

# Buchanan

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February 5, 2025

## **VIA E-FILING**

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 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:

Aqua Pennsylvania Wastewater, Inc. (“Aqua”) files and serves this Eighth Status Report in connection with the above-captioned proceeding, as directed by the Presiding Officer, Administrative Law Judge F. Joseph Brady, in his Interim Order Granting Joint Motion for Stay (“Order Granting Stay”) dated February 6, 2023. The Order Granting Stay was based on the City of Chester’s request in its bankruptcy proceeding at Case No. 22-13032 for a stay of Aqua’s Application proceeding at Docket A-2019-3015173, and DELCORA’s Complaint for Declaratory Judgment against Aqua and Delaware County before the Delaware Court of Common Pleas at Docket No. CV-2023-000494. Accordingly, Aqua reports on the status of these proceedings.

### **In re: City of Chester, Pennsylvania, Debtor, Case No. 22-13032**

Consistent with Bankruptcy Judge Ashely M. Chan’s Order of March 7, 2023, Aqua participated in the sixty (60) day period of discussions on the City of Chester’s (“City”) claimed reversionary interests in the DELCORA wastewater system. Judge Chan conducted a hearing on May 15, 2023, at which time the City of Chester, Aqua and DELCORA reported to the Court on the status of the Parties’ efforts toward identifying and reaching an agreement regarding identification of any assets subject to the claimed reversionary interest. At the hearing, Aqua identified assets it believed may be subject to the reversionary interest. Aqua also committed to recognize a Reversionary Interest with respect to any assets that are ultimately identified as

subject to that interest. On May 23, 2023, the Bankruptcy Court issued an order staying Aqua's DELCORA Application before the Pennsylvania Public Utility Commission ("PUC"). Aqua subsequently filed a Notice of Appeal on June 6, 2023, to the United States District Court for the Eastern District of Pennsylvania. Aqua's brief in support of the appeal was filed on August 7, 2023. The City responded on September 6, 2023. Aqua filed its reply brief on September 20, 2023. The parties are waiting for the court to determine if oral argument will be scheduled, or if a decision will be rendered solely on briefing. Aqua filed a renewed request to lift the Stay at Bankruptcy Court which was denied. Oral argument has not been scheduled as of the date of this Status Report. Therefore, the Bankruptcy Court's order staying Aqua's DELCORA Application before the PUC remains in effect.

On August 26, 2024, the Receiver of the City filed with the U.S. Bankruptcy Court a Plan of Adjustment which indicated his intent to proceed with a process to monetize water assets, which included the Chester Water Authority, Stormwater Authority of the City of Chester, and the City's reversionary interests in the sewer assets of DELCORA. On November 20, 2024, a Request for Qualifications ("RFQ") was issued by the City's Receiver for interested parties to submit a response to the RFQ by January 15, 2025.

**DELCORA Complaint for Declaratory Judgment against Aqua and Delaware County before the Delaware Court of Common Pleas, Docket No. CV-2023-000494**

In this proceeding, Aqua filed preliminary objections to DELCORA's Complaint. Delaware County filed an Answer to DELCORA's Complaint. The court scheduled a hearing on Aqua's preliminary objections for October 12, 2023. However, prior to the scheduled hearing, the Delaware County Court notified the parties that the hearing was canceled and that the preliminary objections would be re-listed after the parties receive the benefit of a Commonwealth Court's decision on Delaware County's appeal of the Delaware County Court's September 13, 2022, Remand Order.

On June 4, 2024, the Commonwealth Court issued its Opinion in Delaware County's appeal from the September 13, 2022 Remand Order, affirming the Remand Order to the extent it granted Delaware County mandamus relief, dismissing Delaware County's Trust-related claims as moot, and acknowledging DELCORA's ability under the Municipal Authorities Act to execute the Asset Purchase Agreement with Aqua. None of the parties pursued an appeal to the Supreme Court of Pennsylvania, and as a result the June 4, 2024, Commonwealth Court Order is final.

On December 3, 2024, the Delaware County Court of Common Pleas issued an order that sustained Aqua's preliminary objections and dismissed DELCORA's complaint. Order attached. In dismissing DELCORA's complaint, Judge Dozor's Opinion stated that "... this Court finds that there is no uncertainty, case or controversy as a matter of law, and therefore declaratory relief is unnecessary and inappropriate." Judge Dozor also stated that "as a result of prior decisions of this Court and the Commonwealth Court, the issues that Delcora asked this Court to

February 5, 2025

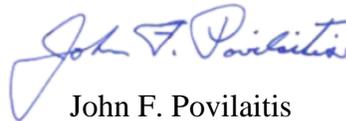
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decide have already been fully litigated and decided, no uncertainty remains, and those issues cannot be relitigated in this case”, and that “[i]t is important to note, that this Court has always confirmed the authority of the Pennsylvania Public Utility Commissions scope of the review, authority and approval.” Finally, Judge Dozor concluded “[t]hus, even if there was a potential case or controversy regarding the interpretation of the Commonwealth Court’s decisions regarding the Ordinance, 2020-4 and the Asset Purchase Agreement, it is premature to raise any claim until the PUC acts on Aqua’s PUC Application.”

More than thirty days have now elapsed since the December 3, 2024, Order without DELCORA seeking to amend its Complaint or filing an appeal challenging the dismissal of its Complaint. Accordingly, the December 3, 2024 Order has become final and unappealable.

Copies of this Status Report have been served on Parties to this proceeding, as indicated in the attached Certificate of Service.

Very truly yours,

A handwritten signature in blue ink that reads "John F. Povilaitis". The signature is written in a cursive style with a large initial "J".

John F. Povilaitis

JFP/psm

cc: Certificate of Service  
The Honorable F. Joseph Brady



assets to Aqua) ("APA").

2. In September 2019, Plaintiff, Delaware County Regional Water Quality Control Authority (DELCORA) entered into an Asset Purchase Agreement (APA) with Defendant, Aqua Pennsylvania Wastewater, Inc. (Aqua), to accomplish Aqua's purchase of Delcora's wastewater management system.
3. On June 3, 2020, the County passed Ordinance No. 2020-4 (Ordinance), which ordered Delcora to "terminate its operation(s), wind up its affairs, satisfy outstanding debts, take all actions necessary to remove any impediments to its termination, and refrain from taking any action or expending any funds inconsistent with termination of its affairs."
4. The Ordinance was upheld by the Commonwealth Court, which held:

Therefore, we conclude that the Ordinance is valid and enforceable to the extent it directs the termination/dissolution of Delcora and dictates that, after termination/dissolution is underway, Delcora must engage in conduct necessary to effectuate the transfer of its assets and assumption of its liabilities/obligations by the County.

(Cmwlth. Ct. slip op., 3/3/22, at 19.)

5. The Commonwealth Court also found that Delcora had the authority to enter into the Asset Purchase Agreement with Aqua pursuant to the Municipal Authorities Act ("MAA"), 53 Pa.C.S. §§ 5601 at seq., and confirmed that among the "obligations incurred" by an authority that a municipality assumes upon termination of an authority are contracts to sell its assets:

That is, based on the plain language of section 5622(a) of the MAA, a municipality can "assume" all of the "obligations

incurred" by an authority, including those in a contract to sell its assets, by obtaining an authority's project and legal title to the assets of the project.

(Cmwlth. Ct. slip op., 3/3/22, at 21).

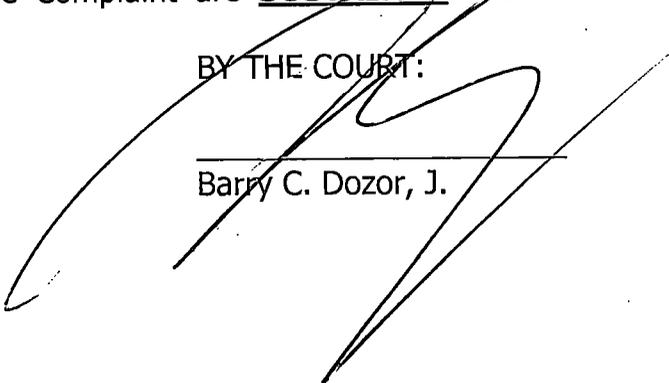
6. In a subsequent Memorandum Opinion issued by the Commonwealth Court on June 4, 2024, the Commonwealth Court affirmed this Court's Order to the extent that it recognized Delcora's ability and authority to enter into the APA with Aqua, holding that: "To the extent that the trial court's Remand Order recognizes Delcora's statutory ability to contract under Section 5607 of the MAA, subject to the reviewing jurisdiction of the PUC, it is valid." (Cmwlth. Ct. slip op., 6/4/24, at 15) (emphasis added).
7. The Commonwealth Court concluded that: "We affirm the Remand Order to the extent that it grants the County mandamus relief, dismisses the County's Trust-related claims as moot, and acknowledges Delcora's ability under the MAA to execute the APA." (Cmwlth. Ct. slip op., 6/4/24, at 16-17) (emphasis added).
8. Because no appeals were filed from the June 4, 2024 Commonwealth Court Order, the decision has become final and unappealable.
9. There is no uncertainty or controversy remaining as to Delaware County Ordinance 2020-4 (directing Delcora to terminate) or the Asset Purchase Agreement pursuant to the Municipal Authorities Act.
10. For the reasons set forth herein, this Court finds that there is no uncertainty,

case or controversy as a matter of law, and therefore declaratory relief is unnecessary and inappropriate.

11. By operation of the doctrines of collateral estoppel and *res judicata* as a result of prior decisions of this Court and the Commonwealth Court, the issues that Delcora asked this Court to decide have already been fully litigated and decided, no uncertainty remains, and those issues cannot be relitigated in this case.
12. It is important to note, that this Court has always confirmed the authority of the Pennsylvania Public Utility Commissions scope of the review, authority and approval.
13. Aqua has filed an Application seeking a Certificate of Public Convenience before the Pennsylvania Public Utility Commission ("PUC"), PUC Docket No. A-2019-3015173, which if granted would allow Aqua to operate the wastewater system after closing on the Asset Purchase Agreement.
14. However, the PUC proceedings have been stayed as a result of the bankruptcy petition filed by the City of Chester which remains pending before the bankruptcy court.
15. Thus, even if there was a potential case or controversy regarding the interpretation of the Commonwealth Court's decisions regarding the Ordinance, 2020-4 and the Asset Purchase Agreement, it is premature to raise any claim until the PUC acts on Aqua's PUC Application.

16. Accordingly, Delcora's Complaint fails to state a legally sufficient claim upon which relief may be granted pursuant to Pa.R.Civ.P. 1028(a)(4). Therefore, Aqua's Preliminary Objections to the Complaint are **SUSTAINED** and the Complaint is hereby **DISMISSED.**

BY THE COURT:



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Barry C. Dozor, J.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

**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.

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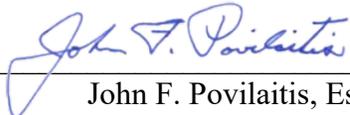
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Date: February 5, 2025



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John F. Povilaitis, Esquire