

September 8, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

In re: Docket No. A-2021-3024267
Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and
507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System
Assets of Lower Makefield Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Preliminary Objection Seeking Dismissal of the Protest of Peter A. Lachance. Copies of the Preliminary Objection are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable Jeffrey A. Watson, Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esq. (via email, w/encl.)

BACKGROUND

1. This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on May 14, 2021, for approval, *inter alia*, of its acquisition of the wastewater system assets of Lower Makefield Township pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”).

2. Protestant filed a Protest to the Application on or about August 27, 2021.

3. Regulations of the Commission at 52 Pa. Code Section 5.101 allow for the filing of preliminary objections in response to any pleading except motions and prior preliminary objections.

4. Grounds for a preliminary objection include lack of standing, as set forth in 52 Pa. Code Section 5.101(a)(7).

PROTESTANT LACKS STANDING TO PROTEST

5. Protestant’s “property has a septic system” and Protestant acknowledges that he is not a sewer ratepayer of Lower Makefield Township.¹ Protestant is also neither a wastewater customer, not a water customer, of Aqua.

6. Lacking customer status, Protestant has no right to protest this Application proceeding. *See Joint Petition of Aqua Pennsylvania, Inc. and Country Club Gardens Water Company, Inc.*, Pa. P.U.C. Docket Nos. A-210104F0066 and A-210620F20002006, Pa. PUC LEXIS 30 (Pa. P.U.C. April 7, 2006) and *Pa. P.U.C. v. Lackawaxen Water & Sewer Authority*, 55 Pa. P.U.C. 461 (1981) (“*Lackawaxen Water & Sewer Authority*”).

7. The Commission recently addressed the question of standing in *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491,

¹ Protest of Peter A. Lachance, Attachment, page 3.

Opinion and Order entered October 24, 2019, *affirmed Swift & Choi Development, LLC v. Pa. P.U.C.*, 2021 Pa. Commw. Unpub. LEXIS 74 *; 247 A.3d 1198; 2021 WL 303045 (“*Swift & Choi*”).

8. In *Swift & Choi*, the Commission denied a petition to intervene of Swift & Choi Development, LLC, in an Aqua Section 1329 Application proceeding where petitioner was neither a customer of Cheltenham Township, the selling municipality, nor a customer of Aqua, the purchasing public utility.

9. The Commission, in *Swift & Choi*, adopted the Initial Decision of Administrative Law Judge Jones, dated June 21, 2019, which, citing *Lackawaxen Water & Sewer*, had denied Swift & Choi’s petition to intervene concluding that Swift & Choi, a non-customer, had failed to demonstrate that it had a direct interest in the subject matter of the proceeding.²

10. Similar to the eligibility requirements for intervention, the eligibility requirements for a protest, which are found in Section 5.52 of Title 52 of the Pennsylvania Code, require that a protestant set forth the “facts from which the alleged interest or right of the protestant can be determined” and “the facts establishing the protestant’s standing to protest.”

11. The facts averred by Protestant – specifically, his averment that his property has a septic system and that he is not a sewer ratepayer in Lower Makefield Township – demonstrate both a lack of an interest or right and a lack of standing to protest. Consistent with *Swift & Choi*, Protestant’s Protest should be dismissed.

12. Two further averments presented by Protestant warrant discussion:

- a. First, Protestant expresses concern with becoming a customer in the future. The Commission rejected a similar claim in *Swift & Choi* concluding that Swift & Choi’s characterization of itself as a “putative customer” was an admission that Swift & Choi was not an existing customer of Cheltenham Township; was an admission that it was neither an existing customer nor an applicant for service

² Initial Decision at 12-13 and Conclusion of Law No. 7.

of Aqua; and was too speculative to support a finding of a direct interest in the proceeding.³

- b. Second, Protestant expresses dissatisfaction with the Township's sale process and with a potential "windfall" to the Township. The Commission rejected claims similar to these allegations in *Swift & Choi*, concluding that its jurisdiction in implementing Section 1329 starts and stops at determining the acquiring utility's ratemaking rate base value for the acquired system in accordance with the applicable statutory provisions and that Section 1329 does not permit the Commission to undertake review of the selling utility's use of the sale proceeds.⁴

SUMMARY

13. This Application proceeding concerns Aqua's proposed fair market value acquisition of the Lower Makefield Township wastewater system. Protestant failed to identify a right to intervene or interest in support of its protest to Aqua's application proceeding.

14. Protestant does not allege it is a customer of either Aqua or Lower Makefield Township. The Commission, moreover, has no jurisdiction over the Township's sale process or the Township's use of the sale proceeds.

15. The Commission desires to avoid undue litigation in Section 1329 proceedings. Undue litigation will be avoided by dismissing Protestant's Protest.

³ *Swift & Choi*, mimeo at 47.

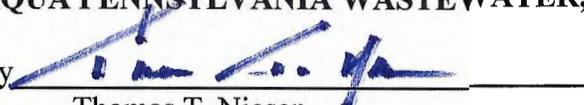
⁴ *Swift & Choi*, mimeo at 48.

WHEREFORE Aqua Pennsylvania Wastewater, Inc. requests that Administrative Law Judge Watson and the Pennsylvania Public Utility Commission grant this Preliminary Objection and dismiss the Protest of Peter A. Lachance.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By



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Date: September 8, 2021

VERIFICATION

I, William C. Packer, Vice President, Regulatory Accounting and Regional Controller of Aqua Pennsylvania, Inc., hereby state that the facts set forth in the foregoing Preliminary Objection of Aqua Pennsylvania Wastewater, Inc. 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).

William C. Packer

William C. Packer
Vice President, Regulatory
Accounting and Regional Controller
Aqua Pennsylvania, Inc.

Dated: September 8, 2021

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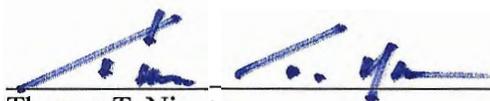
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