

May 6, 2016

VIA E-FILE

David P. Zambito

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: In re: Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton for Approval of (1) the transfer, by sale, of substantially all of the Sewer Authority of the City of Scranton's Sewer System and Sewage Treatment Works assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Scranton and the Borough of Dunmore, Lackawanna County, Pennsylvania; Docket No. A-2016-2537209

JOINT APPLICANTS' PREHEARING MEMORANDUM

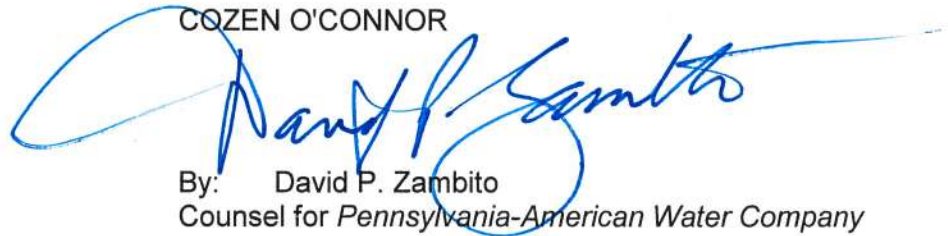
Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find the Joint Applicants' Prehearing Memorandum in the above-referenced proceeding. Copies have been served per the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosure

cc: Honorable David A. Salapa
Honorable Steven K. Haas
Per Certificate of Service

CERTIFICATE OF SERVICE
In Re: Joint Application of Pennsylvania-American Water Company and
the Sewer Authority of the City of Scranton
Docket No. A-2016-2537209

I hereby certify that I have this day served a true copy of Joint Applicants' Prehearing Memorandum, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL:


Allison C. Kaster, Esquire
Gina Lauffer, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

Christine Maloni Hoover, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Sharon E. Webb, Esquire
Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101-1303

John F. Povilaitis, Esquire
Alan Michael Seltzer, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101

DATED: May 6, 2016



David P. Zambito, Esquire
Counsel for *Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judges
David A. Salapa and
Steven K. Haas

In re: Joint Application of Pennsylvania-American Water :
Company and the Sewer Authority of the City of Scranton for :
Approval of (1) the transfer, by sale, of substantially all of the :
Sewer Authority of the City of Scranton’s Sewer System and : Docket No. A-2016-2537209
Sewage Treatment Works assets, properties and rights related to :
its wastewater collection and treatment system to Pennsylvania- :
American Water Company, and (2) the rights of Pennsylvania- :
American Water Company to begin to offer or furnish :
wastewater service to the public in the City of Scranton and the :
Borough of Dunmore, Lackawanna County, Pennsylvania :

**PREHEARING MEMORANDUM OF JOINT APPLICANTS,
PENNSYLVANIA-AMERICAN WATER COMPANY AND
THE SEWER AUTHORITY OF THE CITY OF SCRANTON**

Pennsylvania-American Water Company (“PAWC”) and the Sewer Authority of the City of Scranton (“SSA”) (collectively the “Joint Applicants”), by and through counsel, Cozen O’Connor and Buchanan Ingersoll & Rooney, PC, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order of the Honorable Administrative Law Judges David A. Salapa and Steven K. Haas (“ALJs”), dated April 27, 2016, hereby file this Prehearing Memorandum in the above-captioned matter, and state as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 29, 2016, the Joint Applicants entered into an Asset Purchase Agreement (“APA”) for the sale of substantially all of the assets, properties and rights of SSA’s wastewater collection and treatment system to PAWC (“Transaction”). On March 30, 2016, the Joint Applicants filed the instant application (“Application”) and requested that the Pennsylvania Public Utility Commission (“Commission”): (i) approve the transfer, by sale, of substantially all of SSA’s assets, properties and rights related to its wastewater collection and treatment system to PAWC; (ii) approve the right of PAWC to begin to offer or furnish wastewater service to the public in the City of Scranton and the Borough of Dunmore, Lackawanna County, PA; (iii) allow the rates and the rules and regulations of service as set forth in the *pro forma* tariff supplement attached to the Application as Exhibit L to become effective upon closing of the Transaction; and, (iv) issue any other approval or certificate appropriate, customary, or necessary under the Pennsylvania Public Utility Code (“Code”) to carry out the Transaction in a lawful manner.

The Application was served on the required entities and the Commission-directed notice of the Application was published in the April 9, 2016 edition of the *Pennsylvania Bulletin* as well as in *The Scranton Times* on April 12, 2016 and April 19, 2016. Proof of the publication in *The Scranton Times* was filed with the Commission on April 25, 2016.

The Office of Consumer Advocate (“OCA”) filed a public statement and protest to the Application on April 5, 2016. The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a notice of appearance on April 8, 2016. The Office of Small Business Advocate (“OSBA”) filed a notice of intervention and protest on April 25, 2016. No other person has

sought to intervene or has filed a protest in this matter and the April 25, 2016 deadline to protest or intervene has now passed. *See* 46 Pa.B. 1882.

A telephonic Prehearing Conference is scheduled for May 10, 2016 at 10:00 a.m. before the ALJs. This Prehearing Conference Memorandum is filed in anticipation of that Prehearing Conference.

II. COUNSEL

Counsel for PAWC are:

David P. Zambito, Esquire (PA ID No. 80017)
D. Troy Sellars, Esquire (PA ID No. 210302)
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101
Phone: 717-703-5892
Fax: 215-989-4216
E-mail: dzambito@cozen.com
tsellars@cozen.com

Susan Simms Marsh, Esquire (PA ID No. 44689)
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Phone: 717-531-3208
Fax: 717-531-3399
E-mail: susan.marsh@amwater.com

Counsel for SSA are:

John F. Povilaitis, Esquire (PA ID No. 28944)
Alan M. Seltzer, Esquire (PA ID No. 27890)
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101
Phone: 717-237-4825
Email: john.povilaitis@bipc.com
alan.seltzer@bipc.com

III. SERVICE OF DOCUMENTS

PAWC's attorneys are authorized to accept service on behalf of PAWC in this proceeding. PAWC requests that hard copies of documents be served on Attorney Zambito at the address listed above. PAWC agrees to receive service of documents electronically in this proceeding and requests that all listed counsel for PAWC receive electronic service.

SSA's attorneys are authorized to accept service on behalf of PAWC in this proceeding. SSA requests that hard copies of documents be served on Attorney Povilaitis at the address listed above. SSA agrees to receive service of documents electronically in this proceeding and requests that all listed counsel for SSA receive electronic service.

IV. ISSUES

A. PAWC's Technical, Financial, and Legal Fitness to Acquire and Operate the SSA Wastewater System

The primary issues in this matter are whether PAWC is technically, financially, and legally fit to acquire and operate SSA's wastewater collection and treatment system and whether the Transaction will promote a substantial public interest. As noted in the Application, PAWC's fitness is presumed by law given its status as a currently certificated public utility. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Despite this presumption, PAWC will present substantial record evidence to support a finding that PAWC is technically, financially, and legally fit to acquire and operate the wastewater assets of the Authority in the public interest.

B. Promotion of Substantial Public Interest

To approve the Transaction, the Commission must affirmatively find, by a preponderance of the evidence, that it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *See Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007). The Joint Applicants will establish through substantial record evidence that the Transaction provides a substantial benefit to the general public, including residents of the Scranton area, and -- by growing PAWC's customer base -- to PAWC's existing and future customers.

C. Approval of Initial Tariff Supplement / Reasonable Phase-In of Rates

The Joint Applicants request that the *pro forma* tariff supplement attached as Exhibit L to the Application be allowed to become effective upon closing of the Transaction. As will be explained through testimony, PAWC has agreed to adopt SSA's current customer and consumption charges; however, PAWC's non-customer and non-consumption charges, as well as PAWC's other tariffed rules and regulations, will be adopted immediately upon closing.

PAWC has agreed to an adjustment to the Transaction purchase price should the Commission approve a cumulative revenue increase for Scranton-area wastewater customers in excess of a 1.9% compound annual growth rate at the end of the initial 10-year period following closing ("1.9% CAGR"). The 1.9% CAGR is not a rate limitation and, by approving the Transaction, the Commission would not be limiting its authority to set PAWC's rates prospectively. The 1.9% CAGR is a part of the consideration for the Transaction that was negotiated by the Joint Applicants at arms-length.

In years 11 through 13 following closing of the Transaction, PAWC will strive to bring the Scranton-area customers' wastewater rates in line with PAWC's system average wastewater rates. Consistent with the Commission-recognized principle of gradualism in ratemaking, PAWC's commitments are intended to provide a reasonable phase-in of prospective rate increases for SSA's customers but would not be binding on the Commission or other parties.

While PAWC has agreed in the APA to attempt to phase in wastewater rates for Scranton-area customers, the APA acknowledges that rates will be set by the Commission through future base rate proceedings in which all interested parties may participate. Approval of the Transaction would in no way limit the Commission's ratemaking authority or the ability of parties to the instant proceeding from fully participating in future PAWC base rate proceedings. As such, the instant Application proceeding should not be viewed as a proceeding to set rates.

D. **Amendment of Pro Forma Tariff Supplement to Address Industrial Pretreatment Plan**

Upon closing of the Transaction, PAWC will be responsible for implementing an Industrial Pretreatment Program ("IPP") to replace SSA's current program which must be approved by the Pennsylvania Department of Environmental Protection ("DEP"). While DEP is responsible for the substantive review and approval of the IPP, the IPP must be incorporated by reference in PAWC's tariff and the fees associated therewith (because they are technically rates) must be tarified.

The Joint Applicants intend to file, by the due date for the Joint Applicants' direct testimony, a motion to amend the Application to incorporate an additional tariff supplement page into the *pro forma* tariff supplement attached as Exhibit L to the Application ("Motion to Amend"). The additional page, if approved by the Commission, would require PAWC's

industrial wastewater customers in the Scranton-area to abide by the IPP as approved by DEP, and would set forth the fees to be charged for non-compliance with the IPP. Subject to DEP approval, the terms, conditions and initial fees of the new IPP will be substantially similar to the program currently in place for SSA.

In order to ensure that all persons who may have an interest in the IPP are afforded notice and an opportunity to be heard, the Joint Applicants intend to serve the Motion to Amend upon the parties to the instant proceeding as well as upon all industrial customers who may potentially be subject to the IPP. Service will be accomplished by direct United States first class mail. The Joint Applicants intend to include a notice to plead with the Motion to Amend informing the subject customers they may protest or intervene and file an answer to the Motion to Amend within twenty days of service. *See* 52 Pa. Code § 5.103(c)(regarding “Responses to motions”).¹ The notice to plead will also inform customers they may contact DEP to find out more information regarding the process for DEP approval of the IPP.

Should a customer protest or intervene and file an answer to the Motion to Amend, the procedural schedule set forth below may have to be modified to provide such new party with an opportunity to submit supplemental testimony. Nevertheless, because primary review of the IPP is being performed by DEP and PAWC is substantially adopting the IPP currently in place for SSA, any supplemental issues should be of a limited nature.

¹ The Joint Applicants note that a 16-day protest period was provided by the Commission’s Secretary following publication of notice of the Application in the *Pa. Bulletin* on March 9, 2016. Accordingly, a 20-day period for an interested person to file a protest or intervene in connection with the Motion to Amend is reasonable.

E. **Filing of Potential PAWC Agreements with Municipal Corporations Under 66 Pa. C.S. § 507**

In addition to the approval of the APA under Code Section 507, SSA currently has certain “contracts” with municipal corporations which, upon closing of the Transaction, will be assigned, transferred or otherwise made applicable to PAWC.² Some of these contracts may also have to be filed under Code Section 507, 66 Pa. C.S. § 507, because they would be between a public utility (*i.e.*, PAWC) and a municipal corporation.³

The Joint Applicants are still in the process of identifying all contracts that must be filed pursuant to Code Section 507, and several of the contracts must still be negotiated and executed with the relevant municipal corporations. As such, PAWC intends to file the Code Section 507 contracts as they become available. Depending on the nature of the contracts to be filed, the procedural schedule may have to be modified to allow for supplemental testimony and the development of an evidentiary record upon which the issuance of Certificates of Filing can be based.

In order to avoid procedural complications that may potentially delay prompt adjudication of the Application, the Joint Applicants respectfully request that the ALJs coordinate with the relevant Commission Staff and ask such Staff to reconsider their *sua sponte* decision to consolidate any Code Section 507 contract associated with the Transaction into the

² Some of the “contracts” are currently in the form of municipal ordinances and authority resolutions that will need to be converted to written legal contracts.

³ Following filing of the Application, PAWC was informed by the Commission’s Bureau of Technical Utility Services (“TUS”) (*i.e.*, the bureau traditionally responsible for processing of Section 507 contracts) that, despite the fact that Code Section 507 merely requires the filing of the contracts and the issuance of “Certificates of Filing,” the Commission intends to *sua sponte* consolidate all such Code Section 507 filings with the underlying Application proceeding before the Office of Administrative Law Judge.

contested Application proceeding.⁴ Such Code Section 507 contracts could be processed by Commission Staff, as envisioned by Code Section 507, and the issuance of the Certificates of Filing could be conditioned upon the Commission's approval of the Application.

V. WITNESSES AND EVIDENCE

The Joint Applicants expect to call the following witnesses and provide their testimony in written question and answer form:

Mr. Bernard Grundusky

Mr. Grundusky is Director of Business Development for PAWC. Mr. Grundusky's business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Grundusky's business phone number is (717) 533-5000. Mr. Grundusky will provide an overview of the Transaction and the public benefits that will result from the transaction.

Mr. David Kaufman

Mr. Kaufman is Vice President - Engineering for PAWC. Mr. Kaufman's business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Kaufman's business phone number is (717) 533-5000. Mr. Kaufman will address SSA's wastewater collection and treatment system to be acquired by PAWC, environmental issues associated with SSA's system, PAWC's fitness to operate the system, and the IPP.

⁴ The Joint Applicants note that Code Section 507 contracts are required to be filed with the Commission at least 30 days before their effective date and are not required to be served on any person. 66 Pa. C.S. § 507.

Mr. James Sheridan

Mr. Sheridan is Vice President - Operations for PAWC. Mr. Sheridan's business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Sheridan's business phone number is (717) 533-5000. Mr. Sheridan will address the day-to-day operation of the wastewater collection and treatment system once it is acquired by PAWC and the customer service enhancements that PAWC intends to implement for the benefit of SSA's customers.

Mr. Rodney Nevirauskas

Mr. Nevirauskas is Director of Rates and Regulation for PAWC. Mr. Nevirauskas' business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Nevirauskas' business phone number is (717) 533-5000. Mr. Nevirauskas will address the initial rates, rules and regulations for former SSA customers, rate gradualism for SSA's customers, and the impact of the Transaction on PAWC's existing customers.

Mr. Eugene P. Barrett

Mr. Barrett is the Executive Director of SSA. Mr. Barrett's business address is 312 Adams Avenue, Scranton, Pennsylvania 18503. Mr. Barrett's business phone number is (570) 348-5330. Mr. Barrett will address the background on the SSA, the request for proposal process employed to solicit bids from qualified purchasers of the SSA's wastewater collection and treatment system, the APA and the approvals requested for the Transaction, and the benefits the Transaction from SSA's perspective.

Mr. William L. Courtright

Mr. William L. Courtright is the Mayor of the City of Scranton. Mr. Courtright's business address is 340 North Washington Avenue, Scranton, Pennsylvania 18503. Mr.

Courtright's business phone number is (570) 348-4100. Mayor Courtright will address and provide background on the City of Scranton ("City"), the City's current financial condition, the relationship between the City and the SSA, and the benefits of the Transaction from the City's perspective.

VI. DISCOVERY

In order to accommodate the procedural schedule suggested below, the Joint Applicants propose the following discovery rule modifications:

- A. Answers to discovery requests served after the Prehearing Conference and up until the due date of Rebuttal Testimony be served in hand within ten (10) calendar days of service. Answers to discovery served after the deadline of Rebuttal Testimony be served in hand within five (5) calendar days of service.
- B. Objections to discovery requests served after the Prehearing Conference be communicated orally within three (3) days of service; unresolved objections and motions to compel be served to the ALJs in writing within five (5) days of service of the discovery requests. Objections to discovery served on a Friday or after 12:00 noon on any business day immediately preceding a state holiday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served to the ALJs in writing within six (6) days of service of the discovery requests. Answers to motions to compel be filed within three (3) days of service of such motions.

- C. Except as noted above, discovery requests propounded after 12:00 noon on a Friday or the day before a state-recognized holiday will be deemed served on the next business day for purposes of determining the due date of the responses, objections, and motions to compel.

The Joint Applicants will work in good faith to resolve any discovery disputes that may arise during the course of this proceeding and are willing to engage in informal discovery in order to expedite the process. It should be noted that, to date, OCA has already served three sets of interrogatories on the Joint Applicants, I&E has served one set of data requests, and TUS served one set of data requests before the matter was transferred to the Office of Administrative Law Judge. The Joint Applicants voluntarily responded to the TUS data requests and have provided those responses to the other parties.

VII. PROTECTIVE ORDER

The Joint Applicants have already entered into Stipulated Protective Agreements with OCA and I&E. The Joint Applicants and OSBA are currently negotiating a Stipulated Protective Agreement. The parties reserve their right to file a timely motion for protective order should the need arise during the course of this proceeding.

VIII. PROCEDURAL SCHEDULE

The Joint Applicants propose the following procedural schedule:

Service of Joint Applicants' Written Direct Testimony ⁵	May 13, 2016
Service of Non-Applicants' Written Direct Testimony	June 3, 2016
Service of Written Rebuttal Testimony:	June 13, 2016
Service of Written Surrebuttal Testimony:	June 24, 2016
Evidentiary Hearing (With Oral Rejoinder):	July 6-7, 2016
Main Briefs from all Parties:	July 18, 2016
Reply Briefs from all Parties:	July 27, 2016

Unfortunately, the Joint Applicants have, to date, been unable to reach a consensus with the other parties regarding an appropriate procedural schedule. The Joint Applicants will continue to attempt to reach a consensus prior to the Prehearing Conference. As noted in SSA Statement No. 1 (Direct Testimony of Scranton Mayor William L. Courtright), Commission approval of the transaction by the Commission's September 15, 2016 Public Meeting is essential to the financial standing of the City of Scranton. As noted above, a need for supplemental testimony may arise during the course of the proceeding because of: (i) the amendment of the *pro forma* tariff supplement to include a page on the IPP; and, (ii) the Commission's *sua sponte* decision to consolidate Code Section 507 contract filings with this proceeding. The Joint Applicants will make all such filings as promptly as possible.

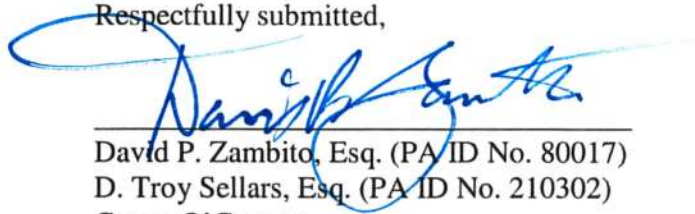
The Joint Applicants also respectfully request that the ALJs request that the Secretary shorten the periods for Exceptions to seven (7) days and the period for Replies to Exceptions to three (3) days. Such shortened periods may be necessary, depending on the issuance date of the Recommended Decision, to allow the Commission to take final action at its September 15, 2016 Public Meeting.

⁵ The Joint Applicants wish to note that SSA served the statements of its two witnesses on the ALJs and Parties prior to the Prehearing Conference on Friday, May 6, 2016.

IX. SETTLEMENT DISCUSSIONS

The Joint Applicants are open to and available for settlement discussions with the other parties.

Respectfully submitted,



David P. Zambito, Esq. (PA ID No. 80017)
D. Troy Sellars, Esq. (PA ID No. 210302)
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101
Phone: 717-703-5892
Fax: 215-989-4216
E-mail: dzambito@cozen.com
tsellars@cozen.com

Susan Simms Marsh, Esq. (PA ID No. 44689)
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Phone: 717-531-3208
Fax: 717-531-3399
E-mail: susan.marsh@amwater.com

Dated: May 6, 2016

Counsel for *Pennsylvania-American Water Company*



John F. Povilaitis, Esq. (PA ID No. 28944)
Alan M. Seltzer, Esq. (PA ID No. 27890)
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: May 6, 2016

Counsel for *The Sewer Authority of the City of Scranton*