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

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

INITIAL OBJECTION OF AQUA PENNSYLVANIA, INC. TO CHAPTER 9 PLAN PROPOSED BY THE CITY OF CHESTER

Aqua Pennsylvania, Inc. ("Aqua"), by and through its undersigned counsel, hereby submits this initial objection to the Chapter 9 plan proposed by the Debtor on August 26, 2024. The Debtor has not sought approval of procedures to confirm its proposed plan nor a hearing to consider confirmation of its plan; however, the plan as proposed is, at a minimum, not feasible, not in the best interests of creditors and does not comply with applicable law. This initial objection is meant merely to identify some of the fatal flaws in the Debtor's plan that preclude confirmation. Aqua reserves all rights to submit a further response in the event that the Debtor amends this plan or moves forward with it as proposed.

Aqua is a party-in-interest in this case, being a party to pending state court litigation and regulatory proceedings involving the Debtor and/or property in which the Debtor asserts an interest. As such, under 11 U.S.C. §943(a), Aqua has a right to be heard regarding this objection.

To the extent that the Debtor moves forward with its proposed plan, Aqua respectfully requests that this Court deny confirmation for, among other things, the reasons set forth herein.

I. BACKGROUND

Prior to the City of Chester initiating this Chapter 9 case, and pursuant to a 2019 Asset Purchase Agreement and amendment ("APA") between the Delaware County Regional Water

Quality Control Authority ("DELCORA") and Aqua Pennsylvania Wastewater, Inc. ("Aqua"), DELCORA agreed to sell and Aqua agreed to buy certain sewer system assets as defined assets of DELCORA. Issues relating to the APA are subject to regulatory proceedings pending before the Pennsylvania Public Utility Commission ("PUC"), a proceeding to which the Debtor is not a party. The issues before the PUC concern the PUC's regulatory authority to approve the sale under the provisions of the Public Utility Code. 66 Pa.C.S. 101 §§ *et seq*. The Commonwealth Court of Pennsylvania initially stated that the APA between DELCORA and Aqua is valid and enforceable. *Delaware County v. Delaware County Reg'l Water Quality Control Auth.*, 272 A.3d 567 (Pa. Cmwlth. 2022). Upon remand from the Commonwealth Court's March 3, 2022 decision, the County of Delaware appealed from a September 13, 2022 Remand Order entered by the Delaware County Court of Common Pleas. On June 4, 2024, the Commonwealth Court issued its Opinion in Delaware County's appeal from the September 13, 2022 Remand Order 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. As a result, the June 4, 2024 Commonwealth Court Order is final. *Delaware County v. Delaware County Reg'l Water Quality Control Auth*., No. 1347 C.D. 2022 (Pa. Cmwlth. 2024).

Further, prior to the Debtor initiating this case, litigation was initiated regarding the Debtor's water assets in which Aqua has a direct interest and that would positively assist in monetizing those assets. The Chester Water Authority ("CWA") provides water services to customers within the City of Chester, Western Delaware County and parts of southern Chester County through its water system assets. The City and Aqua took the position that, as the sole creator of CWA, the City had the unilateral right to take back the assets of the CWA and convey them to Aqua. This issue spawned four separate actions. Ultimately, an *en banc* Commonwealth

Court determined that pursuant to Municipality Authorities Act, 53 Pa.C.S. § 5622(a), the City, as the sole creator of CWA, had the unilateral right to take back the assets of the CWA, without CWA's consent. That determination was appealed by CWA to the Pennsylvania Supreme Court and Aqua filed a cross-appeal.

On November 10, 2022, the Debtor initiated this Chapter 9 case. By Order dated May 23, 2023, the Bankruptcy Court found that the automatic stay of Section 362 of the Bankruptcy Code applied to the regulatory proceedings pending before PUC. Subsequent to the May 23, 2023 Order, Aqua has been virtually shut out of any meaningful participation relating to the APA.[1] Additionally, despite no less than three requests, Aqua has been excluded from the Mediation process involving the disposition and the monetization of the DELCORA assets under the APA. Aqua had been increasingly prejudiced by its inability to take steps to pursue its rights under the APA even though those steps will have no effect on the reversionary rights asserted under the Debtor's 1973 Agreement with DELCORA.

Likewise, the issue relating to the disposition of the CWA water assets matter is now briefed and ready for argument before the Pennsylvania Supreme Court but, like the PUC matter, has been stayed by the automatic stay.

The language of the Debtor's Chapter 9 plan suggests that the true purpose of this Case is not to resolve its insolvency or address issues that will allow it to pay its debts as they come due

[1] The May 23, 2023 Order is currently on appeal to the United States District Court for the Eastern District of Pennsylvania. Despite briefing having been completed almost exactly one year ago today and oral argument having been requested December 7, 2023, the District Court has not acted on the appeal. As is evident from the Debtor's proposed plan, resolution of the issues pending before the state court and in the PUC proceedings is a condition precedent to the Debtor being able to confirm its plan. The intended purpose of the automatic stay is to give the debtor a breathing spell from the time and expense of litigation; however, a common reason to lift the stay is to allow resolution of claims in a forum that is substantially more appropriate than the bankruptcy court, particularly where the non-bankruptcy suit involves multiple parties or is ready for trial. *In re Drauschak*, 481 B.R. 330, 344-45 (3d Cir. 2012) (citations omitted).

and function as a municipality, rather, the true purpose is to manipulate federal law to commandeer DELCORA's and CWA's water and sewer assets and dictate the terms of their sale – actions that, as proposed, deny due process to Aqua and others and deprive the citizenry the benefits of pending transactions that would not only solve the Debtor's solvency issues but enable the upgrade and maintenance of the water and sewer systems in accordance with the state regulatory process. The Debtor provides no information in the plan as to how its insolvency is being remedied or whether, as a result of this case, the Debtor will be able to function as a municipality and pay its debts as they come due.

Rather than acting in good faith to use Chapter 9 for its intended purpose, the Debtor elected to use Chapter 9 as a shield to prevent proceedings before the PUC from moving forward and a sword to try to strong arm DELCORA and CWA to cede to its demands so that the Debtor can control the sale of their respective water and sewer assets. The City simply ignores that the PUC, with primary and specialized jurisdiction over issues involving the sewer system, have matters pending before it that will properly, efficiently and timely resolve issues that the Debtor seeks to bring before this Court (a federal tribunal) prior to confirmation and the effectiveness of its plan. All of the matters that the Debtor seeks to bring before this Court involving the water and sewer systems are matters of state law and involve strong public interest and comprehensive state regulatory procedures, and none of which involve any federal issue whatsoever.

This gamesmanship should not be permitted to continue. The plan, as proposed, does nothing to resolve the Debtor's insolvency and nothing to benefit its citizenry in terms of the provision of municipal services or the cost to taxpayers, and cannot be confirmed.

II. ARGUMENT

Aqua objects to the Debtor's proposed plan for the following reasons:

A. The Plan fails to satisfy Section 943(b) and cannot be confirmed.

For a plan to be confirmed, among other things, it must meet the requirements of 11 U.S.C. §943(b). In relevant part, for purposes of this objection: (i) all amounts to be paid by the debtor or by any person for services or expenses incidental to the plan must have been fully disclosed and be reasonable; (ii) the debtor must not be prohibited by law from taking any action needed to carry out the plan; and (iii) and the plan must be feasible and in the best interests of creditors. 11 U.S.C. §943(b)(3), (4), and (7).

The Debtor bears the burden to satisfy the requirements of section 943(b) by a preponderance of the evidence. *In re Mount Carbon Metropolitan Dist*., 242 B.R. 18, 31 (Bankr. D. Col. 1999).

Unfortunately for the Debtor, its proposed plan fails to meet these requirements.

1. <u>The Debtor fails to disclose amounts to be paid for services or expenses incidental to the Plan.</u>

As to the requirement that the Debtor disclose amounts to be paid for services or expenses incidental to the plan, and notwithstanding its apparent threat to dissolve DELCORA and CWA if they do not fall in line with the Debtor's demands, the plan is devoid of projections or other financial information regarding the Debtor's future operating expenses, ability to pay its debts or how it will fund maintenance, repair and operation of the water and sewer systems pending a sale to a public entity, fund an analysis of its reversion interests or fund the myriad of hypothetical scenarios described in the plan with regard to the water and sewer assets. While the Debtor describes in its plan its intention to have the water and sewer assets sold on its terms, no information is provided regarding the costs and expenses that will be incurred to accomplish this or any other provision of the plan or to determine whether those costs and expenses are reasonable. No specific method or plan to raise funds from the taxpayers or otherwise is presented to allocate the costs that would obviously be incurred by the Debtor to take on the responsibility of providing

these utilities itself, fund the RFP process described in the plan, or determine the extent and any value of its reversionary interests.

Because the plan is devoid of any financial information regarding the amounts required to pay for services or expenses incidental to the Plan or how the Debtor will generate those amounts, the plan fails to meet the requirements of Section 943(b)(3) and cannot be confirmed.

2. The Injunction and terms for the disposition of the water and sewer assets are not proposed in good faith and are contrary to applicable law.

The proposed plan exposes what this Chapter 9 case has been about from the beginning – an end run around the regulatory proceedings involving the water and sewer systems to preclude DELCORA and the CWA from selling their assets in the manner that they have determined is best economically and functionally for the taxpayers and users of those systems.

The requirement that a Chapter 9 plan be "proposed in good faith and not by any means forbidden by law" is derived from 11 U.S.C. § 1129(a)(3), which is expressly incorporated in Chapter 9 by 11 U.S.C. § 901(a). Compliance with § 901 is a requirement for confirmation pursuant to § 943(b)(1).

Most courts agree that determining whether a plan has been proposed in good faith "requires a factual inquiry of the totality of the circumstances." *Mount Carbon*, 242 B.R. at 39. Factors examined include: "(1) whether a plan comports with the provisions and purpose of the Code and the chapter under which it is proposed, (2) whether a plan is feasible, (3) whether a plan is proposed with honesty and sincerity, and (4) whether a plan's terms or the process used to seek its confirmation was fundamentally fair." *Id*. at 40-41. A Chapter 9 plan must treat interested parties fairly and in accordance with due process. *Id*. at 39.

Here, the Debtor's lack of good faith is evidenced by the Debtor's total disregard for state law and comity, not only completely ignoring the prior orders of the state court involving the water

and sewer systems, and the pending proceedings before the PUC involving the APA for the sewer system. Turning a blind eye to what has already occurred in state court, the Debtor proposes to begin anew or remove pending actions to federal court and implement an injunction overriding pending state matters involving the water and sewer systems.

Confirmation and the effectiveness of its plan are conditioned on this Court entering orders that will allow the Debtor to circumvent the state legal and regulatory process and sell DELCORA's and CWA's assets under terms dictated by the Debtor. No legal basis whatsoever exists to confirm such a plan, which would not only violate the due process rights of DELCORA, CWA, Aqua and others, but would require this Court to preside over issues that fall squarely within the primary jurisdiction and expertise of the state court and regulatory process.

To propose a plan as the Debtor has that so blatantly violates due process and comity, and interferes with state law is clearly not a plan proposed in good faith and by means that do not violate applicable law.

Throughout its Chapter 9 case, the Debtor has purposely and continuously refused to engage in negotiations with Aqua, despite Aqua being a party to proceedings to acquire the water assets and an APA to purchase the sewer assets. The Debtor has affirmatively blocked Aqua's participation in mediation and its ability to proceed in state court and before the PUC – on issues purely of state law that the Debtor admits must be resolved in order to confirm its plan.

As discussed below, the Debtor's intention to remove or bring actions in this Court to resolve disputes over the "anti-assignment" clause in the 1973 Agreement or the extent of its reversionary interests in certain sewer assets are precluded by principles of abstention and comity.[2]

[2] *Res judicata* and collateral estoppel would also apply to the extent that the Debtor seeks to relitigate the ability of DELCORA to enter into a contract with a private company to acquire the water system or any other issue that has already been decided by the state court or as part of the state regulatory process.

The interests in and disposition of the water and sewer systems fall squarely within the primary and specialized jurisdiction of the state court and the PUC. Aqua submits that it would be an abuse of this Court's discretion not to abstain from hearing those matters.

Moreover, the injunction found in Section 6 of the Debtor's proposed plan that would require the withdrawal or dismissal of pending actions or proceedings involving the water and sewer assets violates Aqua's due process rights. No consideration is proposed in the plan for Aqua despite the fact that the injunction, if implemented, would result in a taking of Aqua's contractual rights and interests and a denial of its right to be heard.

Through an RFP process, the Debtor proposes that it will seek proposals from those wanting to acquire, manage or operate the storm water, water and/or sewer assets or the Debtor's reverted assets, and the Debtor will require those assets to remain publicly held. Several problems, however, are apparent and not addressed in the plan. First, at this time, the Debtor does not own the vast majority of the water and sewer assets and does not explain how it will conduct an RFP process of assets it does not own or how it will fund its acquisition of those assets. Second, the water assets are presently subject to state court proceedings. The sewer assets are presently subject to a signed Asset Purchase Agreement that has been presented to the PUC for regulatory approval under the state's municipal utilities regulations. Third, no state law or regulation that Aqua is aware of would require the water or sewer assets to remain publicly held and the Debtor has referenced no such law or regulation in its plan. Given that both the water and sewer systems have been marketed to public and private entities, with Aqua's proposal vastly exceeding the highest offers from public entities, the requirement of public ownership will deprive the Debtor, taxpayers and creditors of significant revenues that could resolve the Debtor's insolvency issues and provide the means by which the Debtor can effectively operate as a municipality going forward.

As proposed, the plan will require this Court to revisit issues decided in existing state court orders regarding the assets and set aside the state court and PUC's primary jurisdiction and specialized knowledge of important state issues that are non-core and would only be before this Court as a result of the Debtor seeking Chapter 9 relief rather than as a result of diversity or the existence of any federal question. Moreover, the Debtor lacks the legal authority to disavow the existing agreement involving Aqua regarding a sale of the sewer assets and lacks legal authority to direct or cause DELCORA or CWA to sell their assets in accordance with the Debtor's wishes. As proposed, the plan sets forth action on the Debtor's part that would interfere with non-debtor parties' contractual relations and is neither authorized by state law nor satisfies state regulatory requirements.

Because the plan proposes action and treatment of the water and sewer systems in a manner that violates due process and would impermissibly interfere with the state's regulatory scheme, contract rights and important public interests, the plan is not proposed in good faith and is contrary to applicable law; therefore, the plan cannot be confirmed.

3. <u>The Plan is neither feasible nor in the best interests of creditors.</u>

"Best interests" generally requires that the plan provide a better alternative for creditors than dismissal. *Mount Carbon*, 242 B.R. at 34. Here, dismissal would clearly be a better alternative for creditors given that a sale of the water and sewer systems would provide sufficient revenues to repair and maintain those systems as well as provide revenues to resolve financial issues faced by the Debtor, without the need to turn to the taxpayers for necessary funding.

Because insolvency is required for an entity to file for Chapter 9 relief, confirming a plan that does not remedy the Debtor's insolvency would be a fruitless endeavor. *Mount Carbon*, 242 B.R. at 34. To find feasibility, the court must evaluate the probability that the debtor can provide

public services at a level necessary for the debtor to function as a municipality while it repays its prepetition debt. *Id*. at 35.

While the debtor need not provide certainty or a guarantee that it can accomplish what the plan proposes and provide municipal services, the debtor cannot simply provide "mere hopes, desires and speculation" to demonstrate feasibility. *Id*. The probability of future success depends on the debtor providing reasonable projections of its income and expenses that are based on reasonable assumptions that are not speculative or conjectural. *Id*.

Here, the Debtor's proposed plan is premised on a variety of hopes and speculation as to how the water and sewer assets could be sold and is wholly devoid of projected future revenues and expenses, particularly those expenses that will be incurred to ensure the provision of municipal water and sewer services (if the Debtor is permitted to just ignore the prior orders of the state court and any existing agreements) or to conduct an RFP process as proposed in the plan. Moreover, the RFP process, as proposed by the Debtor, would gut the value of the water and sewer systems to the detriment of the Debtor, the taxpayers and the users of those systems. The plan unfairly precludes DELCORA and CWA from exercising control over the disposition of their respective assets and precludes Aqua (a private entity) from participating in the process by which those assets may be acquired and operated especially as it relates to the fully executed 2019 Asset Purchase Agreement it has with DELCORA.

Nowhere in the plan does the Debtor demonstrate that, through the plan, it will be solvent – being able to pay its debts and function as a municipality. Nowhere in the plan does the Debtor demonstrate that, through the RFP process and sale of DELCORA's and CWA's water and sewer systems on its proposed terms, creditors will be better off than they would be with the presently proposed sales proceeding to approval and eventual closing.

The Debtor's plan makes no effort to maximize creditor recovery and, instead, expressly prohibits the pending sale transactions that could provide sufficient resources to resolve the Debtor's solvency issues. This fact alone goes to the heart of whether the Debtor's proposed plan is in the best interests of creditors and is feasible under 11 U.S.C. §943(b)(7).

Accordingly, based on its terms, the plan does not comport with the purpose of Chapter 9 or the provisions of the Bankruptcy Code in terms of feasibility, fundamental fairness or good faith. The plan is neither feasible nor in the best interests of creditors and cannot be confirmed.

B. <u>This Court must abstain from hearing the issues on which confirmation is conditioned.</u>

Whether the Debtor removes the pending state litigation and regulatory matters to this Court or initiates matters before this Court regarding the sale of the water and sewer systems or the determination of the extent of the Debtor's interests therein, this Court is precluded from hearing those matters under principals of abstention. In the exercise of its discretion, this Court would have to remand the issues or dismiss those actions in favor of the state court and regulatory processes.

Section 1452(a) of title 28 of the United States Code provides for the removal of claims related to a pending bankruptcy case if the "outcome of [the] proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. Withum Smith Brown, P.C.*, 692 F.3d 283, 293-94 (3d Cir. 2102) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). The Debtor may remove matters pending before the state court or PUC that impact its asserted reversion interest and its involvement in litigation involving the water system as being "related to" its bankruptcy case; however, the bankruptcy court may remand on any equitable ground using its broad discretion. 28 U.S.C. §1452(a); *In re Drauschak*, 481 B.R. 330, 337 (3d Cir. 2012).

Factors considered by a court determining whether to remand are: (i) the court's duty to decide matters properly before it; (ii) the plaintiff's choice of forum; (iii) the nature of the claim – whether purely state law matters that are better addressed by the state court or whether federal claims are involved; (iv) the prejudice to involuntarily removed parties; (v) comity; (vi) economical or duplicative use of judicial resources; and (vii) the effect that remand would have on the efficient and economical administration of the estate. *Drauschak*, 481 B.R. at 337. Courts have also concluded that principles of abstention should be considered before applying the more general remand factors. *Id.* (citing, *Stoe v. Flaherty*, 436 F.3d 209, 215 (3d Cir. 2006)).

Certain issues involving the water and sewer systems are purely matters of state law and largely fall within the specialized jurisdiction of the PUC that is charged with implementing the comprehensive regulation of municipal utilities in Pennsylvania. "Utility regulation is one of the most important of the functions traditionally associated with the police power of the states." *In re Entrust Energy, Inc*., 101 F.4th 369, 390 (5th Cir. 2024) (quoting *Wilson v. Valley Elec. M'ship Corp*., 8 F.3d 1311, 315 (5th Cir. 1993)).

Moreover, the issues involving the water and sewer systems have been before the state court and PUC for several years; therefore, bringing those issues before a federal tribunal would require the parties to expend and duplicate considerable resources to revisit issues already decided or underway in state court, very likely delaying confirmation of a plan in this case.

In addition to the general remand considerations, as this Court is surely aware, 28 U.S.C. §1334(c) statutorily requires the bankruptcy court to abstain from hearing certain matters and permits the bankruptcy court to abstain from hearing additional matters where the non-bankruptcy court is the appropriate forum.[3]

[3] A decision to abstain constitutes cause for stay relief to allow the non-core matters to be adjudicated in state court. *Drauschak*, 481 B.R. at 346 (citing *Pursifull v. Eakin*, 814 F.2d 1501, 1505-06 (10th Cir. 1987) and *In re Mid-*

Section 1334 provides for mandatory abstention where: (i) a timely motion is made by a party; (ii) the proceeding at issue is based on a state law claim or action; (iii) the proceeding, while "related to" a bankruptcy case, does not "arise under" the Bankruptcy Code or "arise in" a bankruptcy case; (iv) but for the bankruptcy case, the proceeding at issue would have been brought in state court because there is no independent ground for Federal jurisdiction; and (v) the proceeding will be timely adjudicated in state court. 28 U.S.C. §1334(c); *Drauschak*, 481 B.R. at 338; *In re Chicago, Milwaukee, St. Paul & Pac. R.R.*, 6 F.3d 1184, 1194 (7th Cir. 1993).

Here, the regulatory approval issues are beyond the expertise of the Bankruptcy Court and sale of the water and sewer systems involve wholly issues of state law. Both are matters of significant public interest.[4] While the issues are somewhat related to the Debtor's Chapter 9 case due to the Debtor asserting an interest in some part of those assets, but for the Debtor filing for Chapter 9 relief, there would be no independent basis for a federal court to exercise jurisdiction over these issues. Accordingly, based on the facts and circumstances of this case, mandatory abstention applies.[5]

Atlantic Handling Systems, LLC, 304 B.R. 111, 130-31 (Bankr. D.N.J. 2003). This is particularly important in the instant case where resolution of the matters presently pending in state court are expressly stated as a prerequisite to confirmation and the effective date of the Debtor's proposed Chapter 9 plan. The cost of continuing the litigation in state court would be no greater and likely much less given the state court's familiarity with the litigation and the state regulatory process and this Court's need to make recommendations to the District Court rather than enter final judgment. The Debtor's ability to confirm its plan is dependent upon a resolution of matters before the state court and PUC, which the state court and PUC upon relief from the stay will resolve in a timely manner at no expense that would exceed what the Debtor would incur before the Bankruptcy Court to address the state law issues that fall within the expertise of the state court.

[4] The absence of a prominent issue of federal law also is a significant consideration weighing against retaining jurisdiction. *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 26, (1983); *Izzo v. Borough of River Edge*, 843 F.2d 765, 768 (3d Cir. 1988) (same).

[5] Permissive abstention also applies. Under section 1334(c)(1), this Court may abstain from hearing a proceeding that arises under the Bankruptcy Code or arises in or is related to a bankruptcy case if abstention is in the interest of justice, comity with the state court or out of respect for state law. With permissive abstention, the court considers: (i) the effect of the efficient administration of the estate; (ii) the extent to which Federal issues predominate; (iii) the difficulty of such Federal issues; (iv) the presence or availability of proceedings in a non-bankruptcy forum; (v) the degree of relatedness or remoteness of the proceeding to the bankruptcy case; and (vi) the feasibility of severing

In addition to statutory abstention, applicable caselaw directs abstention here.

The *Burford* abstention doctrine requires that federal courts avoid disrupting an "important, complex state regulatory system." *Lac D'Amiante du Quebec, Ltee v. American Home Assur. Co.*, 864 F.2d 1033, 1038 (3d Cir. 1988). In *Burford*, the federal court deferred to the Texas courts and state Railroad Commission regarding issues falling within the regulation of Texas oil fields because the regulatory scheme was intricate, unique to the state and the Commission was charged with creating a regulatory system for the state's oil industry over which the state courts provided thorough judicial review. *Id*. at 1043. Because the state court and Commission had developed the specialized knowledge to shape the policy of the oil industry, the court determined that jurisdiction of issues falling within the purview of that state scheme should not be decided by the federal court, which could only cause confusion in the well-organized regulatory and review system provided by Texas statute. *Id.* (quoting *Burford v. Sun Oil Co.,* 319 U.S. 315, 327 (1943)).

Under the *Burford* abstention doctrine, "where a state creates a complex regulatory scheme, supervised by the state courts and central to state interests, abstention will be appropriate if federal jurisdiction deals primarily with state law issues and will disrupt a state's efforts 'to establish a

Federal issues from core bankruptcy issues. *See e.g. Drauschak*, 481 B.R. at 338-39. As with mandatory abstention, the fact that no federal issue or independent federal jurisdiction exists and the state court and PUC are intimately familiar with and are already presiding over the resolution of the issues favors abstention.

Similarly, the state court and PUC have primary jurisdiction over the issues and this Court must defer to that primary jurisdiction, which will adjudicate the issues as part of its uniform interpretation of Pennsylvania state utility regulations. *See e.g. In re Megan-Racine Assocs.,* 180 B.R. 375, 381 (Bankr. N.D.N.Y. 1995) (deferring resolution of issues involving the interpretation of the Public Utility Regulatory Act to FERC, the specialized agency with jurisdiction over interpretation of the Act). Indeed, where an agency has the special competence to resolve a proceeding, courts are required to defer to that agency and provide the parties a reasonable opportunity to obtain an administrative ruling. *See e.g. Board of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 41-41 (1991). *See also Delta Traffic Serv. Inc. v. Transtop, Inc*., 902 F.2d 101, 103-4 (1st Cir. 1990) (primary jurisdiction requires the court to discontinue its case and refer the matter to the administrative body where enforcement of the claim requires resolution of issues that, under a regulatory scheme, have been placed within the special competence of the administrative body); *United States v. Gen. Dynamics Corp*., 828 F.2d 1356, 1364 n. 15 (9th Cir. 1987) (If an issue is within an agency's primary jurisdiction, a court may not act until the agency makes its initial determination. Failing to defer is reversible error.).

coherent policy with respect to a matter of substantial public concern.'" *Lac D'Amiante*, 864 F.2d at 1043 (quoting *Colorado River Water Conserv. Distr. v. United States*, 424 U.S. 800, 814 (1976)). *See also Blumenkron v. Multnomah County*, 91 F.4th 1303, 1312 (9th Cir. 2024) (*Burford* abstention protects "complex state administrative processes from undue federal interference."); *Entrust*, at 388-89 (addressing Texas' Public Utility Regulatory Act and the PUC's authority to manage the substantial public concern to have a coherent policy with respect to Texas' electric grid and cautioning against the federal court's involvement in matters of essentially state law and policy, namely whether the federal court will need to weigh competing local interests and review an agency's decision in an area in which that agency is arguably an expert.) (citations omitted).

The *Burford* abstention doctrine applies in cases where the movant seeks declaratory relief in addition to the traditional equitable relief. *Lac D'Amiante*, 864 F.2d at 1045.

Here, the PUC regulatory process and review through the Pennsylvania state court system is a comprehensive and well-tested procedure for vetting transactions involving municipal utility systems and ensuring that any transaction involving the water and sewer systems meets the requirements of state law and is fair to ratepayers. There is no question that the Pennsylvania Public Utilities Commission was created to apply uniform requirements and procedures for the sale and provision of municipal utilities within the state. The decisions of the PUC are subject to review by the state court. There is no justification for the Debtor to ask this Court to interfere with the well-established, uniform state regulatory system or the state court process. Pennsylvania's interest in the provision of water and sewer service is paramount and counsels in favor of abstention to best avoid any disruption or inconsistent application of state regulation that could affect others within Pennsylvania's integrated system and lead to confusion in the application of state regulations.

In the event that the Debtor commences an action in this Court or removes any of the pending state court or PUC proceedings, Aqua intends to immediately ask this Court to abstain as required by Section 1334(c) and *Burford*. All of the issues are matters of state law and are noncore proceedings that do not invoke a substantive right created by federal bankruptcy law. *See Drauschak*, 481 B.R. at 339. The Debtor's assertion that the APA governing the sewer assets triggers its reversion interests or is prohibited by the anti-assignment clause does not change this fact.[6] *See e.g. U.S. v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991) (it is settled law that a debtor cannot use turnover provisions of bankruptcy law to liquidate contract dispute or demand assets as to which title is in dispute.).

All of the actions proposed by the Debtor with respect to the water and sewer systems are actions that could exist outside of bankruptcy, and in many cases do already exist prior to the Debtor initiating this Chapter 9 case. *See*, *Id*. at 339-40. While related to the Debtor's bankruptcy case solely because the Debtor asserts contract rights and a historical reversionary interest in some undefined minimal portion of the sewer assets, absent the Debtor's bankruptcy case, there would be no independent ground for this Court to hear any of the issues contemplated by the Debtor. There is no diversity or federal question at issue and the relevant matters have been in state court, largely involving non-debtors, and before the PUC for several years. Once the automatic stay is lifted the issues can timely proceed to their conclusion within the requirements of the state regulatory scheme that governs and protects municipal utilities within the state of Pennsylvania, its counties, cities and localities. Indeed, there is nothing in the Debtor's plan that would expedite

[6] A core matter "invokes a substantive right provided by title 11 or by its nature, could arise only in the context of a bankruptcy case." *Copelin v. Spirco, Inc.,* 182 F.3d 174, 180 (3d Cir. 1999) (citation omitted) (emphasis added).

the process, nor reduce the cost of the process given that the exact same analyses and determinations will be required to resolve the issues whether in state or federal court.

The state court and PUC are well situated to completely resolve the issues involved with the sale of the water and sewer systems so that the Debtor can promptly confirm a plan - without the risk of inconsistent rulings or rulings that do not comply with the state's regulatory process that would exist if this Court were to be inserted into the process. *See e.g. Entrust*, 101 F.4th at 389-90 (addressing the takings claim and whether the actions are constitutional without compensation, the federal court would be inserting itself into a key part of Texas' regulatory scheme, which could make the transaction financially unfeasible or force Texas to choose between competing policies; therefore, the principles of comity that underly *Burford* compel abstention.). The state's interest in its regulatory system is strong and should not be interrupted by having a federal court make its own interpretation of state law when the same issues have been before the state court where they are more appropriately resolved. *See Brillhart v. Excess Ins. Co*., 316 U.S. 491, 495, (1942) (in exercising discretion to decline to grant declaratory relief, the federal court should consider whether proceeding in federal court would contribute to uneconomical concurrent litigation, whether federal law governs the action and whether the controversy can better be settled by the state court.). Additionally, while the state court and PUC could enter final orders resolving each of the issues affecting the disposition of the water and sewer assets, this Court could not; therefore, bringing the issues before this federal forum would also require an extra layer of review by the District Court and an extra layer of cost to be borne by the parties. Conditioning confirmation of its plan on this Court entering orders to resolve issues within the primary and specialized expertise of the state court and regulatory system renders the plan not feasible and not confirmable.

The ultimate irony here is that the ratepayers and taxpayers of Chester are paying the legal fees of the Receiver's attorneys who are not pursuing obvious financial benefits that would result in an upgraded water and sewer system and hundreds of millions of dollars in revenues that could be used to fund a Chapter 9 plan and resolve the Debtor's financial woes, saving taxpayers millions of dollars in taxes and fees that would otherwise be borne by them under the Plan.

III. CONCLUSION

The proposed plan does not meet the legislative purpose of Chapter 9 or the confirmation requirements of section 943(b). It does nothing to resolve the Debtor's insolvency or provide any financial data with which the Court or any interested party could determine whether the Debtor will be able to pay its debts and continue to provide public services.

The plan is not feasible. The plan is not proposed in good faith, with honesty and sincerity, and its terms and the processes proposed as conditions to confirmation are not fundamentally fair. *See Mount Carbon*, 242 B.R. at 40-41. The plan appears to be merely a tool used by the Debtor as an end run around the state's regulatory system to take control of the assets of DELCORA and CWA and deny Aqua its contractual and equitable rights and interests under its agreements therewith.

The Debtor has negotiated for months for a settlement regarding the water and sewer systems - but only with one group of constituents, to the exclusion of Aqua and other interested parties. The Debtor's actions have not only delayed upgrades to the water and sewer systems but have jeopardized the Debtor's and, ultimately, the ratepayers' and taxpayers' ability to realize any benefit from the proceeds of the sales.

Aqua respectfully submits that the proposed plan is not confirmable. At a minimum, it is not feasible, is not in the best interests of creditors and is conditioned upon provisions that are contrary to applicable law.

Moreover, to the extent that the Debtor proposes a plan that is conditioned on the resolution of its reversion interest, the impact of the so-called "anti-assignment" clause, and the parameters of the sale of DELCORA's and CWA's water and sewer systems, the state court and PUC have primary and specialized jurisdiction to finally resolve these issues that impact matters of significant public interest. Confirmation should be denied and this Court should abstain in favor of the state law process.

Respectfully submitted,

LAMB McERLANE PC

By: */s/ Joel L. Frank*
Joel L. Frank, Esquire
Attorney I.D. # 46601
Guy A. Donatelli
Attorney I.D. # 44205
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565
(610) 701-4419

DILWORTH PAXSON, LLP

By: */s/ Anne M. Aaronson*
Lawrence G. McMichael
Attorney I.D. # 28550
Anne M. Aaronson
Attorney I.D. # 82118
1500 Market Street, Ste 3500E
Philadelphia, PA 19102
215-575-7110

Dated: October 2, 2024

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

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

PROOF OF SERVICE

The undersigned hereby certifies that I caused a copy of the foregoing to be served on all counsel of record via the Court's electronic filing system.

Respectfully submitted,

LAMB McERLANE PC

Dated: October 2, 2024

By: */s/ Joel L. Frank*

Joel L. Frank, Esquire
Attorney I.D. # 46601
Guy A. Donatelli
Attorney I.D. # 44205
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565
(610) 701-4419