


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 8, 2022

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

Re: 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
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon

Erin L. Gannon

Senior Assistant Consumer Advocate

PA Attorney I.D. # 83487

E-Mail: EGannon@paoca.org

Enclosures:

cc: The Honorable F. Joseph Brady (**email only**)
Certificate of Service

*333732

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of August 2022.

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Dated: August 8, 2022
*311241

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania	:	
Wastewater Inc. pursuant to Sections 507, 1102	:	
and 1329 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	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the Initial Prehearing Conference on Remand Order issued by Administrative Law Judge F. Joseph Brady on July 29, 2022, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION

On March 3, 2020, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of Delaware County Regional Water Quality Control Authority (DELCORA) wastewater collection and treatment system, the right of Aqua to provide wastewater service in the areas served by the Authority, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. The Office of Consumer Advocate (OCA) filed a Protest and Public Statement on April 2, 2020. 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). On July 27, 2020, by Secretarial Letter, the Commission accepted the Application as complete for review.

In its testimony and briefs, the OCA set forth its primary recommendation that the Commission should deny the Application as proposed. If, however, the Commission determined to approve the Application, the OCA recommended that its approval should include the adoption of appropriate and necessary conditions, including those recommended by the OCA to limit ratepayer exposure to the risks of the acquisition and to ensure that ratepayers receive a fair allocation of the benefits of the acquisition. The OCA also recommended adjustments to the Utility Valuation Experts' fair market value appraisals.

Between November 3-6, 2020, Southwest Delaware County Municipal Authority, Lower Chichester Township and Upland Borough filed lawsuits against DELCORA and the DELCORA Rate Stabilization Trust in Delaware County Court of Common Pleas regarding DELCORA's representations in the Asset Purchase Agreement (APA) (Municipal lawsuits).¹ On December 28, 2020, the Court of Common Pleas of Delaware County issued an Order in the County lawsuit.

On January 12, 2021, Administrative Law Judges (ALJs) Angela T. Jones and F. Joseph Brady issued a Recommended Decision denying the Application because of Aqua's failure to establish a record upon which the Commission could make a determination that the proposed acquisition promotes the service, accommodation, convenience and safety of the public in some substantial way. R.D. at 28 *citing* 66 Pa. C.S. §§ 1102 and 1103; *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972). The ALJs also found that Aqua failed to establish a record upon which the Commission could make a determination of the fair market value of DELCORA or the rate base, or the reasonableness, legality, or validity of the APA and Aqua's request to

¹ Docket Nos. CV-2020-0074691, CV-2020007552, CV-2020-007596, respectively.

assume enumerated municipal contracts alleged to be currently held by DELCORA. R.D. at 28 *citing* 66 Pa. C.S §§ 1329, 507. The ALJs did not address the conditions proposed by the OCA in the event the Application was granted or the OCA's adjustments to the appraisals. R.D. at 19-20.

On January 29, 2021, the County filed a Petition requesting 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. In the first quarter of 2021, several of the municipal protestants in the Commission proceeding filed Stipulations and Notices of Withdrawal related to the Municipal lawsuits. On March 10, 2021, Aqua filed a letter stating that it voluntarily waived 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 further proceedings as may be deemed appropriate. Order at 16. The Commission referenced the numerous filings post close of record relating to the County and Municipal lawsuits and protests and extra-record assertions related to the rate stabilization plan issue. Order at 13-15. With regard to the scope of the remand proceeding, the Commission stated:

After conducting any further proceedings as deemed necessary, we direct the presiding officer to prepare a Recommended Decision on Remand evaluating and recommending the disposition of the entire Application.

...

We acknowledge the ALJs' prior concerns about the outstanding issues present at the close of the evidentiary record and the concerns about issuing what would be tantamount to a hypothetical recommendation. *See* R.D. at 26. By directing the reopening of the record and remanding 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 Code.

Order at 15 and n. 7.

On April 16, 2021, ALJ Brady issued an Order Staying the Proceedings. On April 27, 2021, Aqua filed a 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 schedule hearings, briefing, and address other pending matters in the remanded proceeding. A Prehearing Conference Order was issued on July 29, 2022 directing the parties to submit a prehearing conference memorandum by noon on August 8, 2022.

II. NEED FOR ADDITIONAL TESTIMONY

The OCA is participating in this remand proceeding to ensure the interests of Aqua's existing customers and acquired customers are protected. As stated above, the ALJs did not recommend approving the Application because the record did not contain information sufficient for the Commission to determine (1) whether the acquisition would promote the public interest in some substantial way, (2) the fair market value of DELCORA or the rate base, or (3) the reasonableness, legality, or validity of the APA and Aqua's request to assume enumerated municipal contracts alleged to be currently held by DELCORA. Further, the ALJs did not address (4) the OCA's proposed conditions, to be adopted if the Application was granted and (5) the OCA's recommended adjustments to the UVE appraisals.

With regard to (1), the OCA challenged several aspects of the proposed transaction including that the purchase price is 44% (approximately \$84.7 million) over the net book value of the system assets and that the estimated revenue deficiency resulting from the transaction

would increase bills for DELCORA customers by approximately 12.55%, existing Aqua wastewater customers by 14.32%, and water customers by 4.58%. The record should be updated to reflect any changes in the net book value, the components of the calculation of the revenue deficiency, and estimated bill impacts.

The OCA also raised concerns regarding the proposed Trust and its provision of temporary rate relief to the acquired customers. When the record closed, DELCORA had not identified a specific amount to be placed in the Trust. The preliminary estimate of \$200 million should be updated. Also, parties have raised issues regarding the rate stabilization plan, in this proceeding and before the Courts, and there have been extra-record assertions about changes to the Trust proposal. The record regarding these matters should be subject to update and review regarding the direct and indirect impacts on acquired and existing Aqua customers.

Related to both (1) and (3), the status of any ongoing litigation regarding the County and Municipal lawsuits and protests should be updated in the record. Whether DELCORA has legal authority to transfer the wastewater utility assets and related contracts and the issues that have been raised by some of the resale customers regarding the resale and transfer of previous agreements, should be resolved before the transaction can close. As noted by the OCA, those agreements are tied to expected revenues.

Regarding (2) and (5), fair market value and ratemaking rate base, the OCA will investigate whether any intervening changes since the close of record impact the UVE valuations or the OCA's recommended adjustments.

Regarding (4), in response to the additional evidence received into the record in this remand proceeding, the OCA may revise its recommended conditions or propose new conditions as appropriate, in the event the Commission approves the Application.

The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained.

III. WITNESSES

The OCA intends to present additional testimony of Ralph Smith (Financial, Ratemaking, Appraisal and Policy Issues). Mr. Smith's contact information is as follows:

Ralph Smith
Larkin & Associates
15728 Farmington Road
Livonia, MI 48154
OCADelcora@paoca.org

To the extent necessary, the OCA's witness will present testimony regarding the impact of the proposed transaction on Aqua's existing customers and the acquired customers, and other financial, technical and ratemaking issues presented in this proceeding.

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify Your Honor and all parties of record immediately.

IV. SCHEDULE

As noted above, Aqua has waived the deadline for the Commission's issuance of a final order as set forth in Section 1329(d)(2) of the Code. In the absence of a statutory deadline, the OCA requests that the schedule adopted in this matter should recognize the number of issues to be addressed, as discussed *supra* in Section II, as well as the existing procedural schedules in place for other proceedings in which counsel and witnesses for the OCA and other parties in this proceeding are participating. To ensure that the schedule allows for full development of the record and provides enough time for discovery and examination of the proposed transaction, it may be

appropriate to delay setting a schedule. In the alternative, the OCA proposes the following schedule:

Applicant (and supporting Parties) Direct Testimony	October 12, 2022
Advocate/Intervenor Rebuttal Testimony	November 9, 2022
Surrebuttal Testimony	November 30, 2022
Hearings	December 6-8, 2022
Main Briefs	December 22, 2022
Reply Briefs	January 10, 2022

V. PUBLIC INPUT HEARINGS

Two Public Input Hearings were held in September 2020. If the OCA becomes aware of substantial public interest in scheduling additional hearings, it will promptly advise the Presiding Officer and parties and request that a Public Input Hearing be scheduled.

VI. DISCOVERY

By Prehearing Conference Order issued August 17, 2020 in this matter, discovery modifications were ordered because of the statutory six-month deadline for final Commission action. The OCA does not object to continued use of those modified deadlines, however, if longer deadlines are reasonable based on the schedule adopted for this remand proceeding, the OCA will work with the Presiding Officer and other Parties to make appropriate changes.

VII. SERVICE ON THE OCA

The OCA will be represented in this remand proceeding by Deputy Consumer Advocate Christine Maloni Hoover, Senior Assistant Consumer Advocate Erin L. Gannon, and Assistant Consumer Advocate Harrison W. Breitman. At this time, the OCA will be providing service via email and does not expect other parties to serve the OCA by mail.

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VIII. SETTLEMENT

The OCA is willing to engage in settlement discussions with all parties.

Respectfully submitted,

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DATED: August 8, 2022