*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 :

**INTERIM ORDER**

**GRANTING IN PART AND DENYING IN PART ,WITHOUT PREJUDICE, THE MOTION OF AQUA PENNSYLVANIA WASTEWATER INC., TO STRIKE PORTIONS**

**OF THE TESTIMONY OF BARRY SUMMERS**

In accordance with the litigation schedule adopted at the prehearing conference on September 9, 2021, written testimony of Protestant, Barry Summers, was served on September 10, 2021.

On September 17, 2021, the Applicant filed a Motion of Aqua Pennsylvania Wastewater, Inc., to Strike Portions of the Testimony of Barry Summers (Motion to Strike). Regulations of the Commission at 52 Pa. Code Section 5.103 allow for the presentation of requests, by written motion, for relief desired.

Applicant asserts that, beginning in the middle of page 2 of his testimony, Mr. Summers questions the “assumptions” behind the Township’s decision to sell the wastewater system. Specifically, at pages 2 through 5, numbered subparagraphs 1 through 6, 9, 10 and 13, Mr. Summers would testify that:

1. Alternatives may not have been sufficiently considered, and if so, have not been well communicated;
2. Complete Details of all causes for this financial need have not been well communicated;
3. We do not understand the vetting process;
4. The sale is based on a need to improve the system that Aqua will provide, and which LMT is unable to do. It is not a short-term financial concept;
5. That LMT has the best financial interests of its citizens in mind and is careful with its expenses;
6. That the sewer system sale is urgent;
7. That the assessment by the pricing consultants PFM Financial Advisors, LLC, of Harrisburg was fair;
8. Are sewer rate increases fair and reasonable based on the service provided to the end customer?
9. Do you have any information regarding how private ownership of public assets is driven by return on investment, not on citizen approval when there is no alternative for the citizen?[[1]](#footnote-1)

In its Motion to Strike, Applicant asserts that the Commission lacks 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 question the “assumptions” of the local governmental authority in deciding to sell a system.[[2]](#footnote-2) Applicant argues that challenged portion of Mr. Summers’ testimony is irrelevant and immaterial to the matters before the Commission and beyond the jurisdiction of the Commission to consider. Accordingly, Applicant concludes that the testimony of Mr. Summers at pages 2 through 5, numbered subparagraphs 1 through 6, 9, 10 and 13, should be stricken and not accepted into the evidentiary record.[[3]](#footnote-3)

Applicant further argues that subparagraphs 4, 5, 9 and 13 at pages 2 through 5 of Mr. Summers’ testimony constitutes inadmissible hearsay. Subparagraph 4 provides a purported statement of Township Supervisors and a newspaper article in the Bucks County Herald News. Subparagraphs 5 and 9 appear to be based on the same newspaper article. Subparagraph 13 provides a lengthy list of articles found on the internet in response to the question concerning “information regarding how private ownership of public assets is driven by return of investment, not on citizen approval when there is no alternative for the citizen”. [[4]](#footnote-4)

Applicant notes that none of the declarants quoted from or cited in the newspaper articles or internet sites is before the Commission and argue that the information upon which Mr. Summers would rely in the referenced Subparagraphs is, consequently, hearsay. Applicant argues that the testimony of Mr. Summers at pages 2 through 5 of his testimony, numbered subparagraphs 4, 5, 9 and 13 should be struck and not accepted into the evidentiary record.

Applicant concludes that Mr. Summers’ disagreement with the decision of the Township representatives to sell the wastewater system is wholly outside the Commission’s jurisdiction and his reliance on hearsay testimony is impermissible.

On September 17, 2021, an interim order was entered providing a deadline for the filing of responsive pleadings to theMotion of Aqua Pennsylvania Wastewater Inc To Strike Portions Of The Testimony Of Barry Summers, not later than 4:30 p.m. on Wednesday, September 22, 2021.

On September 22, 2021, Mr. Summers served, by email, Surrebuttal Testimony which set forth a date of September 19, 2021, on the first page of the document. The Verification on the last page of the document was dated September 22, 2021. In addition, the undersigned presiding officer received an email from Mr. Summers on September 22, 2021 that stated, “I request that Administrative Law Judge Watson and the Public Utility Commission not strike any part of my testimony.” “This is stated implicitly in my prior email’s documents, but I am stating here explicitly.” No responsive pleading was filed.

A Public Input Hearing is scheduled for 6 p.m. on September 23, 2021 and the evidentiary hearing in this proceeding has been scheduled for September 29-30, 2021.

Based upon the circumstances, the following Interim Order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the Motion of Aqua Pennsylvania Wastewater, Inc., to Strike Portions of the Testimony of Barry Summers, specifically requesting that subparagraphs 4, 5, 9 and 13 at pages 2 through 5 of the testimony of Barry Summers be stricken as inadmissible hearsay, is Granted.
2. That the Motion of Aqua Pennsylvania Wastewater, Inc., to Strike Portions of the Testimony of Barry Summers, specifically requesting that the testimony of Mr. Summers at pages 2 through 5, numbered subparagraphs 1 through 6, 9, 10 and 13, be stricken, to the extent not stricken by the ordering paragraph above, is Denied, without prejudice. Any Party may raise objections to the testimony, or any portion thereof, at the hearing in this proceeding, and a ruling will be made after hearing from the Parties at the evidentiary hearing, consistent with the provisions set forth above.

Date: September 23, 2021

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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1. Applicant’s Motion to Strike at p.p. 2-3. [↑](#footnote-ref-1)
2. *Id* at p. 3. [↑](#footnote-ref-2)
3. *Id* at p. 4. [↑](#footnote-ref-3)
4. Barry Summers Direct Testimony at p.p. 4-5. [↑](#footnote-ref-4)