

MINUTES

WORKSHOP REGARDING CHESTER LTCP UPDATES AND FUTURE CAPITAL PROJECTS

NOVEMBER 13, 2023 (VIRTUAL)

Attendants: Messrs. Cartafalsa, Cherico, DiSantis, S. Garner, Hurst, Kern, Knapp, Lenton, Monaghan, Moss, Mullen, Nagle, Willert, and Mesdames Amadio, Billings, Bonnett, Byrd, Caulk, B. Garner, Fitzgerald, Nichols, and Sage.

The following were present: Samantha Newell, and John Rice. There were no other members of the public present.

1. WORKSHOP REGARDING CHESTER LTCP UPDATES AND FUTURE CAPITAL PROJECTS: Mr. Kern reviewed and summarized the report entitled “Re-evaluation of Current Treatment Options for The Eastern Service Area”. See Exhibit A attached. Ms. Nichols asked if we would need to extend our contract with the Philadelphia Water Department (PWD) until the tunnel project is completed, if not completed by 2028. Mr. DiSantis replied that there was a meeting held with PWD, Mr. Willert, and our attorneys at the time. The PWD’s Commissioner informed him that if this instance occurs, PWD will be willing to work with us. Mr. Kern explained that as of now, the 537 Plan hasn’t been approved, nor have permits been issued to begin work so that is the hold up on the tunnel project currently. Ms. Billings spoke briefly about the budget comparison, which is the last page of the referenced attached report. Mr. Knapp asked for an explanation about the ammonia removal. Mr. Hurst replied that the DRBC and EPA are trying to make the WRTP, as well as all of the other ten dischargers, go into a specific portion of the Delaware River when removing ammonia due to the conditions of the river. Ms. Nichols asked if the costs of the capital improvements are associated with diverting the wastewater to Philadelphia, then why is the cost distributed between county rate payers instead of the rate payers specifically in the eastern service area. Mr. DiSantis answered that since the county is going to benefit from this project, it would only be fair to distribute the costs amongst all county rate payers as well as the eastern service area rate payers.

Ms. Billings summarized the Legal Update Memorandum. See Exhibit B attached. Mr. Rice explained that DELCORA has filed a counter claim with AQUA because AQUA made a complaint to cease DELCORA from speaking with PWD without AQUA being present. Lastly, Ms. Newell added that Judge Dozier is not interested in hearing an argument on the DELCORA Declaratory Judgement action that was filed until after the Commonwealth Court has determined what his ability would be to have jurisdiction over the EPA.

EXHIBIT A

RE-EVALUATION OF CURRENT TREATMENT OPTIONS FOR THE EASTERN SERVICE AREA

**By: DELCORA Board of Directors Ad-Hoc Committee
November 13, 2023**

BACKGROUND

DELCORA was formed by the County of Delaware, PA by resolution dated October 20, 1971, with the power to construct, finance, operate and maintain sewer systems throughout the County and adjacent areas included in its drainage basin.

Pennsylvania's Act 537 requires that municipalities develop and implement comprehensive official plans that provide for the resolution of existing sewage disposal problems and provide for future sewage disposal needs.

Delaware County's Act 537 Plan, approved in 1971, divides the County into two regions, the Eastern Service Area and the Western Service Area. The Eastern Service Area is served by the Philadelphia Water Department (PWD) Southwest Water Pollution Control Plant (PSWPCP; hereafter called "Philadelphia"). The Western Service Area is serviced by the DELCORA Western Regional Treatment Plant (WRTP), located in Chester, PA.

To implement the current Act 537 plan, DELCORA entered into a fifty-year agreement with PWD to provide treatment for the Eastern Service Area at the PSWPCP. The agreement was renegotiated in April 2013 and the service agreement was extended until April 1, 2028. The extended agreement included a provision that DELCORA would pay 9.44% of the cost of implementing PWD's Long-Term Control Plan (LTCP)¹. At that time, DELCORA's 9.44% share of PWD's LTCP was estimated at \$178 million.

Over time, the cost of PWD's LTCP increased significantly. By 2021, DELCORA's share was projected to rise from \$178 million to \$605 million, to be billed annually as the work is completed.

In response to this projected substantial increase in cost, DELCORA investigated alternatives for treatment of sewage from the Eastern Service Area that might be less expensive than continuing to direct flows to Philadelphia. After analyzing multiple options, DELCORA proposed an alternative that included upgrades to the WRTP to handle additional flow, upgrades to the existing pump stations and force mains, and providing a tunnel for storage and flow equalization (hereafter called the "tunnel project"). The 8.5-mile-long rock tunnel would extend from the Darby Creek Pump Station and continue to the WRTP; all of DELCORA's flow to Philadelphia would be eliminated by 2029 after the current service agreement expires. After review by the PA Department of Environmental Protection (DEP), the pipe size was increased from twelve feet to fourteen feet plus tunnel access shafts and additional pipelines were added to satisfy the

¹ Long-Term Control Plans are EPA mandates to develop, evaluate, and complete a range of Combined Sewer Overflow (CSO) alternatives to meet water quality standards, including better maintenance and management of stormwater entering the sewer system. Both PWD and DELCORA are currently operating under Long-Term Control Plans for their sewage treatment systems.

requirements of DELCORA's LTCP. This increased the plan's cost substantially, but it remained the most viable alternative.

Because the tunnel project represented a significant change in sewage treatment for the Eastern Service Area, DELCORA completed an update to the existing Act 537 Plan. The plan (called the Act 537 Plan Update for the Eastern Service Area) was submitted to the appropriate regulatory agencies and 46 municipalities within the Eastern and Western Service Areas. All but three municipalities have approved the plan². Most notable of the non-approvers is the City of Chester, the host location for the proposed expanded WRTP and additional flow from the Eastern Service Area. The Authority has met numerous times with City officials, City Council, and the City Receiver seeking approval of the new Act 537 Plan. Chester has also filed for bankruptcy and has listed DELCORA as a creditor based on a 45-year-old agreement that would be triggered upon a pending sale of the Authority to Essential Utilities³, further complicating the approval process.

The current legal situation makes future negotiations extremely difficult, if not impossible. Significantly, the DEP will not approve the proposed Act 537 Plan Update until it is approved by the City of Chester. Without state approval, necessary state-issued permits cannot be obtained. Without permits, the proposed tunnel project cannot be constructed.

STATUS OF THE TUNNEL PROJECT

Work Completed

The current service agreement with the PWD expires on April 1, 2028. To have completed construction of the tunnel project by this deadline, some work had to proceed even though the proposed Act 537 Plan Update had not yet received full approval.

Consequently, DELCORA has proceeded with the following work:

- Design of Tunnel and Pump Stations - completed.
- Secure Tunnel Easements - 75% completed.
- Obtain Permits - applied for but Pennsylvania permits not received⁴.

² City of Chester, Swarthmore Borough, and Lansdowne Borough.

³ In 2019, DELCORA signed an Asset Purchase Agreement to sell to Aqua Pennsylvania Wastewater, Inc, an Essential Utilities Company.

⁴ DELCORA has submitted numerous permitting packages that have been reviewed by agencies and technical comments have been addressed resulting in design reviewed by agencies and technical comments have been addressed resulting in design) changes. All packages remain pending or in some cases were returned to DELCORA due to the lack of the approval of the Act 537 Plan.

Work to Be Completed

- Approval of the project by the remaining municipalities.
- Obtaining remaining easements (Heinz Wildlife Refuge, Norwood Borough, and some minor parcels).
- Finalization of permits.
- Design of the WRTP upgrades and expansion needed to accommodate additional flow.

It should be noted that, as discussed earlier, approval by the City of Chester remains problematic, as does obtaining the remaining easements. Additionally, construction of the tunnel, while feasible from both an engineering and economic standpoint, faces uncertainty and risk associated with major underground construction.

RECENT CHANGES

In August 2023, the PWD forwarded an amendment to the service agreement with DELCORA. This amendment changed the rate model used to calculate DELCORA's share of the LTCP costs for Philadelphia. The new rate model reduces DELCORA's share from 9.44% (\$605,000,000) to 0.21% (\$13,458,000), a reduction of almost 98%. The rate model used to determine treatment costs (a separate annual cost unrelated to those associated with the LTCP) as well as the expiration date of the agreement did not change. DELCORA approved the amendment, and the new rates become effective on November 1, 2023.

The dramatic reduction in DELCORA's cost for PWD's Long-Term Control Plan prompted a re-evaluation of the decision to build a tunnel which would discontinue utilizing Philadelphia for treatment of sewage from the Eastern Service Area.

RE-EVALUATION

The following factors were considered when re-evaluating the options to either leave Philadelphia and construct the tunnel or stay in Philadelphia:

Staying in Philadelphia:

- Debt Service on \$300,000,000 of new capital to finance DELCORA's LTCP.
- Annual operating and LTCP expenses due to Philadelphia⁵.

Leaving Philadelphia and construction of tunnel:

- Debt Service on \$735,000,000 of new capital to finance tunnel project including additions for DELCORA's LTCP.

⁵ As of 2030, this may include future expenses for ammonia removal at the Philadelphia plant.

- Annual operating and LTCP expenses to Philadelphia (end in 2029).
- Additional operating expenses at WRTP to accommodate additional flow⁶.

As shown in Exhibit 1, the cumulative cost savings of staying in Philadelphia reaches more than \$90M over the next 10 years. Additionally, because continuing to send flow to the PSWPCP is essentially a “No Action” option that retains the current process by which sewage from the Eastern Service Area is treated, it is anticipated that the existing approved Act 537 Plan will require no modification. This would seem, then, the best decision from both an economic and administrative standpoint.

However, there is reasonable concern that, without a long-term extension of the service agreement between DELCORA and PWD, there is no guarantee that Philadelphia’s rates for the LTCP will not rise. While the Service Agreement defines the model used to calculate rates, other variables could impact the model, changing DELCORA’s costs. Additionally, it should be noted that PWD’s charge to DELCORA for sewage treatment for 2023-2024 went up 21%.⁷ This significant increase (about \$1 million) was offset by the corresponding decrease in the Long-Term Control Plan charges, which became effective on September 1, 2023. While this increase in treatment costs was indeed substantial, it would take 36 years of similar annual rate increases⁸ to invalidate the option to stay in Philadelphia.

RECOMMENDATIONS

Staying in Philadelphia appears to be the most viable option. However, given the unknown future costs for both the Philadelphia LTCP and annual treatment costs, it would not be prudent for the Authority to completely abandon the significant work already completed with respect to the tunnel project. This can be accomplished while continuing efforts to utilize Philadelphia for sewage treatment from the Eastern Service Area into the foreseeable future.

Specific action should include:

1. Completion of the following limited work on the tunnel project:
 - a. Continue obtaining easements for the tunnel construction.
 - b. Continue obtaining necessary permits.
2. Negotiate a long-term extension of the Philadelphia Service Agreement that includes a rate structure for the PWD LTCP that remains economically feasible for the Authority.
3. Continuing work to execute the Consent Decree for DELCORA’s LTCP.

⁶ Includes loss of revenue due to reduction in capacity for hauled waste.

⁷ This was the first Phila rate increase in four years.

⁸ Assuming 5¼% annual increase for PWD and 3% increases for DELCORA.

EXHIBIT 1
BUDGET COMPARISON

Stay with Philadelphia; Complete DELCORA LTCP	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Annual Costs Due to Philadelphia										
Treatment Costs (7% annual increase through 2028; 5% after)	\$12,250,000	\$13,107,500	\$14,025,025	\$15,006,777	\$16,057,251	\$16,860,114	\$17,703,119	\$18,588,275	\$19,517,689	\$20,493,574
Ammonia Removal (new as of 2030)	-	-	-	-	-	-	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000
Share of PSWPCP LTCP Expenses (assume \$25,000 annual increase)	\$110,000	\$135,000	\$160,000	\$185,000	\$210,000	\$235,000	\$260,000	\$285,000	\$310,000	\$335,000
Annual Debt Service for DELCORA LTCP (\$300,000,000; 30 years; 3.75%)	\$841,314	\$2,523,943	\$4,206,572	\$5,889,201	\$7,571,829	\$9,254,458	\$10,937,087	\$12,619,715	\$14,302,344	\$15,984,973
Total - Annual Incremental Expense	\$13,201,314	\$15,766,443	\$18,391,597	\$21,080,978	\$23,839,080	\$26,349,572	\$30,300,206	\$32,892,991	\$35,530,033	\$38,213,546

Leave Philadelphia, Build 14-foot Tunnel (Includes DELCORA LTCP additions)	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Annual Costs Due to Philadelphia (end 2029)										
Treatment Costs (7% annual increase)	\$12,250,000	\$13,107,500	\$14,025,025	\$15,006,777	\$16,057,251	\$8,430,057	-	-	-	-
Share of PSWPCP LTCP Expenses (assume \$25,000 annual increase)	\$110,000	\$135,000	\$160,000	\$185,000	\$210,000	\$117,500	-	-	-	-
Other Expenses										
WRTP Operational Costs	-	-	-	\$500,000	\$1,500,000	\$3,500,000	\$4,500,000	\$4,600,000	\$4,650,000	\$4,700,000
Annual Debt Service for tunnel (\$735,000,000; 30 years; 3.75%)	\$701,095	\$3,785,915	\$9,955,553	\$17,948,040	\$26,781,841	\$33,512,355	\$36,316,737	\$37,718,927	\$39,121,118	\$40,523,308
Total - Annual Incremental Expense	\$13,061,095	\$17,028,415	\$24,140,578	\$33,639,817	\$44,549,092	\$45,559,912	\$40,816,737	\$42,318,927	\$43,771,118	\$45,223,308

Comparison	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Annual Incremental Expense Stay With Philadelphia	\$13,201,314	\$15,766,443	\$18,391,597	\$21,080,978	\$23,839,080	\$26,349,572	\$30,300,206	\$32,892,991	\$35,530,033	\$38,213,546
Annual Incremental Expense Build Tunnel Leave Philadelphia	\$13,061,095	\$17,028,415	\$24,140,578	\$33,639,817	\$44,549,092	\$45,559,912	\$40,816,737	\$42,318,927	\$43,771,118	\$45,223,308
Annual Difference in Total Incremental Expense	-\$140,219	\$1,261,972	\$5,748,981	\$12,558,839	\$20,710,011	\$19,210,341	\$10,516,531	\$9,425,936	\$8,241,085	\$7,009,762
		-\$140,219	\$1,121,753	\$6,870,734	\$19,429,573	\$40,139,585	\$59,349,925	\$69,866,456	\$79,292,392	\$87,533,477
Cumulative Difference in Total Incremental Expense	-\$140,219	\$1,121,753	\$6,870,734	\$19,429,573	\$40,139,585	\$59,349,925	\$69,866,456	\$79,292,392	\$87,533,477	\$94,543,239

EXHIBIT B

LEGAL UPDATE MEMORANDUM

To: DELCORA Board Members
From: Legal Liaison Committee
November 13, 2023

ADMINISTRATIVE PROCEEDINGS

- Federal bankruptcy judge has ruled that the PUC hearing is stayed until there is a final unappealable order regarding the Chester bankruptcy. AQUA has appealed the ruling to Federal District Court; no hearing date has been set.

CITY OF CHESTER REVERSIONARY INTEREST AND BANKRUPTCY

- August 2022: Receiver for the City of Chester filed an Action for Declaratory Judgement and Injunctive Relief against DELCORA claiming DELCORA had failed to appropriately recognize Chester's reversionary interest in certain DELCORA assets should the Authority cease to exist. Chester and DELCORA stipulated to stay until resolution of bankruptcy; AQUA objected to stay and filed Preliminary Objections (POs). Receiver withdrew the complaint without prejudice at a hearing on August 28, 2023.
- November 2022: On behalf of the City of Chester, Receiver filed for Chapter 9 bankruptcy. DELCORA is a named party as a potential creditor due to reversionary interest. Valuation of the assets to be included in the reversionary interest is ongoing, as is mediation.

OTHER ONGOING LEGAL PROCEEDINGS

- May 2020: Delaware County filed a complaint against DELCORA relating to the legality, enforceability, and integrity of the Asset Purchase Agreement (APA) and the Rate Stabilization Fund Trust. AQUA intervened in the case. The complaint was later amended to add a count in mandamus to enforce Delaware County Ordinance 2020-04, which ordered the dissolution of DELCORA. Common Pleas Court found that all were legal and enforceable (with the Trust matter subject to PUC jurisdiction). On appeal, Commonwealth Court remanded to Common Pleas Court, finding that the trial court erred in denying the County's request for a writ of mandamus and injunctive relief. The Commonwealth Court did not make any findings on the remaining four questions that were presented. On remand, Common Pleas Court entered a substantially similar opinion, making minor changes. The County filed a request for re-argument. A hearing before the Commonwealth Court was scheduled for October 10, 2023, but the case did not make the final October argument schedule; a new date has not been set.
- January 2023: DELCORA filed a complaint for Declaratory Judgement against AQUA and Delaware County asking the Court to determine if DELCORA can proceed with the sale or

the termination of the Authority given the conflict between the APA and county ordinance terminating DELCORA (2020-4), specifically asking which action supersedes the other. The complaint also requested that the Court determine if DELCORA is permitted to operate under the Municipalities Authorities Act (MMA) solely as a Trust. Hearing was scheduled for October 12, 2023, but was cancelled pending Commonwealth Court on the Delaware County complaint. It is not anticipated that Judge Dozor will hear this case until the Commonwealth Court makes a final ruling on his jurisdictional authority.

- June 2023: AQUA filed an action for Declaratory and Injunctive Relief stating that any extension of the length of DELCORA's Agreement with PWD is outside of DELCORA's ordinary course of business and should be prohibited without AQUA's full participation. DELCORA responded and filed a counterclaim for interference with contractual obligations. AQUA has twice filed POs to DELCORA's counterclaim; DELCORA has responded with updated amended complaints. No court date scheduled.

TRUSTEE:

- Uninvest has resigned as Trustee and has requested coverage of legal costs. A settlement offer is under consideration. A hearing in Orphan's Court related to the appointment of successor Trustee was postponed; a new Court date is set for November 20, 2023. However, DELCORA has received no further reply or communication from Uninvest.

PFAS

- Two firms have submitted letters of interest to represent the Authority in class-action litigation related to recovery of costs that have incurred and/or will incur due to the presence of PFAS (per- and polyfluoroalkyl) chemicals in DELCORA's wastewater effluent, spray irrigation, reuse water, and biosolids. No decision by the Board.