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February 6, 2023

VIA EMAIL

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:

The purpose of this letter to advise the Pennsylvania Public Utility Commission (“Commission”), as well as the Presiding Officer and the parties in the above referenced matter (“Application Proceeding”), of Aqua Pennsylvania Wastewater, Inc.’s (“Aqua”) opposition to a pleading and the relief requested therein (described further below) filed late on Friday, February 3, 2023. The background on the Application Proceeding and the reasons for Aqua’s opposition to the latest attempt to stay it are discussed further below.

On January 26, 2023, the County of Delaware, Pennsylvania, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate (“Joint Movants”) filed a Joint Motion for Stay (“Joint Movants Motion for Stay”) of the Application Proceeding (“Application”). Hearings for the Application Proceeding are scheduled for February 14 and 15 in Philadelphia, Pennsylvania. Aqua filed an Answer opposing the Joint Movants Motion for Stay on February 2, 2023. Energy Transfer Marketing & Terminals L.P.’s (f/k/a Sunoco Partners Marketing and Terminals L.P.) (“Sunoco”) filed an Answer in Support of the Joint Movants Motion for Stay (“Sunoco Answer in Support”) on February 2, 2023.

By letter dated February 3, 2023, Sunoco filed an Addendum to its Answer in Support of Joint Motion for Stay (“Addendum”). The Addendum advises the Commission of a Motion of Debtor Pursuant to Section 362 of the Bankruptcy Code for Entry of an Order Enforcing the Automatic Stay of Proceedings Pending Before the Pennsylvania Public Utilities [Utility] Commission (“Motion”), attached to the Addendum as Exhibit A. *See* Attachment 1. The Motion was filed by the City of Chester (“Chester” or the “City”) on February 3, 2023, in its pending bankruptcy proceeding at Case No. 22-13032 before the United States Bankruptcy Court for the

Eastern District of Pennsylvania. Chester's Motion seeks an order from the Bankruptcy Court staying the Commission from continuing to adjudicate the Application Proceeding.

The Motion asserts that Chester will provide Notice of the filing to the Commission. *See* ¶ 36. The Motion also proposes that responses to the Motion be filed by February 17, 2023, and that a hearing on the Motion be scheduled at 10:00 a.m. on February 27, 2023, before the presiding bankruptcy judge, the Honorable Ashely Chan, in Philadelphia. *See* Attachment 1, Notice of Motion, Response Deadlines, and Hearing Date.

Sunoco's Addendum raises new grounds for staying the Application Proceeding not addressed in either the Joint Movants Motion for Stay or the new arguments supporting a stay included in Sunoco's Answer in Support. Sunoco asserts as true that Chester has a valid reversionary interest that must be resolved before the Application Proceeding can continue. *See* Addendum ¶ 3-4. However, neither the validity of that claim nor its scope has yet been determined. Further, the very language of Chester's claimed reversionary interest excludes major assets originally sold to DELCORA under the 1973 agreement, such as "the Treatment Plant" and "the Collection System", and it is not clear that there are any assets to revert.

Moreover, Chester filed a complaint in the Court of Common Pleas at Docket No. CV-2022-006116 based on its claimed reversionary interest on August 17, 2022, which is currently pending. Inexplicably, Chester waited until the eve of Commission hearings in the Application Proceeding to assert alleged rights under the stay provisions of the Bankruptcy Code to attempt to stay this matter, despite the fact that its bankruptcy proceeding has been pending since November 10, 2022. Aqua's Application has been proceeding before the Commission throughout this entire period. Importantly, no Chester rights are implicated by the Application Proceeding because it has not yet been determined if Aqua's Application will be approved.

Aqua will be filing a full response to Chester's Motion in the bankruptcy proceeding. However, because Chester's Motion is likely to be denied for the following reasons, there is no need to stay the Application Proceeding.

The Application Proceeding was long underway before Chester filed a complaint in the Delaware Court of Common Pleas regarding its reversionary interest claim or initiated its bankruptcy proceeding. Importantly and as noted further below, Chester is not a party to the Application Proceeding and will not be affected by the outcome of that proceeding. 11 U.S.C. §362(a)(1) stays the continuation of judicial or administrative proceedings against a debtor (e.g., Chester) to recover claims that arose before the commencement of the bankruptcy case. However, the Application Proceeding does not involve a claim against the City to recover anything; therefore, the bankruptcy court has no jurisdiction whatsoever. On the contrary, the Application Proceeding involves Aqua's request to the Commission for the issuance of a certificate of public convenience to purchase assets owned and operated by DELCORA which, prior to Transaction closing, do not address or have any impact on any claimed reversionary interest of Chester.

Certainly, the existence of Chester's reversionary interest claim raises regulatory issues the Commission will have to address in the Application Proceeding, such as the potential impact of the claim on Aqua's rate base and whether the reversionary interest claim must be resolved before Transaction closing. However, the Commission will *not be determining* in the Application Proceeding (i) whether Chester has a reversionary interest in any DELCORA assets; (ii) the meaning of the 1973 agreement between DELCORA and City which first raised the possible reversion of some assets transferred and sold to DELCORA almost 50 years ago; and, (iii) if there is a valid reversionary interest, the precise nature and scope of the assets subject to reversion and their value for reversion purposes. An approval of Aqua's Application by the Commission in no way determines or affects the merits of Chester's reversionary interest claim.

Even if a stay under the bankruptcy code was deemed to apply to the Commission's proceeding, good cause exists for the bankruptcy court to find that relief from the stay should be granted to the Commission for cause. 11 U.S.C. §362(d)(1). ("On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay... for cause..."). Under the Bankruptcy Code, bankruptcy courts may grant relief from the automatic stay for "cause." 11 U.S.C. § 362(d)(1). "Cause" is based on the totality of the circumstances of the particular case. In *re Wilson*, 116 F.3d 87, 90 (3d Cir.1997). Cause for lifting the stay exists because there is no prejudice to the City, as the bankruptcy debtor, in lifting it. As noted above, the Application Proceeding involves issues completely unrelated to the claimed reversionary interest, and the Commission has no jurisdiction to consider and resolve the core issues relating to the reversionary interest claim. On the other hand, not lifting the stay will have an immediate and prejudicial impact on Aqua and DELCORA by depriving them of the opportunity for a full and timely adjudication of the Application, which has already been substantially delayed. Further, any reversionary interest Chester may have will remain regardless of whether the Commission approves the Application. Consequently, there is clear "cause" for lifting the stay.

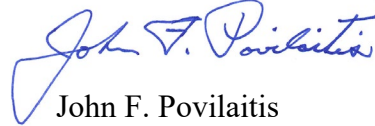
Accordingly, the automatic stay provision of the Bankruptcy Code does not apply to the Application Proceeding and, if it does apply, good cause exists for lifting that stay. Bankruptcy courts are accorded considerable discretion in deciding if good cause exists for relief from the automatic stay. *See e.g., In Re Szymanski*, 413 B.R. 232, 253 (Bankr. E.D. Pa. 2009); *accord Matter of Holtkamp*, 669 F.2d 505, 507 (7th Cir. 1982). There is no reason to stay the Application Proceeding as a result of Chester's Motion.

Finally, Chester's reversionary interest claim is currently being addressed in a mediation authorized by the bankruptcy court. Continuation of the Application Proceeding will not disturb the mediation process.

Copies of this correspondence are being served on Administrative Law Judge F. Joseph Brady and the Parties to this proceeding as indicated in the attached Certificate of Service.

February 6, 2023
Page - 4 -

Very truly yours,



John F. Povilaitis

JFP/kas
Enclosure
cc: Certificate of Service

Attachment 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 9
CITY OF CHESTER, PENNSYLVANIA,	:	Case No. 22-13032
Debtor.	:	Judge Ashely Chan

**MOTION OF DEBTOR PURSUANT TO SECTION 362 OF THE BANKRUPTCY
CODE FOR ENTRY OF AN ORDER ENFORCING THE AUTOMATIC
STAY OF PROCEEDINGS PENDING BEFORE THE PENNSYLVANIA
PUBLIC UTILITIES COMMISSION**

The City of Chester (“Chester” or the “City”), as the debtor in the above-captioned chapter 9 case, hereby moves the Court (the “Motion”), pursuant to Section 362 of title 11 of the United States Code¹ (the “Bankruptcy Code”), for entry of an order, substantially in the form attached hereto as **Exhibit A**, enforcing the automatic stay against proceedings pending before the Pennsylvania Public Utilities Commission (the “PUC”) related to the proposed sale of certain assets by the Delaware County Regional Water Quality Control Authority (“DELCORA”) to Aqua Pennsylvania Wastewater, Inc. (“Aqua”) in disregard of the City’s reversionary interest in those assets, which are property of the City’s bankruptcy estate. The continuation of the PUC proceeding and any decision by the PUC regarding the proposed sale would affect the City’s reversionary interest and, thus, the City’s bankruptcy estate. As a result, the continuation of the PUC proceeding violates the automatic stay as an act to obtain possession of or from, or exercise control over, the City’s property. In support of this Motion, the City respectfully represents as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

¹ Applicable to cases under chapter 9 pursuant to 11 U.S.C. § 901(a).

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Background

4. Pursuant to the authority granted by the Secretary of the Pennsylvania Department of Community and Economic Development to file a municipal debt adjustment action on behalf of the City under the Bankruptcy Code and the Pennsylvania Municipalities Financial Recovery Act, Act of 1987, P.L. 246, No. 47, on November 10, 2022 (the “Petition Date”), Michael Doweary, the Receiver for the City (the “Receiver”) commenced this case on behalf of the City under chapter 9 of the Bankruptcy Code.²

5. On the Petition Date, the City filed a *Motion for an Order (I) Appointing a Judicial Mediator, (II) Referring Certain Matters to Mandatory Mediation, and (III) Granting Related Relief* (the “Mediation Motion”) [Docket No. 16]. The Mediation Motion sought to have certain issues mediated, including the monetization of the City’s reversionary interest in the Sewer System (as hereinafter defined) and the multiparty litigation pending in Pennsylvania state courts relating to these assets—the resolution of which represent an important part of the City’s efforts to formulate and confirm a plan of adjustment. *See* Mediation Motion, ¶¶ 23-24.

6. Several parties, including Aqua, filed responses to the Mediation Motion [Docket Nos. 93, 94, 95, 97, 99, 117, 119, 122, and 125].

7. On December 15, 2022, the Court held a hearing on the Mediation Motion and on December 16, 2022, the Court entered an order granting the Mediation Motion (the “Mediation

² The factual background regarding the City, including the events precipitating the chapter 9 filing, is set forth in detail in the *Declaration of Michael Doweary in Support of the City of Chester, Pennsylvania’s Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code and First Day Pleadings* [Docket No. 5] and the *Declaration of Vijay Kapoor in Support of the City of Chester, Pennsylvania’s Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code and First Day Pleadings* [Docket No. 6], which were filed on the Petition Date.

Order”) [Docket No. 139] and appointed the Honorable Mary F. Walrath (the “Mediator”) to determine the mediation issues, establish a process and procedure for mediation, and to conduct mediation (collectively, the “Mediation”).

8. Shortly after the Mediation Order was entered, the parties to the Mediation, including DELCORA, met with the Mediator and began the mediation process, which is ongoing.

9. The factual basis for this Motion is contained in the *Declaration of Vijay Kapoor in Support of the Motion of Debtor Pursuant to Section 362 of the Bankruptcy Code for Entry of an Order Enforcing the Automatic Stay of Proceedings Pending Before the Pennsylvania Utilities Commission* (the “Kapoor Declaration”), filed contemporaneously herewith.

A. The City’s Relationship with DELCORA

10. Prior to 1973, the City owned and operated certain facilities and property used for the collection, transportation, and treatment of sewage (the “Sewer Services”) within the City and certain adjacent areas, where it served private users. Kapoor Dec. ¶ 5. Additionally, the City received sewage from municipal systems located in Delaware County, Pennsylvania for treatment. *Id.*

11. On February 12, 1973, the City entered into an Agreement of Sale and Service (together, with all amendments thereto, the “1973 Agreement”) with DELCORA, a copy of which is attached to the Kapoor Declaration as Exhibit A. *Id.* at ¶ 6.

12. DELCORA is a municipal authority incorporated by Delaware County on October 20, 1971, under the Pennsylvania Municipal Authorities Act for the purpose of collecting, conveying, and treating wastewater generated by residents and businesses located in Delaware County. *Id.* at ¶ 7. DELCORA owns and operates sewer collection systems serving eight municipalities, including the Sewer System as defined in paragraph 13, and is governed by a nine

member board entirely appointed by Delaware County. *Id.*

13. Pursuant to the 1973 Agreement, DELCORA purchased the property constituting the City's sewer system, including, *inter alia*, the sewage treatment plant and all the land at the location of the plant, the sewer mains, the interceptors, the force mains, the collection systems, the valves, the pumps, the machinery, the equipment, the inventory, the franchises, the licenses, the permits, and the accounts receivable, as well as certain related property (as defined in the 1973 Agreement, the "Sewer System") and agreed to provide Sewer Services to areas identified in the 1973 Agreement and exhibits thereto. *Id.* at ¶ 8.

14. Section 15 of the 1973 Agreement provides DELCORA with the exclusive right and duty to provide the Sewer Services to the specified service areas. 1973 Agreement at § 15.1. Under the 1973 Agreement, this exclusive right and duty continued until November 17, 2022 and thereafter, for a term as long as DELCORA remains in existence, unless the City or DELCORA provided notice of termination one year in advance. *Id.* at § 15.6. Neither the City nor DELCORA has provided a notice of termination. *See*, Kapoor Dec. ¶ 8.

15. The 1973 Agreement also provides:

If at any time in the future during the term of this Section 15 or at the end thereof [DELCORA] ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real Property, other than the Treatment Plant and those facilities in the Collection System described in Section 2(d) shall revert to [the City's] ownership rather than to the County of Delaware or any other agency.

1973 Agreement at § 15.7. Accordingly, the City maintains a reversionary interest in the Sewer System (except as to the Treatment Plant) if DELCORA ceases to operate the Sewer System, as DELCORA will if the proposed sale to Aqua discussed *infra*, is approved by the PUC and closes. The 1973 Agreement also prohibits the City and DELCORA from assigning their rights and obligations under the 1973 Agreement. *Id.* at § 16.3.

16. On November 26, 2014, DELCORA and the City entered into the Agreement between the Delaware County Regional Water Quality Control Authority (DELCORA) and City of Chester (City) Containing an Easement to Permit DELCORA to Operate and Maintain a Pipeline On, Under, and as Part of Property of the City (Facilities Easement) (the “Easement”), , related to use of a 48-inch force main and related facilities located underneath real property within the City. *See*, Kapoor Dec. ¶ 9 Pursuant to the Easement, DELCORA is obligated to pay ten percent (10%) of any proceeds it received from the sale or lease of the Easement to a third party. *Id.*

B. The Proposed Aqua Sale, PUC Approval, and Litigation

17. DELCORA and Aqua entered into an Asset Purchase Agreement dated September 17, 2019, as amended by a First Amendment to Asset Purchase Agreement dated February 24, 2020 (collectively, the “APA”), a copy of which is attached to the Kapoor Declaration as Exhibit B. *Id.* at ¶ 10. Pursuant to the APA, Aqua seeks to purchase, among other things, the Sewer System, the 1973 Agreement, the Easement, and various other service agreements with the City. *Id.* Additionally, the APA purports to transfer the capital contributions made by the City to Aqua. *Id.*

18. Pursuant to the APA, the purchase price for the Sewer System and DELCORA’s additional wastewater system assets is \$276.5 million³. *Id.* at ¶ 11.

19. The proposed sale to Aqua requires approval of the PUC. *Id.* at ¶ 12. Prior to execution of the APA, in December 2019, Aqua filed a Letter/Notice of Licensed Engineer and

³ In 2019, Aqua obtained an appraisal of DELCORA’s assets, including the Sewer System. That appraisal concluded the value of DELCORA’s assets was in a range between \$387,754,301 and \$438,377,696, with a weighted estimated fair market value of \$408,883,000—significantly more than Aqua’s \$276.5 million proposed purchase price. *Id.*

Utility Valuation Expert Engagement Concerning Acquisition of the DELCORA, Delaware and Chester Counties Sanitary Wastewater Collection and Treatment System (the “Notice Letter”). *Id.* On or about March 3, 2020, Aqua filed a formal application with the PUC (together with the Notice Letter and any related filings, the “Application”) initiating a proceeding for approval of the proposed sale (the “Application Proceeding”). *Id.* Specifically, the Application seeks approval of, among other things: (a) Aqua’s acquisition of the Sewer System and other wastewater system assets located in Delaware and Chester Counties; (b) Aqua’s provision of the Sewer Services to areas in Delaware and Chester Counties; (c) assignment of 163 municipal contracts from DELCORA to Aqua; and (d) approval of a ratemaking base value of the DELCORA assets of \$276.5 million. *Id.*

20. On November 9 and 10, 2020, the PUC held a public hearing on the Application. *Id.* at ¶ 13. Despite the public hearing and Application Proceeding, neither DELCORA, Aqua, nor the PUC notified the Receiver about the impact of the proposed transaction on the City’s reversionary interest in the Sewer System (other than the Treatment Plant) or the proposed assignment of the Easement. *Id.*

21. On or about April 7, 2022, the Receiver filed a letter with the PUC, notifying DELCORA, Aqua, and the PUC of the City’s reversionary interest in the Sewer System and asserting that the proposed transaction could not be completed without a resolution of the City’s reversionary interest. A copy of the letter date April 7, 2022 is attached to the Kapoor Declaration as Exhibit C. *Id.* at ¶ 14.

22. On June 2, 2022, the Receiver attempted to intervene in the Application Proceeding. *Id.* at ¶ 15. On August 3, 2022, the PUC denied the Receiver’s petition to intervene on procedural grounds. *Id.* On August 9, 2022, the PUC held a prehearing conference, from which the Receiver

was excluded. *Id.* Nonetheless, the Bureau of Investigation and Enforcement of the PUC (the “BIE”) submitted a Prehearing Memorandum for Remand of Proceeding, which noted that the PUC, DELCORA, and Aqua were disregarding the City’s reversionary interest and that DELCORA was attempting to transfer assets that it does not own as a result of such reversionary interest. *Id.* Testimony by the BIE also indicates that similar reversion provisions exist in DELCORA’s contracts with five additional municipalities. *Id.* Despite the conclusions of the BIE, the Receiver remains excluded from the Application Proceeding before the PUC. *Id.*

23. Thereafter, on August 17, 2022, the Receiver filed a Complaint in the Court of Common Pleas of Delaware County seeking, among other things, a declaratory judgment, specific performance, and injunctive relief determining that ownership of the Sewer System (other than the Treatment Plant) reverts to the City and that any transfer of the Sewer System must address the value of the City’s reversionary interest, a copy of which is attached to the Kapoor Declaration as Exhibit D. *Id.* at ¶ 16. The Complaint also seeks a determination that the City is entitled to payment of a portion of the proceeds attributed to the Easement. *Id.*

24. To date, the PUC has not yet approved Aqua’s acquisition of DELCORA’s assets and the Receiver’s Complaint remains pending before the Court of Common Pleas. *Id.* at ¶ 17. The PUC is scheduled to conduct a hearing on the proposed sale on February 14 and 15, 2023. *Id.*

III. Relief Requested and Basis for Relief

25. Section 362(a) of the Bankruptcy Code, made applicable to the City’s bankruptcy case by section 901 of the Bankruptcy Code, imposes an automatic stay of, among other things, “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Section 902 of the Bankruptcy Code provides that “‘property of the estate,’ when used in a section that is made applicable [in a chapter 9 case], means property of the debtor.” 11 U.S.C. § 902(1); *see also In re Jefferson County*, 484

B.R. 427, 446 n.9 (Bankr. N.D. Ala. 2012).

26. The automatic stay is intended to protect the estate. As the United States Supreme Court has explained, “[t]he automatic stay serves the debtor’s interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others.” *City of Chicago v. Fulton*, 141 S. Ct. 585, 589 (2021).

27. Property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). The term “property” has been broadly interpreted to include “all kinds of property, including causes of action, disputed, contingent *or reversionary interests*, and all other forms of property.” *Feiler v. Sims (In re Feiler)*, 218 F.3d 948, 956 (9th Cir. 2000) (emphasis added) (citing S. REP. No. 989 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5868; H.R. REP. No. 595 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6323 (footnote omitted)). See also *PNC Bank v. Spring Ford Indus. (In re Spring Ford Indus.)*, 338 B.R. 255, 260 (E.D. Pa. 2006) (explaining that the “definition of ‘property’ is broad enough to encompass reversionary interests”); *Morton v. Kievit (In re Vallecito Gas, LLC)*, 440 B.R. 460, 477 (Bankr. N.D. Tex. 2010) (citing *Weinman v. Graves (In re Graves)*, 609 F.3d 1153 (10th Cir. 2010) (“Even a contingent reversionary interest is included in a debtor’s estate.”) (internal citations omitted)); *Murphy v. Wray (In re Wray)*, 258 B.R. 777, 785 n.8 (Bankr. D. Idaho 2001) (noting that a reversionary interest in real property constituted property of the estate). Moreover, where a debtor’s interest in property is the subject of litigation, the automatic stay applies to that property. *In re Manley Toys Ltd.*, Case No. 16-15374 (JNP), 2018 Bankr. LEXIS 429 at, *16 (Bankr. D.N.J. Feb. 14, 2018).

28. In the chapter 9 case of *In re Jefferson County*, the court held that a lawsuit

regarding the provision of inpatient and emergency care for indigent residents of the debtor municipality was stayed pursuant to Section 362(a)(3) of the Bankruptcy Code as an attempt to exercise control over the debtor's property. 484 B.R. at 433, 447.

29. The Bankruptcy Code's broad definition of "property of the estate" includes the City's reversionary interest in the Sewer System (other than the Treatment Plant), which reversionary interests constitutes property of the City's estate. The Application Proceedings seek approval of a sale that would eliminate or terminate the City's reversionary interest without any consideration being paid to the City. Likewise, the continued pursuit of PUC approval of the proposed sale in the Application Proceedings, constitutes an attempt by Aqua and DELCORA to take property of or from the City, or to exercise control over, the City's property.

30. DELCORA and Aqua's disregard of the City's reversionary interest in the Sewer System and attempts to proceed with the Application Proceeding, if successful, would eliminate a valuable asset of the estate. *City of Chicago*, 141 S. Ct. at 589. The monetization of the Sewer System, which is a matter referred to Mediation, will be an important element in any plan of adjustment proposed by the City and is essential to the City's efforts to restructure.

31. Pursuant to the 1973 Agreement, if DELCORA ceases to operate the Sewer System, the City's reversionary interest is triggered and ownership will revert to the City—not the County of Delaware or any other Agency. 1973 Agreement at § 15. DELCORA and Aqua entered into the APA, without providing any notice to the City, despite its revisionary interest in the Sewer System. And now, pursuant to the APA, Aqua seeks to purchase—at a significantly below market price—among other things, the Sewer System, the 1973 Agreement, the Easement, and various other service agreements with the City. Kapoor Dec. ¶¶ 10-11. As recognized by the BIE, DELCORA and Aqua, in their efforts to have the APA approved and pursue the sale, are

disregarding the City’s reversionary interest and are attempting to transfer assets—which should properly revert to the City—without paying any amount to the City on account of the reversionary interest. *Id.* at ¶ 15.

32. This Court has determined that the Mediation is the proper vehicle to assist the City in its efforts to value and monetize the Sewer System. Allowing the Application Proceeding to proceed directly impedes the City’s ability to formulate and negotiate a viable plan of adjustment in this case.

33. Section 362(a) of the Bankruptcy Code prohibits the PUC, DELCORA, and Aqua from continuing to pursue approval of the sale because such effort is an attempt to take property of or from the City, or to exercise control over, the City’s property.

34. Therefore, Section 362(a)(3) of the Bankruptcy Code stays the Application Proceeding. Because of this, the automatic stay should be enforced to prohibit DELCORA and Aqua from continuing to prosecute the Application Proceeding before the PUC and prohibit the PUC from taking any further action with respect to the Application Proceeding⁴.

III. Reservation of Rights

35. The City files this Motion without prejudice to or waiver of its rights pursuant to Section 904 of the Bankruptcy Code, and nothing herein is intended to, shall constitute, or shall be deemed to constitute the City’s consent, pursuant to Section 904 of the Bankruptcy Code, to this Court’s interference with (a) any of the political or governmental powers of the City, (b) any

⁴ Because any decision by the PUC violates the stay, such decision would be void. *In re Siciliano*, 13 F.3d 748, 750 (3d Cir. (recognizing the “general principal that any creditor action taken in violation of an automatic stay is void *ab initio*.”); *In re Jester*, 344 B.R. 331, 338 (Bankr. E.D. Pa. 2006) (explaining actions in “violation of the stay [are] void *ab initio*”).

of the property or revenues of the City, or (c) the City's use or enjoyment of any income-producing property.

IV. Notice

36. Notice of this Motion will be provided to the following (or their counsel, if known) (a) the Office of the United States Trustee; (b) DELCORA; (c) Aqua; (d) the PUC; (e) Bureau of Investigation and Enforcement of the PUC; (f) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d); and (g) any party that has requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002. The City submits that, in light of the nature of the relief requested herein, no other or further notice is required.

V. No Prior Request

37. No prior request for the relief sought in the Motion has been made to this or any other Court.

WHEREFORE, the City respectfully requests the entry of an order substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and:

1. Enforcing the automatic stay provided by Section 362(a) of the Bankruptcy Code against the Application Proceedings;
2. Barring DELCORA and Aqua from pursuing, taking, or continuing any further action in the Application Proceeding without first obtaining stay relief from this Court;
3. Barring the PUC from taking any further action with respect to the Application Proceeding, including, without limitation, taking evidence, requesting briefing, and issuing a decision with respect to the Application Proceeding; and
4. Granting such other and further relief the Court may deem just and proper.

February 3, 2023

Respectfully submitted,

/s/ Tobey M. Daluz

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(*Admitted *pro hac vice*)

Attorneys for the City of Chester

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 9
CITY OF CHESTER, PENNSYLVANIA,	:	Case No. 22-13032
Debtor.	:	Judge Ashely Chan

**ORDER APPROVING THE MOTION OF DEBTOR PURSUANT TO SECTION 362
OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER ENFORCING THE
AUTOMATIC STAY OF PROCEEDINGS PENDING BEFORE THE PENNSYLVANIA
PUBLIC UTILITIES COMMISSION**

This matter having come before the Court on the *Motion of Debtor Pursuant to Section 362 of the Bankruptcy Code for Entry of an Order Enforcing the Automatic Stay of Proceedings Pending Before the Pennsylvania Utilities Commission* [Docket No. __] (the “Motion”)¹ filed by the City of Chester, Pennsylvania (the “City”); the Court having reviewed the Motion and the evidence adduced with respect to the Motion at a hearing before the Court (if any) (the “Hearing”); the Court finding that, (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The automatic stay provided by Section 362(a) of the Bankruptcy Code applies to stay the Application Proceedings because they are an act to obtain possession of property of the

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

City's estate.

3. Delaware County Regional Water Quality Control Authority ("DELCORA") and Aqua Pennsylvania Wastewater, Inc. ("Aqua") are barred from pursuing, taking, or continuing any further action in the Application Proceeding without first obtaining stay relief from this Court.

4. The Pennsylvania Public Utilities Commission is barred from taking any further action with respect to the Application Proceeding, including, without limitation, taking evidence, requesting briefing, and issuing a decision with respect to the Application Proceeding.

5. Nothing herein or in the Motion is intended to, shall constitute or shall be deemed to constitute the City's consent pursuant to Section 904 of the Bankruptcy Code to this Court's interference with (a) any of the political or governmental powers of the City, (b) any of the property or revenues of the City, or (c) the City's use or enjoyment of income-producing property.

6. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement, or interpretation of this Order.

Dated: _____

Ashely M. Chan
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 9
CITY OF CHESTER, PENNSYLVANIA,	:	Case No. 22-13032
Debtor.	:	Judge Ashely M. Chan

NOTICE OF MOTION, RESPONSE DEADLINES, AND HEARING DATE

On February 3, 2023, the City of Chester (“Chester” or the “City”), filed a *Motion of Debtor Pursuant to Section 362 of the Bankruptcy Code for Entry of an Order Enforcing the Automatic Stay of Proceedings Pending Before the Pennsylvania Public Utilities Commission* (the “Motion”) [Docket No. 211]. The Motion seeks entry of an order enforcing the automatic stay against proceedings pending before the Pennsylvania Public Utilities Commission (the “PUC”) related to the proposed sale of certain assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”) to Aqua Pennsylvania Wastewater, Inc. (“Aqua”) in disregard of the City’s reversionary interest in those assets, which are property of the City’s bankruptcy estate.

1. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult an attorney).

2. **If you do not want the court to grant the relief sought in the Motion** or if you want the Court to consider your views on the Motions, then on or before **February 17, 2023** you or your attorney must file a response to the Motions. (*See Instructions on next page*).

3. A hearing on the Motions is scheduled to be held before the Honorable Ashely M. Chan on **February 27, 2023 at 10:00 a.m. (prevailing Eastern Time) in the United States Bankruptcy Court, 900 Market Street, 2nd Floor, Courtroom No. 4, Philadelphia,**

February 3, 2023

Respectfully submitted,

/s/ Tobey M. Daluz

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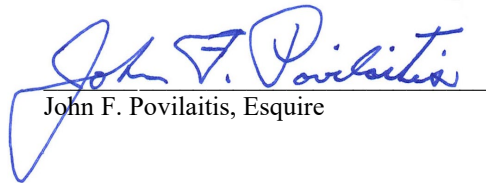
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(*Admitted *pro hac vice*)

Attorneys for the City of Chester

VERIFICATION

I, John Povilaitis, attorney for Aqua Pennsylvania Wastewater, Inc., hereby verify that the information in the foregoing document filed at Docket No. (A-2019-3015173), is true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.


John F. Povilaitis, Esquire

DATE: February 6, 2023

**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 the acquisition by Aqua of the	:	
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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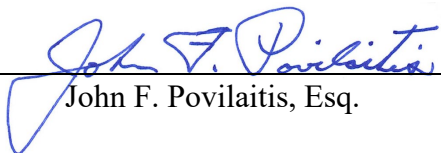
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John F. Povilaitis, Esq.

Date: February 6, 2023