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September 16, 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 Motion to Strike the Testimony of Peter A. Lachance. Copies of the Motion 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. In accordance with the litigation schedule adopted at the prehearing conference on September 9, 2021, written testimony of Peter A. Lachance was served, on behalf of Protestant Barry Summers, on September 10, 2021.

3. Regulations of the Commission at 52 Pa. Code Section 5.103 allow for the presentation of requests, by motion, for relief desired. A motion may be made, in writing, at any time.

THE CRITICISM OF THE TOWNSHIP SALE PROCESS IS BEYOND THE BOUNDS OF COMMISSION JURISDICTION

4. The Lachance testimony is, in its entirety, a criticism of the Township sale process. It starts on page 2 with a claim that Township ratepayers were not well-served by the Township’s RFP process and that the RFP process could have been improved.

5. The testimony continues, on page 3, with a question premised on the assumption that the Township bid process was nowhere near ideal in the opinion of Mr. Lachance and followed by a claim of conflict of interest by PFM, the Township’s consultant.

6. Mr. Lachance then presents three alternative scenarios, which, again, are a challenge to the Township’s decision to sell the wastewater system and, in Mr. Lachance’s opinion, are preferable to the proposed transaction. The testimony concludes with a claim that the Mr. Ferguson, the Township Manager, was biased in favor of a sale.

7. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v.*

Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. 1945).

8. The Public Utility Commission has no subject matter or other jurisdiction to review, or “second guess,” a decision of local Township supervisors to enter into a transaction to sell a wastewater system or to consider alternative scenarios that may or may not have been considered by the local governmental authority.

9. In *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491, 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*”), the Commission held 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.¹

10. If any forum has jurisdiction to review a local Township decision to sell its wastewater system, it would be the local court of common pleas. An attempt to stop the Township’s sale of the wastewater system was, in fact, pursued in Bucks County Court as referenced by Mr. Lachance at the top of page 2 of his testimony. That attempt, apparently, was unsuccessful. Clearly, the local county court is where any challenge to the Township’s decision should have been made and was made. It is not now the jurisdictional function of the Commission to review or second guess a decision of the Bucks County Court of Common Pleas.

11. The jurisdictional infirmity is not solved for Protestant Summers and the testimony of witness Lachance by couching the testimony in public interest terms or fairness to ratepayers. The testimony is, simply, a criticism of the Township’s sale process. That criticism is not

¹ *Swift & Choi*, mimeo at 48.

something that the Commission has jurisdiction to consider. Again, an effort to block the sale was unsuccessfully pursued in local county court – that ends the matter.

SUMMARY

12. Mr. Summers’ (and witness Lachance’s) disagreement with the Township’s decision to sell the wastewater system is wholly outside the Commission’s jurisdiction.

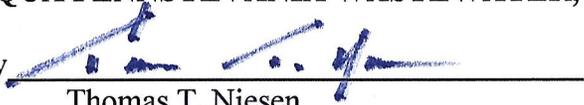
13. Striking the testimony of Mr. Lachance will avoid undue litigation in this Section 1329 proceeding, which is being considered and reviewed on an expedited six-month schedule as required by statute.

WHEREFORE Aqua Pennsylvania Wastewater, Inc. requests that Administrative Law Judge Watson and the Pennsylvania Public Utility Commission grant this Motion to Strike the Testimony of Peter A. Lachance.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By



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Date: September 16, 2021

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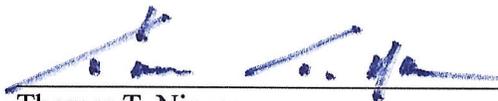
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