



Matthew S. Olesh
215.665.3043
matthew.olesh@obermayer.com
www.obermayer.com

Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street | Suite 3400
Philadelphia, PA 19102-2101
P: 215.665.3000
F: 215.665.3165

September 8, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
ermclain@pa.gov

RE: Docket No. A-2021-3024267 – Application of Aqua Pennsylvania Water, Inc. to Acquire the Wastewater System Assets of the Lower Makefield Township

Dear Secretary Chiavetta:

We serve as counsel to Lower Makefield Township in the above-referenced matter and are submitting, with this letter, the Township's Prehearing Conference Memorandum. This document is also being served on all parties of record via electronic mail.

Very truly yours,

Matthew S. Olesh

cc: All parties of record
The Honorable Jeffrey A. Watson, Administrative Law Judge
Nick Miskanic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. under Sections 1102 and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a) and 1329 (relating to enumeration of acts requiring certificate and valuation of acquired water and wastewater systems), for approval of: (1) the transfer, by sale, of substantially all of the wastewater collection and conveyance system assets, properties and rights of Lower Makefield Township (LMT) related to its wastewater collection and conveyance system; (2) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer or furnish wastewater service to the public in Lower Makefield Township, Bucks County, Pennsylvania; and (3) the use for ratemaking purposes of the lesser fair market value or the negotiated purchase price of the Lower Makefield Township assets related its wastewater collection and conveyance system.

A-2021-3024267

PREHEARING MEMORANDUM OF LOWER MAKEFIELD TOWNSHIP

Lower Makefield Township (“LMT” or the “Township”), by and through its attorneys, Obermayer Rebmann Maxwell & Hippel LLP, submits this prehearing memorandum pursuant to the Prehearing Conference Order in advance of the September 9, 2021 Prehearing Conference in this matter.

I. Background

This proceeding concerns the May 14, 2021 application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”) for approval to acquire the wastewater system assets of the Township pursuant to Sections 1102, 1329, and 507 of the Pennsylvania Public Utility Code.

By Secretarial Letter dated June 25, 2021, the Commission, *inter alia*, conditionally accepted the application. By Secretarial Letter dated August 5, 2021, the Commission, *inter alia*, accepted the application for filing.

Administrative Law Judge Jeffrey A. Watson was assigned to preside over the proceeding. An Initial Prehearing Conference has been noticed for September 9, 2021. Judge Watson issued the Prehearing Conference Order on August 11, 2021, which requires the parties to file and serve their prehearing memoranda by 1:00 PM on September 8, 2021.

On June 29, 2021, LMT submitted a Petition to Intervene in this matter, and consequently submits this prehearing memorandum.

II. Issues

A. Approval of Application

Issue: Should the Pennsylvania Public Utility Commission approve Aqua's application to (i) acquire the wastewater system assets of LMT and (ii) begin to offer, render, furnish and supply wastewater service to the areas served by LMT?

LMT's Position: The Commission should issue a Certificate of Public Convenience approving the acquisition because Aqua's acquisition of LMT's wastewater system assets is necessary or proper for the service, accommodation, convenience or safety of the public.

1. LMT currently provides wastewater service to approximately 11,151 customers in the Township. The Commission has a longstanding policy in favor of consolidation and regionalization of small, local water and wastewater systems in order to allow the industry to institute better management practices and achieve greater economies of scale. This acquisition will permit LMT to take advantage of Aqua's expertise in operating wastewater utility systems and regulatory compliance.
2. Aqua is a viable operator of LMT's wastewater system, its viability will not be impaired by the acquisition, and it maintains the managerial, technical, and

financial capabilities to safely and adequately operate the Township's system in compliance with 66 Pa. C.S. (relating to the Public Utility Code), the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1--721.17) and other requisite regulatory requirements.

3. After receiving extensive input from the public, the democratically-elected officials of the Township determined that the sale of its wastewater system is in the best interest of the residents of LMT, and they therefore agreed to the sale to Aqua pursuant to the asset purchase agreement, dated September 17, 2020 between the Township and Aqua.
4. Aqua is a regulated public utility that furnishes water and wastewater service to the public in various counties throughout Pennsylvania, and it has the experience necessary to demonstrate that it is able to operate wastewater collection systems in a safe, reliable and efficient manner.

B. Ratemaking Rate Base

Issue: Pursuant to Section 1329 of the Public Utility Code, what is the ratemaking rate base of the wastewater system assets of the Township?

LMT's Position: Under Section 1329 of the Public Utility Code, the ratemaking rate base of the wastewater system assets is set based on the lower of the purchase price or the average of two fair market value appraisals. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$53,000,000, being the lesser of the purchase price of \$53,000,000 negotiated by Aqua and LMT and the average of the fair market value appraisals, \$54,967,796 — determined by the \$55,505,000 valuation presented in the appraisal of Gannett

Fleming Valuation and Rate Consultants, Inc. and the \$54,430,591 valuation presented in the appraisal of AUS Consultants.

C. Validity of Contracts

Issue: Pursuant to Section 507 of the Public Utility Code, is the Asset Purchase Agreement (“APA”) between Aqua and LMT valid, reasonable, and otherwise lawful?

LMT’s Position: The APA between Aqua and LMT is valid, reasonable, and otherwise lawful under Section 507 of the Public Utility Code.

III. Witnesses

LMT expects to present the testimony of witnesses Kurt M. Ferguson (the Township Manager), and Jerome C. Weinert of AUS Consultants, the Township’s Utility Valuation Expert. LMT reserves its right to call additional witnesses, if necessary, and agrees to notify Administrative Law Judge Watson and the parties promptly should the Township determine that any additional witnesses will be called.

IV. Litigation Schedule

LMT has agreed to the modified litigation schedule set forth in Aqua’s Prehearing Memorandum.

V. Settlement

LMT is willing to address settlement of all or part of the proceeding with the other parties.

VI. Discovery

LMT agrees to the expedited discovery rules presented in Administrative Law Judge Watson’s Prehearing Conference Order.

Respectfully submitted,

/s/ Thomas Wyatt

Thomas Wyatt, Esquire (PA I.D. 89342)

Matthew S. Olesh, Esquire (PA I.D. 206553)

Sydney N. Melillo, Esquire (PA I.D. 328031)

OBERMAYER REBMANN

MAXWELL & HIPPEL LLP

Centre Square West

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Tel.: (215) 665-3000

Fax: (215) 665-3165

Thomas.Wyatt@obermayer.com

Matthew.Olesh@obermayer.com

Sydney.Melillo@obermayer.com

Counsel for Lower Makefield Township

Dated: September 8, 2021

CERTIFICATE OF SERVICE

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing discovery response upon the following parties by electronic mail:

Erika L. McLain
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisonburg, PA 17105
ermclain@pa.gov

Office of Consumer Advocate
egannon@paoca.org
hbreitman@paoca.org

Barry Summers
BLSummers5@verizon.net

Erin L. Fure
Assistant Small Business Advocate
Office of Small Business
efure@pa.gov

Peter A. Lachance
peter@LMTconstable.com

Kevin and Beth Cauley
artage2000@aol.com

Alexander R Stahl
Aqua Pennsylvania Wastewater, Inc.
astahl@aquaamerica.com

Jaan Pesti
1367 Brentwood Road
Yardley, PA 19067
No e-mail listed on Protest
Sent via overnight mail

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
tniesen@tntlawfirm.com

John C. Char
7218 Hilltop Road
Upper Darby, PA 19082
No e-mail listed on Protest
Sent via overnight mail

Erin L. Gannon
Senior Assistant Consumer Advocate
Harrison G. Breitman
Assistant Consumer Advocate

/s/ Matthew Olesh

Dated: September 8, 2021