



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 9, 2016

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of Pennsylvania American Water Company (PAWC) 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 PAWC, and 2) 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, Pennsylvania
Docket No. A-2016-2537209

Dear Secretary Chiavetta:

Enclosed please find the **Supplement to the Bureau of Investigation and Enforcement's Prehearing Memorandum** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 783-7998.

Sincerely,

Allison C. Kaster
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #93176

ACK/snc
Enclosure

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Pennsylvania :
American Water Company (PAWC) 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 : Docket No. A-2016-2537209
System and Sewage Treatment Works :
assets, properties and rights related to its :
wastewater collection and treatment :
system to PAWC, and 2) 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, :
Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Supplement to the Bureau of Investigation and Enforcement's Prehearing Memorandum** dated May 9, 2016, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

John F. Povilaitis, Esquire
Alan Michael Seltzer, Esquire
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357

David P. Zambito, Esquire
D. Troy Sellars, Esquire
Cozen O' Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101

Jeffrey J. Belardi, Esquire
The Sewer Authority of the City of
Scranton

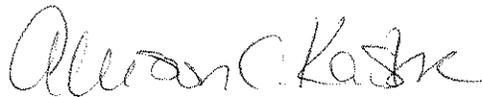
Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Paul J. Walker, Esquire
The Sewer Authority of the City of
Scranton
205 North Washington Ave. #1
Scranton, PA 18503

410 Spruce Street, 4th Floor
Scranton, PA 18503-1883

Susan Simms Marsh, Esquire
Pennsylvania American Water Company
800 Hersheypark Drive
Hershey, PA 17033

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



Allison C. Kaster
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #93176

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Pennsylvania American :
Water Company (PAWC) 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 PAWC, and 2) 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, Pennsylvania :

**SUPPLEMENT TO THE
BUREAU OF INVESTIGATION AND ENFORCEMENT'S
PREHEARING MEMORANDUM**

TO THE HONORABLE DAVID A. SALAPA AND STEVEN K. HAAS:

The Bureau of Investigation and Enforcement ("I&E") submitted a Prehearing Conference Memorandum on May 5, 2016 as directed in the Prehearing Conference Order dated April 27, 2016. I&E indicated that it was currently working with the parties to develop a mutually agreeable procedural schedule. Although those discussions are ongoing, no agreement has been reached. Therefore, I&E supports the procedural schedule proposed by the Office of Consumer Advocate in its Prehearing Conference Memorandum for the reasons presented below.

The Asset Purchase Agreement ("APA") is lengthy and complex. In particular, the rate section of the APA contains numerous agreements that impacts PAWC's future rates for over a decade. The schedule proposed by the Joint Applicants does not provide I&E sufficient time to determine whether the Application is in the public interest or sufficient time to prepare its case-

in-chief. This is significant as Commission regulations prohibit parties from introducing evidence in a rebuttal phase that should have been included in its case-in-chief and from introducing evidence that substantially varies from its case-in-chief. 52 Pa. Code § 5.243(e). As such, it is imperative that I&E and the other advocates have sufficient time to develop their respective positions and present those recommendations in direct testimony. I&E maintains that the procedural schedule presented in OCA’s testimony and recreated below (“Advocate Schedule”) provides sufficient time for discovery and testimony preparation:

	Joint Applicant Schedule	Advocate Schedule
Joint Applicant Direct Testimony	May 13, 2016	May 13, 2016
Other Party Direct Testimony	June 3, 2016	June 24, 2016
Rebuttal Testimony	June 13, 2016	July 20, 2016
Surrebuttal Testimony	June 24, 2016	August 10, 2016
Hearing (with Oral Rejoinder)	July 6-7, 2016	August 17-18, 2016
Main Briefs	July 18, 2016	September 14, 2016
Reply Briefs	July 27, 2016	October 5, 2016
Public Meeting	September 15, 2016	December 22, 2016

The schedule proposed by the Joint Applicants fails to provide sufficient time as it requires I&E to serve direct testimony three weeks after receipt of the Joint Applicants’ direct testimony. This three week period provides little time to send discovery and virtually no time to prepare, send and review follow up discovery. As demonstrated in the sampling of acquisition proceedings provided below, requiring I&E to prepare direct testimony in three weeks is not common in acquisition cases before the Commission:

	Peoples-TWP Acquisition A-2010-2210326	FirstEnergy-West Penn Acquisition A-2010-2176520	Peoples-Equitable Acquisition A-2013-2353647
Filing	11/10/2010	5/14/2010	3/19/2013
Applicant Direct Testimony	1/11/2011	5/14/2010	4/17/2013
Other Party Direct Testimony	3/29/2011 ¹	8/17/2010	7/24/2013
Time to Prepare Other Party Direct Testimony:	11 weeks	13.5 weeks	14 weeks

The procedural timing of Peoples acquisition of Equitable (“Peoples-Equitable Acquisition”) at Docket No. A-2013-2353647 is substantially similar to this proceeding. The Prehearing Conference in that case was held on May 9, 2013, one day earlier than this Prehearing Conference. In the Peoples-Equitable Acquisition, the applicants served testimony on April 17, 2013, approximately four weeks earlier than the May 13, 2016 date that the Joint Applicants propose herein. Moreover, I&E’s testimony was due on July 24, 2013, almost seven weeks later than the Joint Applicants’ request for I&E to serve testimony on June 3, 2016. Given that the Prehearing Conferences were held at virtually identical times, the three weeks that the Joint Applicants propose for preparation of I&E direct testimony in this proceeding stands in stark contrast to the fourteen weeks that I&E had to prepare direct testimony in the Peoples-Equitable acquisition proceeding.

Moreover, the proposed Joint Applicant schedule provides little time for the ALJs to prepare an initial decision or for the Commission to issue an order. The Joint Applicant schedule is premised on making the September 15 Public Meeting agenda. The proposed due date for

¹ The schedule approved at the Prehearing Conference contained the 3/29/2011 direct testimony date; however, by agreement of the parties, this was extended to 4/1/2011.

reply briefs is July 27, 2016; therefore, the Joint Applicant schedule proposes that both the initial decision and Commission order be issued approximately seven weeks after the submission of reply briefs.

Despite the expedited nature of the Joint Applicants' proposed schedule to make the September 15 Public Meeting, to date the Joint Applicants have not shortened their discovery response period or submission of direct testimony. I&E sent its first set of discovery on April 18, 2016 and, because it is currently a twenty day response period, those responses are due today. Although the responses to I&E's discovery are not overdue, the Joint Applicants have not assisted or expedited I&E's understanding of the proposed transaction given that they are using the full twenty days to respond. Additionally, the Joint Applicants could have provided direct testimony when it filed the Application or soon thereafter in order to give I&E and other parties additional time to review and send interrogatories. This did not occur given that the Scranton Sewer Authority recently served its direct testimony on May 6 and PAWC proposes to serve the direct testimony of four witnesses on May 13.

It is necessary to develop a reasonable procedural schedule so that I&E can fulfill its charge of representing the public interest. For the reasons discussed above, the Joint Applicants' proposed schedule fails to provide interested parties sufficient time to analyze this transaction and the proposed seven week interval between the submission of reply briefs and Public Meeting likely does not give the ALJs or the Commission sufficient time to issue an initial decision and order. Accordingly, I&E supports the Advocate Schedule.