

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 Approval of its Acquisition
Of the Wastewater System Assets of the Delaware
County Regional Water Quality Control Authority

A-2019-3015173

**AMENDED PREHEARING MEMORANDUM OF THE DELAWARE
COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**

The Delaware County Regional Water Quality Control Authority (“DELCORA”), by and through its undersigned attorneys, submits this amended prehearing memorandum pursuant to the Prehearing Conference Order in this matter. The Amended memorandum is submitted due to changes to the status of the ongoing litigation described in DELCORA’s initial memorandum. DELCORA joins with Aqua Pennsylvania Wastewater, Inc.’s Prehearing Conference Memorandum as to the proposed procedural schedule.

I. Identification and status of any ongoing litigation related to this case

DELCORA is now aware of three instances of ongoing litigation. In the Delaware County Court of Common Pleas, in Docket No. CV-2020-003185, after a Remand Hearing/Argument was held on September 7, 2022. The Court entered an Order on Remand from the Commonwealth Court of Pennsylvania on September 8, 2022. The time to file an appeal of this Order has not yet expired. As of the date of this filing no parties have filed a notice of appeal.

Additionally, there is a second Commonwealth Court matter, under Docket No. 455 CD 2021, which was previously scheduled for Argument on June 23, 2022, but later determined the Court would rule on the briefs that were previously submitted. On September 12, 2022 the Court entered an Opinion that the PUC’s Application to Dismiss and/or Quash Appeal and Intervenor Aqua Pennsylvania Wastewater, Inc.’s Motion to Quash are granted.

Finally, on August 17, 2022 the City of Chester Receiver filed a complaint against DELCORA and the DELCORA Rate Stabilization Fund Trust, DELCORA as Settlor and Univest Bank and Trust Co. as Trustee. This complaint seeks a declaratory judgment that a 1973 Sale Agreement and 1986 Amendment of the same as well as an Easement Agreement from 2014, between the City of Chester and DELCORA, which contained a reversion of certain assets should DELCORA cease to operate the system is enforceable and that DELCORA cannot assign the Contract. The Receiver has requested additional forms of relief including an injunction against DELCORA from completing the transaction contemplated by the APA and from transferring an assets that are subject to the City's right of reversion as set forth in the Contract. DELCORA filed a responsive pleading to this Complaint on September 13, 2022.

II. Need for additional direct and rebuttal testimony

As per the Pennsylvania Public Utility Commission's March 30, 2021 Order ("March 30 Order") reopening the evidentiary record and remand the proceeding for further proceedings as may be deemed appropriate DELCORA believes it appropriate to offer 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 updating are: 1) Aqua'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 and Pennsylvania Department of Environmental Protection, and 3) Aqua's stated acceptable conditions on the Chapter 11 and 13 approvals, based on the foregoing remand testimony. DELCORA respectfully requests that the Presiding Officer address in an order following the Prehearing Conference, the scope of issues DELCORA and any other supporting Party may include in their initial testimony on remand.

III. Need for additional witnesses

DELCORA offers Mr. Robert Willert, DELCORA Executive Director, as a potential witness to address the March 30 Order issues and update the record as described above in section II.

IV. Scheduling deadlines for additional briefs and reply briefs

DELCORA is willing to work with the administrative law judge and the parties to develop an agreed upon schedule for additional briefs and reply briefs.

V. Need for additional public input hearings

DELCORA is willing to work with the administrative law judge and the parties to develop an agreed upon schedule for additional public input hearings, should they be necessary.

VI. Scheduling new evidentiary hearings

DELCORA is willing to work with the administrative law judge and the parties to develop an agreed upon schedule for additional public evidentiary hearings, should they be deemed necessary.

VII. Any other appropriate matter.

DECLORA notes that on July 21, 2022 DELCORA received notice that Univest Bank and Trust Co. was resigning as Trustee of the DELCORA Rate Stabilization Trust. DELCORA is undertaking the review process to select an acceptable Successor Trustee for the Trust.

VIII. Discovery

DELCORA agrees to complete any necessary discovery as presented in the Prehearing Conference on Remand Order.

IX. Lead attorney

DELCORA's Counsel for the remand phase of this proceeding are:

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Michael P. Clarke will speak as lead counsel for DELCORA at the Prehearing Conference on remand order. DELCORA agrees to receive electronic service of documents in this proceeding and does not require that hard copies follow.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael P. Clarke", is written over a horizontal line.

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Dated: September 15, 2022

*Counsel for the Delaware County Regional
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CERTIFICATE OF SERVICE

I, Michael P. Clarke, Esq., hereby certify that I have served a true and correct copy of the foregoing Amended Prehearing Memorandum upon the parties listed below in accordance with the requirements of 52 Pa. Code §§ 1.54 (relating to service by a party) via electronic mail.

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