



**Matthew S. Olesh, Esquire**  
Direct Dial: 215.665.3043  
matthew.olesh@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

January 17, 2025

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**RE: Docket No. P-2024-3052732– Petition for Declaratory Order of The York Water Company Seeking an Order Clarifying Whether Certain Customers Are Currently Within Its Certificated Service Territory and Whether the Company Owns and Is Responsible for Repairing Certain Facilities**

Dear Secretary Chiavetta:

We are counsel to West Manchester Township (the “Township”) in the above-referenced matter and are submitting, with this letter, a corrected version of the Township’s Answer to the Petition for Declaratory Order of The York Water Company.

Copies of this filing are being served on the Public Utility Commission’s Bureau of Investigation & Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all affected parties in accordance with 52 Pa. Code § 5.42(b), as indicated in the attached Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Olesh".

Matthew S. Olesh

cc: Certificate of Service

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Declaratory Order of The York Water Company Seeking an Order Clarifying Whether Certain Customers Are Currently Within Its Certificated Service Territory and Whether the Company Owns and Is Responsible for Repairing Certain Facilities

P-2024-3052732

**ANSWER OF WEST MANCHESTER TOWNSHIP TO THE PETITION OF THE YORK WATER COMPANY FOR A DECLARATORY ORDER**

Pursuant to 52 Pa. Code § 5.61, West Manchester Township (the “Township”) submits this Answer to the Petition of The York Water Company (“YWC”) for a Declaratory Order (the “Petition”). The Township respectfully submits that the Petition should be denied because the information provided by YWC does not conclusively establish its entitlement to the relief it seeks and, additionally, the Township presents additional facts and information herein that prevent the entry of the relief sought by YWC without further proceedings to resolve disputed issues of fact.

**I. Township Position As To Issues Raised In the Petition**

The issues raised in the Petition date back to 2017, when YWC acquired the wastewater system assets of West York Borough (“West York”). In doing so, YWC was provided a list of West York’s customers, which included the two customers at issue in this proceeding located at 1438 and 1440 Worth Street, York, PA (the “Service Addresses”). YWC was all too happy to provide wastewater service to the Service Addresses and profit off same. However, YWC states that the lateral providing wastewater service to these customers has collapsed. Consequently, now that repairs are needed, YWC has conveniently disclaimed responsibility for the Service Addresses in an effort to avoid repair costs, instead attempting to foist that responsibility upon

the Township despite the Township not ever having provided wastewater service to the Service Address itself.

The Commissions should not sanction what is, at best, a failure of YWC to conduct the necessary diligence in its transaction with West York or, at worst, a blatant and disingenuous attempt of YWC to avoid repair costs for which it is rightfully responsible so as to ensure the provision of wastewater service to its customers. YWC should not be permitted to “cherry pick” customers based on how burdensome they may be at any particular point in time. It is not in dispute that YWC has been providing wastewater service to the Service Addresses since approximately February 2017. It is similarly not in dispute that the Service Addresses had been customers of West York prior to its sale transaction with YWC, and that these Service Addresses were included in the customer list West York provided to YWC.

It is the Township’s position that it is not responsible for performing the repairs that YWC refuses to perform for customers that YWC has serviced for approximately seven years but now seeks to abandon. At minimum, it is far from clear from YWC’s Petition whether the Service Addresses are located within West York or the Township. The materials submitted by YWC with its Petition do not provide a sufficient basis to make that determination, making it a disputed issue of fact that precludes the entry of the declaratory order sought by WYC.

Further, it was always explicitly agreed and understood between the Township and West York that these and other customers located on the border of the two municipalities would be serviced based upon the location of the property to be serviced regardless of the point of interconnectivity. While the Township is unaware of this agreement being reduced to writing, the fact that West York listed the Service Addresses as its customers in connection with its transaction with YWC is consistent with the agreement. This, too, is evidence of a disputed issue of fact that precludes the entry of a declaratory order in this action.

Whether or not YWC properly submitted the proper service area for approval by the Commission in connection with its transaction with West York is an issue that must be dealt with by YWC – not the Township. This presents the real issue before the Commission as it pertains to the matters raised in the Petition: not whether or not the Service Addresses are YWC’s customers (they are) but whether YWC included them as such when it sought a Certificate of Public Convenience from the Commission. If it did, the instant Petition should be denied as moot. If it did not, YWC should be made to do so, not given an opportunity to evade its responsibilities to customers to which it has been providing service for seven years. Either way, the repairs at issue are the responsibility of YWC – not the Township.

## **II. Standing**

The Township has standing because the Petition seeks relief that directly impacts the Township. Specifically, YWC seeks relief that would have the effect of forcing the Township to provide service to customers that are not its customers and never have been treated as such. *See Johnson v. Am. Std.*, 8 A.3d 318, 327 (Pa. 2010) (“Pennsylvania courts have consistently required a substantial, direct, and immediate interest in the outcome of litigation to obtain standing.”).

## **III. Facts and Matters of Law Relied Upon**

1. On June 6, 2016, YWC filed an application to acquire West York’s wastewater system and provide service to all of its customers.
2. The application included the provision of service to the Service Addresses.
3. Upon information and belief, West York had previously been providing wastewater service to the Service Addresses for many years, if not decades.
4. The Commission granted YWC a Certificate of Public Convenience to provide service to West York’s customers on February 27, 2017.

5. As a result, on February 27, 2017, YWC began providing wastewater service to all of West York's customers, including the Service Addresses.

6. After providing service to the Service Addresses and charging them for it continuously for over seven years, YWC was informed of an issue with a sewer lateral pertaining to one of the Service Addresses in mid-2024.

7. YWC has since performed temporary repairs to the lateral but refuses to perform any further repairs, now contending that the Service Addresses are not its customers.

8. Prior to the 2017 sale, an agreement existed between the Township and West York that customers located on the border of the two municipalities would be serviced based upon the location of the property to be serviced regardless of the point of interconnectivity.

9. As the acquirer of West York's wastewater assets, YWC is bound by this agreement.

10. The agreement is dispositive of the issue raised by YMC. However, even if it were not, the case law cited by YWC does not warrant the declaratory relief it seeks. *See Lukens Steel Co., Div. of Lukens, Inc. v. Pennsylvania Public Utility Com.*, 499 A.2d 1134, 1137 (Pa. Commw. 1985) (discussing whether customer owned property in utility's service area to serve as point of delivery and citing cases where "customers were members of the public in the service territory where they owned property and were therefore entitled to public utility service there"); *see also Peoples Natural Gas Co. v. Pennsylvania Public Utility Com.*, 554 A.2d 585, 591 (Pa. Commw. 1989) (holding that customers takes delivery in municipality where they are "situate" in municipality).

11. Here, the Service Addresses are plainly property located within the service area YWC acquired from West York.

12. Moreover, both West York and YWC's conduct and provision of service to these customers over the course of decades plainly suggests that they are properly serviced by YWC as a result of its acquisition

13. Were it not for a critical and expensive repair issue arising, YWC would have been content to continue to provide service to the Service Addresses and collect revenue for same.

14. It is only now, when such a repair issue has arisen, that YWC claims that these are not actually its customers in a transparent attempt to avoid its responsibility to address it.

#### **IV. Documents Relied Upon**

The aforementioned agreement between the Township and West York was not reduced to writing but is nonetheless a valid and enforceable agreement.

WHEREFORE the Township respectfully requests that the Commission deny YWC's Petition.

Respectfully submitted,

/s/ Thomas Wyatt

Thomas Wyatt, Esquire (PA I.D. 89342)

Matthew S. Olesh, Esquire (PA I.D. 206553)

**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

Dated: January 17, 2025

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the filing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant) and 52 Pa. Code § 5.42(b) (relating to service of petitions for declaratory order).

### **VIA E-MAIL**

NazAarah Sabree  
Small Business Advocate  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1st Floor  
Harrisburg, PA 17101  
ra-sba@pa.gov

Patrick Cicero, Esquire  
Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
pcicero@paoca.org

Allison Kaster, Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
akaster@pa.gov

Devin T. Ryan, Esq.  
Post & Schell, P.C.  
One Oxford Centre  
301 Grant Street, Suite 3010  
Pittsburgh, PA 15219  
dryan@postschell.com

Megan E. Rulli, Esq.  
Post & Schell, P.C.  
17 North Second Street –12th Floor  
Harrisburg, PA 17101-1601  
mrulli@postschell.com

**VIA FIRST CLASS MAIL**

John and Carla Shorts  
1438 Worth Street  
York, PA 17404

Ame M. Myers  
1440 Worth Street  
York, PA 17404

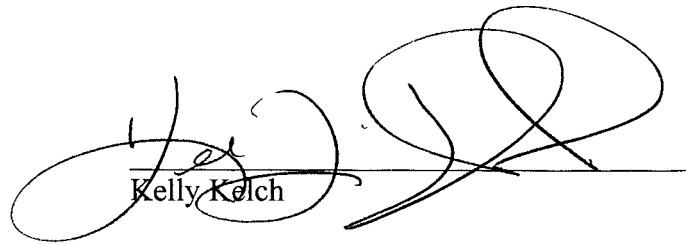
Date: January 17, 2025

/s/ Matthew S. Olesh

Matthew S. Olesh

**VERIFICATION**

I, Kelly Kelch, Township Manager of West Manchester Township, hereby state that the facts set forth above 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).



Kelly Kelch

Dated: 1/16/25