserted its jurisdiction over the Petition for Review, as the Commonwealth Court has done in this instance. This is especially true where, as here, the court has expressed its intention to render a determination whether the appeal is from an interlocutory order or not. Since the Court has expressly stated its intent to assert jurisdiction, the more appropriate course of action would be to honor the Commonwealth Court's assertion of jurisdiction by proceeding under Pa R.A. P. 1701 (a), and stay the proceedings before the Commission.

Finally, the underlying proceeding is extremely complex and controversial: dealing with monies in excess of \$276 million and involving the interests of numerous counties, municipalities, and approximately 197,000 customers. To that end, I believe judicial economy and overall prudence would be achieved by letting the two separate proceedings proceed to finality before recommencing this proceeding here at the Commission.

July 14, 2022
Date



Gladys Brown Dutrieuille, Chairman

⁵ 52 Pa. Code § 5.483(a)

⁶ 52 Pa. Code § 1.15