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August 8, 2022

**VIA EFILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

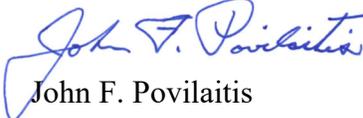
Re: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority;  
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed please find the Prehearing Conference Memorandum of Aqua Pennsylvania Wastewater, Inc., filed in the above-referenced proceeding.

Copies are being served on the Administrative Law Judge and all parties of record.

Very truly yours,

  
John F. Povilaitis

JFP/tlg

Enclosure

cc: The Honorable F. Joseph Brady  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania :  
Wastewater, Inc. Pursuant to Sections 1102, :  
1329, and 507 of the Public Utility Code for : Docket No. A-2019-3015173  
Approval of its Acquisition of the :  
Wastewater System Assets of the Delaware :  
County Regional Water Quality Control :  
Authority :**

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**PREHEARING CONFERENCE MEMORANDUM OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

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**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:**

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) hereby submits this Prehearing Conference Memorandum in accordance with 52 Pa. Code § 5.222 of the regulations of the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) and the Initial Prehearing Conference On Remand Order of the Administrative Law Judge (“ALJ”) dated July 29, 2022.

**I. RECENT PROCEDURAL HISTORY**

On March 30, 2021, the Commission issued an Order (“March 30 Order”) (i) declining to rule on the Exceptions and Reply to Exceptions filed with respect to the January 12, 2021 Recommended Decision (“Initial RD”) of ALJ Angela T. Jones and ALJ F. Joseph Brady in this proceeding; (ii) stating the Commission’s reasons for vacating the Initial RD; and (iii) reopening the evidentiary record and remanding the proceeding for further proceedings as may be deemed appropriate. Further, the ALJ was directed to prepare and issue a new Recommended Decision.

ALJ Brady issued an Order staying the remanded proceedings on April 16, 2021. Thereafter, Aqua petitioned for Commission interlocutory review of this Order and requested that the stay be lifted.

On June 2, 2022, the Receiver for the City of Chester, filed a Petition to intervene in this proceeding.

The Commission answered Aqua's Petition for Interlocutory Review of Order Staying Proceedings and Answer to Material Question in an Order entered on July 26, 2022. The PaPUC directed that the proceeding resume and that hearings and briefing be scheduled promptly. On July 29, 2022, the ALJ issued an Initial Prehearing Conference On Remand Order that directed the filing of Prehearing Conference memoranda on or before noon, August 8, 2022 and the convening of a Prehearing Conference on August 9, 2022 a 1:00 p.m.

On August 3, 2022, the ALJ issued an Order denying the Petition to Intervene filed by the Receiver for the City of Chester, Michael Doweary.

**II. COUNSEL FOR AQUA AND LEAD ATTORNEY FOR INITIAL PREHEARING CONFERENCE ON REMAND ORDER**

Aqua's counsel for the remand phase of this proceeding are:

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John F. Povilaitis will be lead counsel for Aqua at the Initial Prehearing Conference on remand order. Aqua continues to agree to receive electronic service of documents in this proceeding and does not require that hard copies follow. If materials are disseminated electronically, it is requested that copies be sent to [john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com) and [alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com).

### **III. ISSUES DESIGNATED BY THE ALJ FOR COUNSEL TO ADDRESS**

#### **a. Identification and status of any ongoing litigation related to this case**

The Court of Common Pleas legal action initiated by Delaware County (the “County”) was appealed to Commonwealth Court at Docket No. 148 C.D. 2021. This appeal, which formed a basis for the ALJ’s April 16, 2021 stay of the remand proceeding, was decided in an Opinion dated March 3, 2022. In that Opinion, the Commonwealth Court upheld the County Ordinance directing the termination of the Delaware County Regional Water Quality Control Authority (“DELCORA”), noting that “a municipality may invoke its power under section 5622(a) [of the Municipality Authorities Act (“MAA”)] to demand that the authority [DELCORA] terminate and/or convey its assets to the municipality at any time prior to the complete performance of that contract [the Aqua-DELCORA Asset Purchase Agreement (“APA”)]. However, the Court also opined that “the County, in its demand that DELCORA terminate its operations and transfer its assets to the County, effectively places the County in the situation where it would receive a ‘contractual assignment’ from DELCORA as a matter of statutory law. Consequently, the County would, without question or condition, be bound by the terms and conditions of the APA, just as if it were DELCORA itself in the sense that it would essentially become a ‘party’ to the contract.” Opinion at 21-22.

Earlier in the Opinion, Commonwealth Court noted that section 5622(a) of the MAA “expressly accounts for the scenario where the authority has already entered a valid and binding contract.” Opinion at 21. No party to the case at Docket No. 148 C.D. 2021 sought an appeal to the Pennsylvania Supreme Court. Aqua and the County are now before the Delaware County Court of Common Pleas attempting to resolve with the trial Judge the terms of an order for entry on remand based on the Commonwealth Court Opinion. The Judge has not yet entered an order.

The County's appeal of the March 30 Order to Commonwealth Court is pending at Docket No. 455 C.D. 2021. The Commission's Motion to Quash and Aqua's Application to Quash the appeal have been combined with the merits of the appeal. The Motion/Application and the merits of the appeal have been fully briefed and Aqua, DELCORA, the County and the Commission are awaiting Commonwealth Court's decision.

b. Need for additional direct and rebuttal testimony

Aqua respectfully requests that the ALJ confirm the scope of matters permitted to be addressed in the remand proceeding. The duration of this proceeding has extended significantly beyond the normal time frame for completing an application proceeding seeking approvals under Chapters 11 and Section 1329 of the Public Utility Code. Therefore, the issues addressed in additional served testimony should be limited to matters addressed in the March 30 Order, or are necessary to provide the ALJ and the parties with updated information, not previously available, on issues already raised and addressed in the record. In Aqua's view, it is obligated to submit for the evidentiary record the Joint Stipulations and related documents that were filed with the Commission after the initial close of the record. The March 30 Order also expressed some concern that Aqua's position on distribution of DELCORA's Trust proceeds had changed in the Exception phase of the case. To clarify this situation, Aqua agrees that its testimony on remand should address this issue.

Aqua also believes it is appropriate to offer limited testimony in the remand that updates the record due to the passage of time since the record closed on specific issues where it is necessary and appropriate so that the ALJ has up to date information on which to base a new recommended decision. The specific areas of limited updating are: 1) the Company's estimated revenue requirements because those estimates were based on DELCORA's and Aqua's current rates which have changed, 2) authorizations requested from the U.S. Environmental Protection Agency

(“EPA”) and Pennsylvania Department of Environmental Protection (“DEP”), and 3) the Company’s stated acceptable conditions on the requested Chapter 11 and 13 approvals, based on the foregoing remand testimony. Aqua respectfully requests that the Presiding Officer address in an order following this Prehearing Conference, the scope of issues Aqua and any other supporting Party may include in their initial testimony on remand.

c. Need for additional witnesses

Aqua proposes to present testimony of two witnesses: (i) William Packer, a previous witness in the proceeding, who will address the March 30 Order issues and update the record as described above in subparagraph b, and (ii) Jenifer Fields, Managing Partner, ACRI Environmental Group, who will address EPA and DEP updates.

d. Scheduling deadlines for additional briefs and reply briefs

Aqua proposes the following procedural schedule based on informal discussions with the Parties, but recognizing that no consensus emerged on the schedule based on those discussions. This schedule provides for three rounds of testimony, discovery and briefing and is informed by the facts that (i) this is a limited remand proceeding with a very narrow group of issues compared to those that existed in the initial proceeding; and (ii) a significant period of time has passed since the Application was originally filed and it is in the public interest to resolve this remand as expeditiously as possible.

August 9, 2022 – Prehearing Conference

Day 1 – ALJ rules on scope of issues to be addressed in remand proceeding

Day 8 – Aqua (and supporting parties) Direct Testimony on Remand

Day 29 – Settlement Discussions

Day 36 – Advocate/Intervenor Rebuttal Testimony due

Day 57 – Surrebuttal Testimony due

Hearings – to be finalized by the Parties and ALJ in a further prehearing conference

Seven Days after Completion of Evidentiary Hearings – Close of Evidentiary Record

Assuming the proposed schedule timeline is accepted due to the limited nature of the proceeding, Aqua proposes the following expedited discovery and service rules be applicable to the remand proceeding as follows<sup>1</sup>:

- a. Answers to written interrogatories shall be served in-hand within five (5) calendar days of service.
- b. Objections to interrogatories shall be communicated orally within two (2) calendar days and in writing within three (3) calendar days of service of the interrogatories.
- c. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of the written objections.
- d. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of such motions.
- e. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within five (5) calendar days.
- f. Requests for admissions will be deemed admitted unless answered or denied within three (3) calendar days of service.
- g. Discovery and all discovery-related pleadings, such as objections, motions or answers, served after 12:00 p.m. noon on a Friday or after 12:00 noon before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.
- h. The parties are directed to make every reasonable effort to comply with the discovery response times set forth in this agreement. In those instances when compliance is not possible, despite a party's best efforts, the responding party shall so advise, and the parties shall work together to address the requests and responses on a timely basis.

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<sup>1</sup> In the event a more extended procedural schedule is adopted, Aqua proposes an interrogatory response period of seven (7) calendar days and the filing of written objections in five (5) days, consistent with ALJ Jones September 4, 2020 Prehearing Order.

i. These discovery modifications are for the limited purpose of this proceeding and should not be viewed as binding, or otherwise limiting, upon positions taken by the parties in any other proceeding.

e. Need for additional public input hearings

There are no new material issues that will be addressed in the remand proceeding.

Therefore, Aqua does not see a necessity for additional public input hearings.

f. Scheduling new evidentiary hearings

Aqua proposes two days of potential evidentiary hearings to accommodate potential cross examination of witnesses and the introduction of evidence into the record, consistent with the Company's proposed procedural schedule discussed above.

g. Any other appropriate matter

Aqua requests that the ALJ clarify that the Protective Order previously entered in this case will continue to be in force and applicable to the remand phase of this proceeding, and that counsel and other appropriate parties who have not previously indicated they acknowledge the Order will do so before reviewing any protected materials provided in the remand proceeding.

#### **IV. SETTLEMENT**

Aqua continues to be open to settlement discussions with Parties and has proposed a settlement discussion date in its proposed procedural schedule.

BUCHANAN INGERSOLL & ROONEY PC

Dated: August 8, 2022

By:   
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*Counsel for Aqua Pennsylvania Wastewater, Inc.*

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wastewater system assets of the Delaware :  
County Regional Water Quality Control :  
Authority :**

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**Via Email:**

The Honorable F. Joseph Brady  
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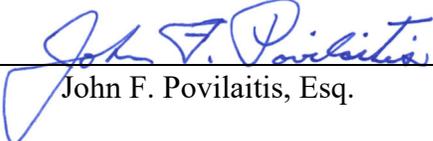
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Date: August 8, 2022

  
John F. Povilaitis, Esq.