

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265**

**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 held July 14, 2022  
3015173-OSA  
Docket No. A-2019-3015173**

**MOTION OF COMMISSIONER RALPH V. YANORA**

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 Company). The Petition concerns the Application of Aqua 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, (Application) to acquire the wastewater system assets of the Delaware County Regional Water Quality Control Authority (DELCORA).

On March 30, 2021, the Commission issued its Opinion and Order (March 30 Order) which, *inter alia*, remanded the matter to the 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, the Administrative Law Judge (ALJ) issued an Order Staying the Proceedings (ALJ Stay Order). The ALJ Stay Order suspended Commission proceedings to address concerns of judicial economy pending a “final unappealable decision” in an ongoing Commonwealth Court lawsuit filed by Delaware County challenging DELCORA’s sale.

In its Petition, Aqua seeks reversal of the ALJ Stay Order. Specifically, Aqua seeks interlocutory review and an answer in the affirmative by the Commission to the Material Question, summarized as follows:

Should the Commission reverse the [ALJ] Stay Order because it is inconsistent with the March 30 Order and direct the OALJ [Office of Administrative Law Judge] 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 102, 129 and 07 of the Code, and (ii) the presiding officer to prepare a Recommended Decision on Remand evaluating and recommending the disposition of the Application.

Aqua Petition at 2.

As a preliminary matter, I address the Commission's jurisdiction to consider the Petition given that an appeal of the March 30 Order is currently pending before the Commonwealth Court. Generally, under Pa. R.A.P. 1701, once an appeal is taken, the matter before a governmental unit may no longer proceed. However, the rule is not without exceptions. The pertinent exception here is Rule 1701(b)(6), which states that after an appeal is taken, or review of a quasijudicial order is sought, the trial court or other government unit may proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order. Pa. R.A.P. 1701(b)(6).

Consistent with the Commission's position before the Commonwealth Court,<sup>1</sup> the Commission's March 30 Order is a non-appealable interlocutory order, the effect of which was to remand the matter to the OALJ for further proceedings. Accordingly, under Pa. R.A.P. 1701(b)(6), the Commission retains jurisdiction over its March 30 Order and may proceed further in the matter of the Petition.<sup>2</sup>

Turning to the material question in the Petition, Aqua asserts that the Commission should reverse the ALJ Stay Order and direct the proceedings to resume. In addressing this issue, we note that it has been over a year since the Petition was filed. During that time, on March 3, 2022, the Commonwealth Court issued an order disposing of the Delaware County lawsuit concerning this matter at Docket No. 148 CD 2021; no Party sought review on appeal and the decision is now final. The parties to this proceeding have offered conflicting interpretations on whether the Commonwealth Court order acts to lift the pending stay.

The Commission held in its March 30 Order that it would be in the public interest to give the parties the opportunity to present additional evidence that was not in the public record. The Commission was well aware of the ongoing litigation in other forums when it issued its March 30 Order. Aqua asserts that lifting the stay will allow the Commission to reopen the record and receive evidence that permits a full evaluation of its Application. As the remand is interlocutory in nature, a continued stay is not necessary to protect the "substantial rights" of any party.<sup>3</sup> The Commission does have the "duty" to carry out all the provisions of the Code and regulate the conduct of all utilities in the Commonwealth of Pennsylvania.<sup>4</sup> While judicial economy is sometimes a valid basis for a stay, this consideration should not be the primary factor in placing

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<sup>1</sup> The Commission's position before Commonwealth Court is that the *March 30 Order* is a non-appealable interlocutory order. See Pa. PUC's Brief filed on February 2, 2022, in *The County of Delaware, Pennsylvania v. Pa. PUC*, Docket No. 455 CD 2021.

<sup>2</sup> The Commission has previously relied on Pa. R.A.P. 1701(b)(6) to act on filings while a Petition for review was pending in Commonwealth Court. *Application of Laser Northeast Gathering Company, LLC for Approval to Begin to Offer, Render, Furnish, or Supply Natural Gas Gathering and Transporting or Conveying Service by Pipeline to the Public in Certain Townships of Susquehanna County, Pennsylvania*, Docket No. A-2010-2153371 (Order entered December 5, 2011).

<sup>3</sup> 66 Pa.C.S. § 331(e).

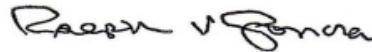
<sup>4</sup> 66 Pa.C.S. §501(a), (b). In this vein, I note that the ALJ Stay Order has prevented the Commission from timely addressing petitions to intervene in the instant proceeding.

an indefinite hold on a proceeding, particularly where the stay is due to actions in other forums whose schedule is not subject to the provisions of the Code. To the extent that rulings in other forums have some impact on this proceeding, the Commission will afford all parties notice and opportunity to be heard. For these reasons, I find that the OALJ should be directed to promptly schedule hearings and briefing in the remanded proceeding and address any other pending matters at the instant docket.

**THEREFORE, I MOVE THAT:**

1. The Petition for Interlocutory Review of Order Staying Proceeding and Answer to Material Question filed on April 27, 2021, by Aqua Pennsylvania Wastewater, Inc. is granted and that the material question is answered in the affirmative to extent that the Stay of the Proceedings directed on April 16, 2021 by the Office of Administrative Law Judge in this matter is lifted and the Office of Administrative Law Judge shall promptly schedule hearings, briefing, and address other pending matters in the remanded proceeding.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**DATE: July 14, 2022**



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**Ralph V. Yanora, Commissioner**