BEFORE THE

PENNSYLVANIA PUBLIC UTILITY 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 :

# **INITIAL PREHEARING CONFERENCE ON REMAND ORDER**

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.

On April 16, 2021, I issued an Order Staying the Proceedings.

On April 27, 2021, Aqua filed its Petition for Interlocutory Review of Order Staying Proceeding and Answer to Material Question, seeking a lift of the stay of proceeding.

On July 26, 2022, the Commission entered an Opinion and Order granting the Petition for Interlocutory Review of Order Staying Proceeding and Answer to Material Question, lifting the stay, and directing the Office of Administrative Law Judge to promptly schedule hearings, briefing, and address other pending matters in the remanded proceeding.

Accordingly, a Prehearing Conference is scheduled for **Tuesday, August 9, 2022, at 1:00 p.m.**

The parties are hereby directed to comply with the following requirements:

1. That a request for a change of the scheduled Prehearing Conference date must state the agreement or opposition of other participants and must be submitted in writing no later than five (5) days prior to the Prehearing Conference. 52 Pa.Code § 1.15(b). Requests for changes of the Prehearing Conference date must be sent to me and all participants of record.
2. That absent a continuance for good cause, all parties must be prepared to participate in the scheduled Prehearing Conference. Failure of a party to participate in the conference, after being served with notice of the date, time and location thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and an order or ruling with respect thereto.
3. **That the parties be prepared to discuss the following:**
4. Identification and status of any ongoing litigation related to this case;
5. Need for additional direct and rebuttal testimony;
6. Need for additional witnesses;
7. Scheduling deadlines for additional briefs and reply briefs;
8. Need for additional public input hearings;
9. Scheduling new evidentiary hearings; and
10. Any other appropriate matter.
11. **That each active participant must file and serve, on or before 12:00 p.m., Monday, August 8, 2022, a prehearing conference memorandum which addresses the agenda items listed above.** If more than one attorney represents a party, your prehearing memorandum should identify one attorney who will speak as the lead attorney for the purposes of the prehearing conference.
12. That the parties shall review the regulations relating to discovery, specifically 52 Pa.Code § 5.331(b), which provides, inter alia, that “[a] party shall initiate discovery as early in the proceeding as reasonably possible,” and 52 Pa.Code § 5.322, which encourages participants to exchange information on an informal basis. All participants are urged to cooperate in discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-372.
13. That pursuant to 52 Pa.Code §§ 1.21-1.23, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted pro hac vice, represent you. However, if you are a partnership, corporation, trust, association, joint venture, other business organization, trust, trustee, legal representative, receiver, agency, governmental entity, municipality or other political subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted pro hac vice represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall ensure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).
14. That the parties must serve me directly with a copy of any document that they file in this proceeding. Also, if a party sends me any correspondence or document, that party must send a copy to all other parties that have declared they are actively participating in these proceedings. Parties may serve documents electronically by 4:30 p.m. to meet any required due date. Since documents can be submitted to me and the participants by e-mail, e-mail addresses are included on the attached service list. Please check the list for omissions and errors and contact my office to make corrections.
15. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expense in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.
16. That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this filing. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility.

Date: July 29, 2022 /s/

F. Joseph Brady

Administrative Law Judge

**A-2019-3015173 - APPLICATION OF AQUA PENNSYLVANIA WASTEWATER INC PURSUANT TO SECTIONS 507,1102 AND 1329 OF THE PUBLIC UTILITY CODE   
FOR APPROVAL OF ITS ACQUISITION OF THE WASTEWATER SYSTEM ASSETS   
OF THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**

*Revised: July 28, 2022*

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