



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 10, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisonburg, PA 17105

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 are counsel to Lower Makefield Township in the above-referenced matter and are submitting, with this letter, the Township's Preliminary Objections Seeking Dismissal of the Protest of Peter A. Lachance. Copies of the Township's Preliminary Objections are being served upon all parties of record via electronic mail.

Very truly yours,

Matthew S. Olesh

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Jeffrey A. Watson, Presiding

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

NOTICE

TO: PETER A. LACHANCE
484 STONY HILL ROAD
YARDLEY, PA 19067

PURSUANT TO 52 PA CODE SECTION 5.101(b), NOTICE IS HEREBY GIVEN THAT AN ANSWER TO THE FOLLOWING PRELIMINARY OBJECTIONS SHALL BE FILED WITHIN 10 DAYS OF THE DATE OF SERVICE.

DATE OF SERVICE: SEPTEMBER 10, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Jeffrey A. Watson, Presiding

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

**PRELIMINARY OBJECTIONS OF LOWER MAKEFIELD TOWNSHIP SEEKING
DISMISSAL OF THE PROTEST OF PETER A. LACHANCE**

AND NOW comes, Lower Makefield Township (“LMT” or the “Township”, by and through its undersigned counsel, and, pursuant to 52 Pa. Code § 5.101, files this Preliminary Objection Seeking Dismissal of the Protest of Peter A. Lachance (“Protestant”) for various reasons. In support of its preliminary objections and dismissal of the Protest, the Township submits as follows:

I. BACKGROUND

1. This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“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 permit filing of preliminary objections in response to any pleading except motions and prior preliminary objections.

II. PROTESTANT LACKS STANDING

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

5. The Township joins, and incorporates by reference as if set forth fully herein, Aqua’s Preliminary Objection Seeking Dismissal of the Protestant for Lack of Standing filed on September 8, 2021 as Protestant is not a customer of either Aqua or Lower Makefield Township, and the Commission does not have jurisdiction over the Township’s sale process or use of the sale proceeds.

III. PROTESTANT INCLUDES IMPERTINENT/SCANDALOUS MATTER AND PLEADS WITH INSUFFICIENT SPECIFICITY

6. The Township incorporates by reference the averments in the preceding paragraphs as if set forth herein at length.

7. Protestant makes vague, inflammatory allegations that are both irrelevant to the matter at issue and wholly unsupported by any factual evidence.

8. 52 Pa. Code § 5.101(a)(2) states that a preliminary objection is proper if a pleading includes scandalous or impertinent matter.

9. To be considered “scandalous” and “impertinent,” the allegations must be immaterial and impertinent to proving the cause of action. *See James Coppedge v. PECO*

Energy Company, 2010 Pa. PUC LEXIS 95, at *13 (noting that “impertinent” and “scandalous” are not defined in the Commission’s regulations but used Black’s Law Dictionary as guidance for the definition of these terms).

10. Further, 52 Pa. Code § 5101(a)(3) states that a preliminary objection is proper for insufficient specificity of a pleading.

11. Protestant uses broad, baseless allegations against the Township Manger and the Chairman of the Board of Supervisors such as “shoddy and questionable methods” and “legally questionable acts” in reference to the Township’s bidding and sale process. *See* Protest of Peter A. Lachance, Attachment, p.1.

12. Protestant also stated that “[t]he entire process from conception to finish was secretive, obfuscatory and devious instead of transparent, cooperative, and honest.” *See id.*

13. While Protestant uses such flowery language like “devious” and “shoddy” to challenge the integrity of the Township’s sale process of its wastewater system, Protestant fails to provide specifics and actually ground his arguments in fact.

14. Instead, Protestant seemingly uses his Protest to needlessly attack the character of the Township Manager and the Chairman of the Board of Supervisors.

15. More importantly, any allegation that the Township’s bidding process was “secretive” or lacked transparency is completely baseless as the Township held multiple meetings – including one special public meeting solely dedicated to the Township’s exploration of the sale that lasted 5.5 hours – where the public was invited to participate and provide input on the sale. *See* Aqua’s Application, Exhibit W, Direct Testimony of Kurt M. Ferguson, p. 9–10.

16. Notably, Protestant attended public participation meetings, where he was provided an opportunity to speak on two occasions but claims he “was forced to stop speaking

because the Chairman of the Board of Supervisors didn't want truths to be made public, lest he not accomplish his goal of selling our sewers to Aqua." See Protest of Peter A. Lachance, Attachment, p.1.

17. Again, Protestant makes a scathing allegation regarding the Chairman's intentions and actions during the public participation meetings; however, Protestant again fails to ground these allegations in fact.

18. Lastly, Protestant includes information regarding the Township Board of Supervisors' alleged attempts "to force" Protestant to connect to the Township's system, and continues to speculate that Aqua will have "monetary incentive to force me to connect, most likely at my expense" if Aqua's Application to acquire the Township's assets is approved. See *id.*, p. 3.

19. Not only does Protestant – again – fail to support his speculative allegation with any specificity, this allegation is entirely unrelated to the instant proceeding.

20. As such, Protestant's Protest should be dismissed in its entirety for, *inter alia*, its inclusion of impertinent and scandalous matter, and his lack of any sort of specificity in his allegations.

IV. PROTESTANT'S PROTEST INCLUDES LEGALLY INSUFFICIENT ALLEGATIONS

21. The Township incorporates by reference the averments in the preceding paragraphs as if set forth herein at length.

22. 52 Pa. Code § 5.101(a)(4) states that a preliminary objection is proper for legal insufficiency of a pleading.

23. The instant protest is legally insufficient because it contains allegations related to the Proposed Transaction and the Township's bidding process that are not based on the

Protestant's personal knowledge, but instead are based seemingly entirely on inadmissible hearsay. *See* 225 Pa. Code § 802.

24. For example, Protestant states the following:

Importantly, the bid solicitation documents were faulty in a critical way: ***I was told by two supervisors*** that there was language toward the front of the bid solicitation (and to my knowledge, to this day that document has not been made public) that clearly stated that the Township's intention was to *sell* the sewer assets, leaving no doubt in the minds of bidders that other public-private partnership options would be defeated, regardless of their positive contribution to the public's interest and benefit.

See Protest of Peter A. Lachance, Attachment 1, p. 2 (emphasis added).

25. Hearsay is defined as "a statement that the declarant does not make while testifying at the current trial or hearing and a party offers in evidence to prove the truth of the matter asserted in the statement." 225 Pa. Code § 801(c).

26. This allegation is clearly grounded in a statement made by two unidentified declarants (supervisors), about which Protestant lacks personal knowledge.

27. As such, Protestant's Protest should be dismissed in its entirety for, *inter alia*, its lack of legal sufficiency.

V. SUMMARY

28. This Application proceedings concerns Aqua's proposed fair market value acquisition of the Township's wastewater system.

29. Protestant uses his Protest to challenge the integrity of the Township's sale process with baseless allegations lacking any factual specificity or legal sufficiency, while also needlessly attacking Township officials in ways that are wholly irrelevant.

30. For the foregoing reasons, the Township respectfully requests that Protestant's Protest be dismissed in its entirety.

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 10, 2021

CERTIFICATE OF SERVICE

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing Preliminary Objections 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

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

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

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

Erin L. Gannon
Senior Assistant Consumer Advocate
Harrison G. Breitman
Assistant Consumer Advocate
Office of Consumer Advocate
egannon@paoca.org
hbreitman@paoca.org

Barry Summers
BLSummers5@verizon.net

Peter A. Lachance
peter@LMTconstable.com

Kevin and Beth Cauley
artage2000@aol.com

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

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

/s/ Matthew Olesh

Date: September 10, 2021

VERIFICATION

I, Kurt M. Ferguson, the Township Manager for Lower Makefield Township, hereby verify that the statements of fact made in the foregoing petition 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 made herein are subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Kurt M. Ferguson

Dated: September 10, 2021