

SCOTT J. RUBIN  
ATTORNEY • CONSULTANT  
333 OAK LANE • BLOOMSBURG, PA 17815 • (570) 387-1893 • SCOTT.J.RUBIN@GMAIL.COM

August 7, 2020

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg PA 17105-3265

Re: Application of Aqua Pennsylvania Wastewater,  
Inc. pursuant to Sections 507, 1102, and 1329 of  
the Public Utility Code for, inter alia, approval of  
the acquisition of the wastewater system assets of  
the Delaware County Regional Water Quality  
Control Authority, Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced proceeding please find the Protest of Lower  
Chichester Township.

This document is being served on the Attorney General of Pennsylvania, in accordance  
with 71 P.S. § 732-204.

This document also is being served on the Administrative Law Judge and all parties of  
record. The document was filed electronically with the Commission on this date.

Sincerely,



Enclosure

cc: Joshua Shapiro, Attorney General of Pennsylvania  
Angela Jones, Administrative Law Judge  
All parties of record

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, inter alia, approval of the acquisition of the wastewater system assets of the Delaware County Regional Water Quality Control Authority	: : : : : :	Docket No. A-2019-3015173
---	----------------------------	---------------------------

---

PROTEST OF  
LOWER CHICHESTER TOWNSHIP

---

Pursuant to 52 Pa. Code §§ 5.51, *et seq.*, Lower Chichester Township (“Lower Chichester”) hereby files a Protest to the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) to acquire the assets of Delaware County Regional Water Quality Control Authority (“DELCORA”) and to begin providing service to DELCORA’s customers. In support of this Protest, Lower Chichester states as follows:

1. Lower Chichester is a first class township in Delaware County, Pennsylvania, with its principal place of business at 1410 Market Street, P.O. Box 1255, Linwood, PA 19061.
2. Lower Chichester provides wastewater service to residential, commercial, government, and industrial customers within the township’s boundaries.
3. Lower Chichester collects wastewater from its customers and transports the wastewater to DELCORA for treatment.
4. Lower Chichester is a wholesale customer of DELCORA in DELCORA’s Western Service Region.

5. Lower Chichester will be represented in this case by, and all documents should be served upon its attorney:

Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815  
Phone: (570) 387-1893  
Mobile: (570) 850-9317  
e-mail: scott.j.rubin@gmail.com

6. Lower Chichester transports wastewater to DELCORA for treatment pursuant to the terms of a contract entered into by Lower Chichester and DELCORA on April 12, 1977. The contract is attached to the Application as Exhibit F84 and is referred to herein as "the Contract."

7. The term of the Contract is 45 years from the original date of the Contract, renewable by mutual consent of the parties for an additional term of 50 years. Exhibit F84, Section 8.10. The current term of the contract, therefore, runs until April 11, 2022.

8. Under the terms of the Contract, DELCORA has certain obligations, including but not limited to obligations to accept Lower Chichester's wastewater flows (so long as the flows meet DELCORA's quality standards) and maintain DELCORA's facilities in accordance with regulatory requirements. Exhibit F84, Sections 2.02 and 6.01.

9. DELCORA's obligations cannot be assigned without the consent of Lower Chichester. Exhibit F84, Section 8.13.

10. Lower Chichester has not consented to DELCORA's assignment of the Contract to Aqua.

11. Aqua has no right to file the Contract with the Commission under Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, as if it were a contract between Aqua and

Lower Chichester, since Lower Chichester has not consented to the assignment of the Contract by DELCORA.

12. Under the terms of the Contract and DELCORA's rate schedules, Lower Chichester has made capital contributions to DELCORA, some of which paid for existing DELCORA facilities and some of which are being held by DELCORA to pay for the construction of facilities in the future.

13. On information and belief, Lower Chichester avers that a substantial amount of the capital contributed by Lower Chichester to DELCORA to fund future capital improvements is being held by DELCORA in cash or cash equivalents. Specifically, according to DELCORA's audited financial statement for the year end December 31, 2019, DELCORA had cash and cash equivalents at year-end 2019 totaling more than \$103 million.

14. The Asset Purchase Agreement between Aqua and DELCORA (Exhibit B1 to the Application) states that Aqua will not receive any of the cash or cash equivalents held by DELCORA. Exhibit B1, section 2.02.

15. Neither the Asset Purchase Agreement nor (to the best of Lower Chichester's knowledge) any other agreement makes any provisions to refund Lower Chichester's capital contributions to Lower Chichester.

16. To the best of Lower Chichester's knowledge, the calculation of the net original cost of DELCORA's plant is based on the original cost of the plant less accumulated depreciation, without considering contributions from Lower Chichester or other DELCORA customers. See Application ¶ 22.

17. Aqua estimates that the first rate increase to Lower Chichester, as a Western region wholesale customer, would be 12.55%.

18. Based on Aqua's history in other acquisitions, Lower Chichester would expect that projected increase to be just the first of many rate increases that would adversely affect Lower Chichester and its retail customers.

19. Based on information and belief, Lower Chichester avers that there would be little or no need for a rate increase under Aqua ownership if Aqua gave Lower Chichester full credit for the contributions Lower Chichester has made to DELCORA and with which DELCORA has purchased the property, plant, and equipment included in Aqua's purported rate base for the Western wholesale service area.

20. Lower Chichester understands that Section 1329(d)(5) of the Public Utility Code, 66 Pa. C.S. § 1329(d)(5), purports to permit Aqua to ignore the contributions of Lower Chichester and other customers to the value of the property proposed to be acquired by Aqua.

21. Section 1329(d)(5) was enacted on April 14, 2016, effective June 13, 2016, as part of Act 12 of 2016.

22. To the extent that Section 1329(d)(5) is interpreted to permit Aqua to ignore the value of property contributed by Lower Chichester to DELCORA, then Section 1329(d)(5) would unconstitutionally impair DELCORA's obligations to Lower Chichester under the Contract (which predated the enactment of Act 12 by almost 30 years), in violation of Article I, Section 17, of the Pennsylvania Constitution ("No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any

grant of special privileges or immunities, shall be passed.”). Pa. Const. art. I, § 17 (emphasis added).

23. Lower Chichester submits this Protest to oppose the proposed transaction for the following reasons:

A. DELCORA does not have the legal right to transfer the property used to serve Lower Chichester under the Contract without Lower Chichester’s consent, which consent has not been given;

B. DELCORA does not have the legal right to transfer the Contract to Aqua without Lower Chichester’s consent, which consent has not been given;

C. There is no contract or agreement between Lower Chichester and Aqua, and Lower Chichester has not agreed that DELCORA can assign the Contract or any other agreements to Aqua, therefore Aqua’s request to file and have the Commission approve the agreement between Lower Chichester and DELCORA in Exhibit F84 is a nullity and cannot be approved under 66 Pa. C.S. § 507;

D. It is not consistent with the public convenience and necessity for Aqua to acquire the assets and contracts of DELCORA, in violation of 66 Pa. C.S. §§ 1101, *et seq.*;

E. The acquisition of DELCORA’s assets and contracts by Aqua would not provide an affirmative benefit to the public, but rather it would be detrimental to the public including Lower Chichester and its retail customers, in violation of the standards enunciated by the courts in *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (the Public Utility Code “requires that the proponents of a merger demonstrate that the merger will affirmatively promote the ‘service, accommodation, convenience, or

safety of the public' in some substantial way") and *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Commw. Ct. 2018), appeal denied, 207 A.3d 290 (Pa. 2019); and

F. The proposed application of Section 1329(d)(5) of the Public Utility Code would deprive Lower Chichester of the benefit of the Contract and impair the rights of Lower Chichester under the Contract in violation of Pa. Const. art. I, § 17.

24. Counsel consents to the service of documents by electronic mail at the email address listed above, as provided in 52 Pa. Code § 1.54(b)(3).

WHEREFORE, Lower Chichester respectfully requests the Commission to deny the Application, prevent DELCORA from transferring to Aqua the property used to provide service to Lower Chichester; prevent DELCORA from transferring its obligations under the Contract to Aqua; find that there is no contract between Lower Chichester and Aqua; find that the proposed transaction does not promote the service, accommodation, convenience, or safety of the public in some substantial way; if the transaction is approved, require Aqua to give credit to Lower Chichester for the value of property contributed by Lower Chichester to DELCORA; find that the application of 66 Pa. C.S. § 1329(d)(5) to the facts and circumstances of this case would be a violation of

Art I, § 17 of the Pennsylvania Constitution; and grant such other relief as is warranted under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

Scott J. Rubin, Esq.  
Pa. Supreme Court ID: 34536  
333 Oak Lane  
Bloomsburg, PA 17815  
scott.j.rubin@gmail.com  
(570) 387-1893

Counsel for:  
Lower Chichester Township

Dated: August 7, 2020



---

VERIFICATION

---

I, Joseph P. Powell Jr., the Township Secretary of  
Lower Chichester Township, Delaware County, Pennsylvania, hereby state that the facts above  
set forth are true and correct to the best of my knowledge, information and belief, and that I  
expect to be able to prove the same at a hearing held in this matter. I understand that the  
statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn  
falsification to authorities).

Date: August 5, 2020



---

---

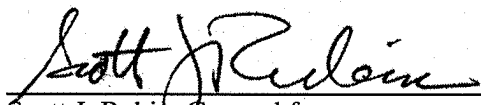
CERTIFICATE OF SERVICE

---

I hereby certify that I have this day served a true copy of the foregoing Protest upon Joshua Shapiro, Attorney General of Pennsylvania, Strawberry Square 16th Floor, Harrisburg, PA 17120 Attn: Civil Law Division, in accordance with 71 P.S. § 732-204, due to the Protest's challenge to the constitutionality of 66 Pa. C.S. § 1329(d)(5).

August 7, 2020

Date

  
\_\_\_\_\_  
Scott J. Rubin, Counsel for  
Lower Chichester Township

I hereby certify that I have this day served a true copy of the Protest of Lower Chichester Township, upon the following parties by electronic mail. Service by first-class mail will be provided to any party that requests such service.

Alexander R. Stahl  
Aqua Pennsylvania  
762 W. Lancaster Ave.  
Bryn Mawr, PA 19010  
astahl@aquaamerica.com  
*Representing Aqua PA Wastewater*

Thomas Niesen  
Thomas Niesen & Thomas LLC  
212 Locust St., Suite 302  
Harrisburg, PA 17101  
tniesen@tntlawfirm.com  
*Representing Aqua PA Wastewater*

Thomas Wyatt / Matthew Olesh  
Obermayer Rebmann Maxwell & Hippel LLP  
1500 Market St., Suite 3400  
Philadelphia, PA 19102  
thomas.wyatt@obermayer.com, matthew.olesh@obermayer.com, angela.swavely@obermayer.com  
*Representing DELCORA*

Gina Miller / Erika McLain  
Pa. Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265  
ginmiller@pa.gov, ermclain@pa.gov  
*Representing Bureau of Investigation & Enforcement*

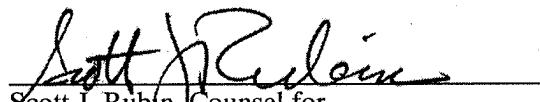
Christine Hoover / Erin Gannon / Santo Spataro / Harrison Breitman  
Office of Consumer Advocate  
555 Walnut St., 5th Fl.  
Harrisburg, PA 17101  
choover@paoca.org, egannon@paoca.org, sspataro@paoca.org, hbreitman@paoca.org  
*Representing Office of Consumer Advocate*

Erin Fure / Daniel Asmus  
Office of Small Business Advocate  
555 Walnut St., 1st Fl.  
Harrisburg, PA 17101  
efure@pa.gov, dasmus@pa.gov  
*Representing Office of Small Business Advocate*

Adeolu Bakare / Robert Young / Kenneth Stark  
McNees Wallace & Nurick LLC  
PO Box 1166  
Harrisburg, PA 17108-1166  
abakare@mwn.com, lcharleton@mwn.com, kstark@mcneeslaw.com, dnafziger@mcneeslaw.com  
*Representing Delaware County*

Kenneth Kynett / Charles Miller  
Petrikin, Wellman, Damico, Brown & Petrosa  
109 Chesley Dr  
Media, PA 19063  
kdk@petrikin.com, cgm@petrikin.com  
*Representing Edgmont Township*

August 7, 2020  
Date

  
\_\_\_\_\_  
Scott J. Rubin, Counsel for  
Lower Chichester Township