*Via electronic service only due to Emergency Order at M-2020-3019262*

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, : A-2021-3024267

Inc., (APW), 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 system assets, :

properties and rights of Lower Makefield Township :

(LMT) related to its wastewater collection and :

conveyance system; (2) the right of APW 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 LMT assets related :

to its wastewater collection and conveyance system.:

**PREHEARING ORDER**

**NOTE: Please read this document in its entirety as it provides important information about this case.**

On August 5, 2021, the Commission accepted as filed an Application of Aqua Pennsylvania Wastewater Inc (APW or Aqua), 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 the acquisition of the Lower Makefield Township wastewater system assets pursuant to Sections 1102, 1329, and 507 of the Public Utility Code. The Application was filed at Docket Number: A‑2021‑3024267.

On August 4, 2021, a Secretarial Letter was issued setting a deadline to file Protests by September 7, 2021.

On August 12, 2021, the Commission issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference for 10:00 a.m. on September 9, 2021.

On August 11, 2021, a Prehearing Conference Order was issued scheduling a Prehearing Conference for September 9, 2021.

On June 29, 2021, a Petition to Intervene was filed by Lower Makefield Township. No objections were filed to this Petition to Intervene.

On 7/2/21 a Protest was filed by the Office of Consumer Advocate (OCA).

On 8/2/21 a Protest was filed by John Char

On 8/5/21 a Protest was filed by Barry Summers

On 8/13/21 a Protest was filed by Kevin and Beth Cauley

On 8/25/21 a Protest was filed by Jaan Pesti

On 8/30/21 a Protest was filed by Peter Lachance

On September 8, 2021, Aqua filed Preliminary Objections to the Protest filed by Peter Lachance.

The prehearing conference was held on September 9, 2021, as scheduled. Aqua, Lower Makefield Township (Township), I & E, OCA, and OSBA, appeared and were represented by counsel. In addition, Protestants Barry Summers and Peter Lachance attended the conference.

The parties discussed a variety of matters detailed below.

**Litigation Schedule**

The Parties agreed upon the following litigation schedule:

**Final Proposed Upper Pottsgrove Litigation Schedule**

|  |  |
| --- | --- |
| **Event** | **Date** |
|  |  |
|  |  |
| Protests Due | Tuesday, September 7, 2021 |
| Prehearing Conference | Thursday, September 9, 2021 |
| Direct Testimony of Other Parties | Friday, September 10, 2021  |
| Telephonic Public Input Hearing | Thursday, September 23, 2021 @ 6:00 pm |
| Rebuttal Testimony | Friday September 17, 2021 |
| Surrebuttal Testimony  | Friday, September 24, 2021  |
| Rejoinder Outlines | Tuesday, September 28, 2021 |
| Evidentiary Hearings with oral rejoinder | Wednesday and Thursday, September 29 - 30, 2021 |
|  |  |
| Main Briefs  | Friday, October 8, 2021 |
| Reply Briefs/ | Monday, October 18, 2021 |
| ALJ Recommended Decision | Monday, November 22, 2021 |
|  |  |
|  |  |
| Public Meeting | January 13, 2022 |
| Entry of Final Commission Order | Wednesday, October 13, 2021 |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa. Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

Active parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa. Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding, to e-file with the Secretary’s Bureau a copy of all testimony furnished to the court reporter during the proceeding consistent with 52 Pa.Code § 5.412(a).

The above-stated dates are in-hand dates for service on the active parties and the undersigned. The undersigned agrees to accept email transmission of such material, so long as the subject email is received by 4:00 p.m. on the due date. The email address of the undersigned is jeffwatson@pa.gov and Nick Miskanic, Legal Assistant is nmiskanic@pa.gov.

Evidentiary hearings will begin promptly at **10:00 a.m. on September 29 - 30, 2021**. The active parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings.

**Parties**

The Petition to Intervene filed by Lower Makefield Township was granted by the ALJ at the prehearing conference, without objection.

With regard to the Preliminary Objections filed by Aqua to the Protest filed by Peter Lachance and the representation by counsel for Lower Makefield Township that its preliminary objections would be filed by September 10, 2021, Protestant, Peter Lachance was directed to file responsive pleadings to the Preliminary Objections filed by Aqua and by the Township, by the close of business on Wednesday, September 15, 2021.

**Public Input Hearing**

The Parties agreed that one public input hearing will be held in this matter. The Parties agreed to the scheduling of a public input hearing on Thursday, June 23, 2021, at 6 p.m. Aqua, the Township and OCA agreed to agree upon language for the notice and to cause notice of the Public Input Hearing consistent with the agreement of the Parties as outlined at the Prehearing Conference.

**Filing and Service**

**The only way to file anything in this case is to** **e-file with the Secretary’s Bureau**. Filings may not be made by emailing or faxing the Secretary’s Bureau. Filings may not be made through the undersigned or his office.

Once a filing has been made, the document must then be served upon the undersigned and every other person appearing on the most recent party’s list provided by the Commission.

The undersigned may be served by email. Furthermore, everyone at the prehearing conference agreed to be served by email. **Therefore, all service by the Commission, the active parties, and protestants shall be by email.**

**Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa. Code § 5.322. If this process fails, the parties have recourse under the Commission’s procedures for formal discovery. 52 Pa. Code §§ 5.321, *et* *seq,* with the amended deadlines set by this Order. The parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of the informal discovery undertaken and the parties’ efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJ will contact the parties and direct them to pursue informal discovery.

In addition, the Parties agreed to utilizing the expedited discovery deadlines in this proceeding as follows:

1. Answers to written interrogatories shall be served in-hand within five (5) calendar days of service.
2. Objections to interrogatories shall be communicated orally within two (2) calendar days and in writing within three (3) calendar days of service of the interrogatories.
3. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of the written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of such motions.
5. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within five (5) calendar days.
6. Requests for admissions will be deemed admitted unless answered or denied within three (3) calendar days of service.
7. Discovery and all discovery-related pleadings, such as objections, motions, or answers, served after 12:00 noon on a Friday or after 12:00 noon the day before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.

When compliance is not possible despite a parties best efforts, for the party who cannot comply with the deadline, despite its best efforts, to contact the requesting party to so advise and for the parties to work together to address the requests and responses on a reasonably timely basis.

**Protective Order**

The parties are directed to familiarize themselves with 52 Pa. Code § 5.362 (Protective orders), § 5.365 (Orders to limit availability of proprietary information), and §  102.4(h) (Challenge procedures to confidentiality designation) regarding the preparation and filing of a motion for a protective order, where applicable.

An Interim Order Granting the Petition filed by Aqua for a Protective Order was entered on September 3, 2021.

**Settlement**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). The parties are strongly urged to seriously explore this possibility.

In the event that the active parties reach a partial or non-unanimous full settlement is achieved, the active parties should be prepared to proceed on the first scheduled day of hearing.

In the event that the active parties reach a full unanimous settlement, the active parties should notify the presiding ALJ as soon as possible prior to the scheduled evidentiary hearings, but no later than **4:00 p.m. on September 27, 2021**.

If the active parties reach a full unanimous settlement, they may choose to convene on September 29, 2021, as scheduled and offer their written testimonies and exhibits on the record. Testimonies and exhibits may be admitted into the record upon oral motion as long as the other active parties waive cross-examination of the witness, and an appropriate verification has been filed with the Commission’s Secretary’s Bureau.

If the active parties reach a full unanimous settlement, they may request that the ALJ cancel the evidentiary hearings. Such a request should be made as soon as possible prior to the scheduled hearings, but no later than **4:00 p.m. on September 27, 2021**. The ALJ will not cancel the evidentiary hearings unless and until the active parties file a fully executed joint stipulation for the admission of evidence with the Secretary’s Bureau. The stipulation must include: (1) a stipulation that all active parties waive cross-examination of all witnesses, (2) a list of all testimonies and exhibits to be admitted into the record, either embedded within the stipulation or attached to the stipulation, and (3) a stipulation that the testimonies and exhibits to be admitted into the record are admissible and should be admitted. If such a stipulation is filed, the ALJ may issue an Order adopting the stipulation, admitting the evidence into the record, cancelling the evidentiary hearings, and ordering the active parties to file their testimonies and exhibits, with appropriate verifications, with the Commission’s Secretary’s Bureau along with a copy of the Order. The stipulation shall also be provided to the ALJ in WORD format.

**Stipulations**

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can in order to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties, and conserve precious administrative hearing resources. 52 Pa. Code §§ 5.232 and 5.234.

All stipulations entered by the active parties must be reduced to writing, signed by the active parties to be bound thereby, and moved into the record either orally at an evidentiary hearing or through a motion filed with the Secretary’s Bureau.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during the evidentiary hearings will not be permitted. 52 Pa. Code §§ 5.76 & 5.243.

**Briefs**

The parties must comply with 52 Pa. Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit an electronic copy of all briefs to the Presiding ALJ **in a *Microsoft Office Word*format.**

Any Briefs or Settlement Petitions filed in this case shall clearly set forth, in the text of the document, and not as a reference to an exhibit or other document, the essential terms of the Settlement.

Any Joint Settlement Petition and Briefs shall include proposed findings of fact, proposed conclusions of law, proposed ordering paragraphs and a procedural history, with specific citations to the record, where applicable. In the event of a settlement or the filing of Briefs, the Parties shall agree upon a list of common issues which the Parties shall utilize in the organization of the settlement petition and all statements in support of settlement in these proceedings. All issues addressed in the settlement petition and statements in support of settlement and briefs shall be structured so that all parties’ statements in support of settlement and the settlement petition discuss identical issues as identified by the parties.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

THEREFORE,

IT IS ORDERED:

1. That the Parties are directed to provide my Legal Assistant Nick Miskanic at nmiskanic@pa.gov, by email, with a copy of any emails provided to me and any documents that any Party may file with the Secretary’s Bureau in this proceeding.  The Parties are also requested but not required to provide me with paper copies of all filings made in this proceeding by first class mail, if possible. In addition, it is requested that service of pleadings, testimony and briefs provided to the undersigned presiding officer electronically, include an electronic copy in WORD format. If you email my Legal Assistant any communication, documents, or correspondence, you must also send a copy to all parties in this case. **The Office of Administrative Law Judge presently may not have access to regular mail because access to our offices may be limited due to the COVID-19 pandemic, although I do attempt to access my regular as often as circumstances permit. Accordingly, all parties are encouraged to sign-up for efiling and eservice. Please visit the Commission’s website at** [www.puc.pa.gov](http://www.puc.pa.gov) **for instructions.**
2. That you must serve me directly with a copy of any document that you file in this proceeding. If you send me any communication, correspondence, or document, you must send a copy to all other Parties. For your convenience, a copy of the Commission’s current service list of the Parties to this proceeding is enclosed with this Order.
3. That if you, or anyone you plan to call as a witness on your behalf, have a limited ability to speak or understand English or are deaf or hearing-impaired, a qualified interpreter can be provided upon your request. If you want an interpreter, please contact the Scheduling Office immediately, and at least ten (10) days before any scheduled proceeding or Hearing to make your request.

Scheduling Office: (717) 787-1399

AT&T Relay Service number for persons who are deaf or hearing-impaired:

1‑800‑654‑5988

1. Commission policy promotes settlements. 52 Pa. Code § 5.231(a).Theparties should talk and attempt to resolve any outstanding or anticipated issues, as well as a possible settlement of this case. Even if you are unable to settle this case, you may still resolve questions or issues during your talks. All pleadings provided to the undersigned ALJ shall include an electronic version prepared in Microsoft Word format.

Date: September 10, 2021  /s/

 Jeffrey A. Watson

 Administrative Law Judge

**A-2021-3024267 - Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the Acquisition of Lower Makefield Township Wastewater System Assets**

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