



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

IN REPLY PLEASE  
REFER TO OUR FILE

July 19, 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 Bureau of Investigation and Enforcement's (I&E) **Main Brief** 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,

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Bureau of Investigation and Enforcement  
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ACK/GLL/sea  
Enclosure

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

**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 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

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**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: July 19, 2016

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## I. STATEMENT OF THE CASE

### A. Introduction

Pennsylvania-American Water Company (PAWC or Company) is seeking Commission approval to acquire the assets of The Sewer Authority of the City of Scranton (SSA or Authority) (collectively, Joint Applicants) and to begin to provide combined wastewater and stormwater service to the Authority's customers. The cost recovery of stormwater service and the creation of a Variance Adjustment are two issues of first impression presented in this transaction. Both provisions harm PAWC customers; therefore, approval of the Asset Purchase Agreement (APA) without modification is not in the public interest. I&E proposed recommendations concerning the recovery of stormwater and the Variance Adjustment through rates to ensure that the public interest is not harmed in this acquisition. Accordingly, if this transaction is approved, I&E respectfully requests that the Commission condition its approval on (1) requiring PAWC to provide costs of service studies that separate sanitary sewer and stormwater flows, capital expenses and operating costs in its next base rate proceeding and (2) prohibiting the recovery of the Variance Adjustment from ratepayers.

### B. History of the Proceeding

On March 30, 2016, PAWC and SSA filed an Application for approval of (1) PAWC's acquisition of the assets, properties and rights of the Authority's combined sewer and stormwater system and (2) PAWC's right to offer and supply wastewater service in the service areas served by the Authority. The purchase price is approximately

\$195 million and PAWC will assume the Authority’s obligation to make system improvements estimated to be approximately \$140 million.

On April 8, 2016, I&E and filed its Notice of Appearance. Protests were filed by the Office of Consumer Advocate on April 5, 2016 and the Office of Small Business Advocate on April 25, 2016.

A Prehearing Conference was held on May 10, 2013, with Administrative Law Judges David A. Salapa and Steven K. Haas (ALJs) presiding. A litigation schedule was developed that provided for the filing of testimony, hearings and briefs as follows:

PAWC/Scranton Direct Testimony	May 13, 2016
Other Parties’ Direct Testimony	June 14, 2016
Rebuttal Testimony	June 24, 2016
Oral Surrebuttal Hearing	July 6, 2016
Oral Rejoinder Hearing	July 7, 2016
Cross-Examination Hearing	July 8, 2016
Main Briefs	July 19, 2016
Reply Briefs	July 27, 2016

ALJs Salapa and Haas conducted evidentiary hearings on July 6-8, 2016. At the hearing, I&E Statement No. 1, I&E Exhibit No. 1, I&E Statement No. 2, and I&E Exhibit No. 2 were entered into the evidentiary record by stipulation. Additionally, in accordance with the procedural schedule, I&E witnesses Lisa A. Gumby and Ethan H. Cline provided oral surrebuttal testimony on July 6, 2016.

Pursuant to the procedural schedule and in accordance with Commission regulations at Section § 5.501, I&E submits this Main Brief.

## II. LEGAL STANDARDS

### A. Burden of Proof

The Public Utility Code (Code) mandates that the party seeking affirmative relief from the Commission bears the burden of proof.<sup>1</sup> To satisfy that burden, there is a duty to demonstrate by a preponderance of the evidence that the proposed transaction complies with Pennsylvania law.<sup>2</sup> Therefore, as the parties requesting relief, the Joint Applicants have the burden of proving that the proposed transaction satisfies Sections 1102 and 1103 of the Code.

### B. Standard for Approval

The Public Utility Code requires that the Commission issue a certificate of public convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.<sup>3</sup>

The standards for the issuance of a certification of public convenience are set forth in Sections 1102 and 1103 of the Code.<sup>4</sup> A certificate of public convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”<sup>5</sup> These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to

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<sup>1</sup> 66 Pa. C.S. § 332(a).

<sup>2</sup> *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>3</sup> 66 Pa. C.S. § 1102(a).

<sup>4</sup> 66 Pa.C.S. §§ 1102, 1103.

<sup>5</sup> 66 Pa. C.S. § 1103(a).

affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.<sup>6</sup> To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.<sup>7</sup>

The Joint Applicants have failed to demonstrate that the Application meets the criteria that it serves the public interest within the meaning of Sections 1102 and 1103 of the Public Utility Code. To rectify this defect, I&E has proposed that certain conditions be adopted to ensure that the public interest is protected.

### **C. Public Interest Definition**

It is important to establish whose interests are appropriately included in the public interest determination in this proceeding. The Authority asserts that the public interest must be broadened to include the financial plight of the City of Scranton (City) and requests the Commission to consider the impact this transaction will have on the City's finances.<sup>8</sup> I&E disagrees and maintains that this public interest definition is overly broad as the Commission cannot consider that which it does not have jurisdiction over.

It is understood that "the Commission's statutory obligations under Title 66 is to protect the public interest. Historically, the public interest has been defined, in our view, to include ratepayers, shareholders, and the regulated community."<sup>9</sup> The Commission

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<sup>6</sup> *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

<sup>7</sup> 66 Pa. C.S. § 1103(a).

<sup>8</sup> SSA St. No. 1; SSA St. No. 2-R, p. 3. SSA St. No. 3-R, p. 3.

<sup>9</sup> *Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc.*, 1995 Pa. PUC LEXIS 193, 34.

reaffirmed this public interest definition in the *CMV* proceeding.<sup>10</sup> The Commission denied CMV's request to transfer its wastewater assets to the North Codorus Township Sewer Authority (NCTSA) based, in part, on the fact that the public interest included only the regulated utility and its customers. NCTSA argued that the public interest definition should be broadened and asked the Commission to consider the positive impact the transaction would have on its financial condition and on the rates charged to its existing customers. The Commission disagreed with NCTSA's broad public interest definition:

It is axiomatic that this Commission only has the authority granted to it explicitly or implicitly by the General Assembly. The General Assembly has given us no such authority over the finances or rates of municipal authorities.<sup>11</sup>

Likewise, in this proceeding, the Commission has no explicit or implicit authority over the Authority's rates or the City's finances. The Mayor of Scranton provided testimony regarding the City's finances, highlighting that proceeds from the sale will allow investment into its currently underfunded fire, non-uniformed and police pension funds and reduce high interest debt obligations.<sup>12</sup> SSA witness Barrett discusses a series of "cascading events" if this transaction is not approved in a timely manner, stating the City will not be able to balance its 2017 budget which would necessitate increasing real

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<sup>10</sup> *Application Of CMV Sewage Company, Inc. for Approval To Transfer To North Codorus Township Sewer Authority All Assets Used And Useful In The Provision Of Sewage Collection Service In North Codorus Township, York County, Pennsylvania; and Application of CMV Sewage Company, Inc. For Approval To Abandon Its Provision Of Sewage Service To The Public In North Codorus Township, York County, Pennsylvania*, Docket No. A-230056F2002 (Order Entered December 23, 2008).

<sup>11</sup> *CMV* at 29.

<sup>12</sup> SSA St. No. 2, pp. 3-8.

estate taxes and cause City residents to not be able to pay their monthly wastewater bill.<sup>13</sup> While this testimony describes the City's financial condition, it is clear that this Commission has no authority over Scranton's pension funding, debt obligations or taxing authority. These same arguments were raised and rejected by the Commission in *CMV*. NCTSA claimed that its needs should be included in the public interest determination because disapproval of the acquisition may require the township to increase taxes in order to make bond payments. Again, the Commission found that these concerns were not part of the public interest determination and stated that "we have no explicit or implicit authority over local tax rates. Consequently, we are not persuaded that we should consider the interest of North Codorus Township residents in determining the public interest."<sup>14</sup>

Scranton's projected downward spiral of increased taxes and potential receivership cannot be used as a justification to approve this acquisition if it is not in the interest of PAWC or its current ratepayers. As recognized in *CMV*, the Commission cannot expand the definition of the public interest to accommodate interests that potentially harm the regulated utility or its customers:

...many of the benefits of this proposal for NCTSA and its customers are the mirror images of the adverse impacts of the proposal for *CMV* and its customers. Considering that this Commission is statutorily charged with the regulation of public utilities and the protection of their customers, we are reluctant to define the public interest in a way that minimizes the adverse impact of a proposal on public utilities and their customers. Consequently, we are not persuaded that we

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<sup>13</sup> SSA St. 2-R, pp. 3-5.

<sup>14</sup> *CMV* at 29-30.

should expand our previous definition of the public interest to include the interests of municipal authorities and their ratepayers.<sup>15</sup>

Accordingly, I&E proposed certain ratemaking protections to ensure that the public interest, as defined in proceedings before this Commission, is protected.

### III. SUMMARY OF THE ARGUMENT

PAWC is seeking to acquire the Authority's system, which is designed as a combined sewer and stormwater system serving approximately 31,000 customers in and around the City of Scranton (City). The Application, as filed, is not in the public interest; however, the Commission has the authority to impose conditions to ensure that PAWC's current customers are not harmed through this transaction.

The proposed transaction contains two issues of first impression. First, PAWC wants to acquire and operate a combined wastewater and stormwater system and is seeking preapproval in this proceeding to recover all stormwater cost from its customers. Operating a stormwater system and collecting stormwater costs through Commission approved tariffed rates is virtually unprecedented. No investor owned utility under Commission jurisdiction operates a combined wastewater and stormwater system. While one municipal utility with customers under Commission jurisdiction operates a combined system, the Commission has determined that stormwater costs cannot be recovered from jurisdictional customers. Therefore, no wastewater customers under Commission jurisdiction pay for stormwater service in their wastewater rates. This stands in stark contrast to PAWC's request to provide stormwater service and its demand that the

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<sup>15</sup> *CMV* at 29.

Commission preapprove stormwater cost recovery from its entire customer base as part of this proceeding.

Second, the transaction contemplates a Variance Adjustment, which is a new term that is not consistent with sound ratemaking principles. The Variance Adjustment increases the \$195 million purchase price ten years after Closing if revenues increase above the agreed upon 1.9% Compound Annual Growth Rate (CAGR) benchmark. The Variance Adjustment is not an asset purchase or related to used and useful plant, but is additional compensation for SSA ten years after the Closing if revenues are higher than the arbitrary 1.9% CAGR. The risk for this unprecedented term should remain with the Company, not its customers. Moreover, the APA contains several ratemaking terms that are intertwined with the Variance Adjustment as it provides an incentive to keep SSA rates low for the ten year period. SSA rates must be designed according to proper ratemaking principles and not be limited for a decade due to the threat of the Variance Adjustment.

Spreading stormwater cost recovery and the Variance Adjustment to PAWC's customers is not in the public interest. Although the Application should not be approved as filed, the Commission has the authority to impose conditions so that approval of the transaction is in the public interest. In order to facilitate approval of this transaction in a manner that does not violate the public interest, I&E recommended that the Commission condition its approval on (1) requiring PAWC to provide costs of service studies that separate sanitary sewer and stormwater flows, capital expenses and operating costs in its next base rate proceeding and (2) prohibiting the recovery of the Variance Adjustment

from ratepayers. These conditions are necessary to ensure that the public interest is protected.

#### IV. ARGUMENT

##### A. Stormwater Costs Must Not Be Recovered From PAWC's Current Customers

This acquisition presents an issue of first impression regarding the regulation of a utility that provides stormwater service. SSA's system was designed as a combined system to remove both sanitary sewage and stormwater. Of its approximately 275 miles of mains, approximately 172 miles are combined sewer and stormwater mains.<sup>16</sup> In a standalone stormwater system, the stormwater is discharged with little or no treatment; however, in a combined system like SSA, stormwater commingles with wastewater and is directed to a wastewater treatment plant which increases the volumes to be treated.<sup>17</sup> PAWC contends that recovery of all stormwater costs across its customer base is necessary in order to make this transaction financially feasible.<sup>18</sup> I&E maintains that preapproval in this proceeding of these undetermined stormwater costs from PAWC customers who do not benefit from stormwater service must be rejected.

There are currently no investor owned wastewater utilities under Commission jurisdiction that operate a combined system; therefore, PAWC's request to acquire SSA's combined system is a significant departure from historic regulation.<sup>19</sup> One municipal

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<sup>16</sup> SSA St. No. 1, p. 3.

<sup>17</sup> OCA St. No. 2, p. 10.

<sup>18</sup> PAWC St. No. 4-R, p. 21.

<sup>19</sup> OCA St. No. 1, p. 5; OCA St. No. 2, pp. 19, 28.

system operating a combined system has customers under Commission jurisdiction, but the Commission ruled that costs related to the provision of stormwater service must not be included in rates paid by jurisdictional customers. As a result, no wastewater customers under Commission jurisdiction currently pay for stormwater service through their wastewater rates.<sup>20</sup> PAWC wants to change that through the instant acquisition and require its wastewater and water customers throughout the Commonwealth to pay SSA's stormwater costs through their Commission approved rates.

Stormwater cost recovery has only been raised before the Commission on one prior occasion in *The City of Lancaster- Sewer Fund (Lancaster)* proceeding.<sup>21</sup> In *Lancaster*, OCA argued that it operated a combined system and that costs associated with stormwater service are not properly recoverable from customers residing outside the city as they are not utility costs. The ALJ determined:

... since stormwater enters the City's combined sewer system through approximately 2,000 stormwater inlets and that when this stormwater is moved with wastewater to the treatment plant, increased pumping and treatment costs are the result. The ALJ further recommended that the costs associated with collecting, conveying, pumping and treating this stormwater are not properly recoverable from jurisdictional customers and must be removed before a proper allocation can be performed between jurisdictional and non-jurisdictional customers.<sup>22</sup>

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<sup>20</sup> I&E recognizes that varying amounts of stormwater enter all wastewater systems, and that reasonable costs of this stormwater infiltration are recovered in rates. However, this is not a situation where low levels of stormwater are infiltrating SSA's system. Instead, this system is purposefully designed, constructed and operated to provide both wastewater and stormwater service. Therefore, while some level of stormwater infiltration is a normal cost of providing wastewater service, no utility recovers the cost to provide stormwater service through Commission approved rates.

<sup>21</sup> *Pennsylvania Public Utility Commission v. City of Lancaster-Sewer Fund*, Docket No. R-00049862 (Order Entered August 26, 2005).

<sup>22</sup> *Lancaster* at 15-16.

The Commission agreed with the ALJ that stormwater increased operating costs:

We conclude that there is substantial record evidence that the City's combined wastewater system collects stormwater runoff, and that when this stormwater is moved within the City's system, costs related to operation of the treatment plant and pumping stations are increased.<sup>23</sup>

The Commission determined that stormwater costs were being improperly allocated to jurisdictional customers. The case was appealed and the Commonwealth Court affirmed the removal of stormwater costs from jurisdictional revenues and the Commission's adoption of OCA's cost allocation methodology that was premised on the theory that costs of treatment of the City's stormwater should not be passed on to the jurisdictional customers.<sup>24</sup>

PAWC focuses on the fact that *Lancaster* involved jurisdictional and nonjurisdictional customers, and that no such distinction exists here.<sup>25</sup> PAWC contends that:

Unlike the situation in the City of Lancaster, the Transaction would result in the same customers benefitting from the integrated stormwater sewer service as are benefitting from the sanitary sewer service. There is no issue of Commission-jurisdictional customers versus non-Commission-jurisdictional customers. There would be no cross-subsidization of non-Commission-jurisdictional customers."<sup>26</sup>

However, under PAWC's proposal, there would be cross-subsidization from current SSA customers and the rest of PAWC's water and wastewater customers. PAWC recognizes

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<sup>23</sup> *Lancaster* at 17.

<sup>24</sup> *City of Lancaster -- (Sewer Fund) v. Pennsylvania Public Utility Commission*, No. 1968 C.D. 2005, slip op. at 17-18 (Pa. Cmwlth August 30, 2006)

<sup>25</sup> PAWC St. No. 4-R, pp. 17-18.

<sup>26</sup> PAWC St. No. 4-R, p. 18.

that the stormwater costs were excluded from rates because jurisdictional Lancaster customers were not benefitting in any way from the stormwater service.<sup>27</sup> I&E agrees with PAWC that stormwater costs should not be recovered customers who do not benefit from the stormwater service.<sup>28</sup> Just as Lancaster jurisdictional customers should not pay for stormwater service that only benefits non-jurisdictional customers, PAWC customers residing in Camp Hill, Coatesville or anywhere else in the Commonwealth should not pay for stormwater service that only benefits Scranton customers.

To ensure that costs related to the provision of stormwater service are not spread to PAWC's other customers, I&E recommended that PAWC be required to provide a cost of service study in its next base rate case that separates sanitary sewer and stormwater flows along with the capital expense and operating costs for these two functions.<sup>29</sup> Because this is a combined system, PAWC will incur additional costs to operate the stormwater component that would not be present if this was a standalone wastewater system. Such costs include additional plant for stormwater catch basins, overflows for when volumes exceed the capacity of treatment facility, and additional maintenance expenses for cleaning catch basins, repairing mains and chemical expenses for treating higher volumes during storm events.<sup>30</sup> A separate cost of service study would provide ratemaking solutions to this stormwater issue by potentially charging SSA customers or the City for these stormwater costs.<sup>31</sup> Alternatively, it would allow these costs to be

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<sup>27</sup> PAWC St. No. 4-R, pp. 17-18.

<sup>28</sup> I&E St. No. 2, p. 15. Tr. 90.

<sup>29</sup> I&E St. No. 1, p. 15.

<sup>30</sup> I&E St. No. 1, p. 13.

<sup>31</sup> I&E St. No. 1, p. 15.

imputed to PAWC to ensure that it is not recovered from its current customers.<sup>32</sup>

Similarly, OCA argues that if a PUC-regulated utility were permitted to provide stormwater service to the public, the utility would need to develop separate rates and charges that were proportional to a customer's contribution of stormwater to the system.<sup>33</sup>

PAWC argues that, while it is theoretically possible to develop a cost of service methodology to segregate stormwater, doing so would be very complex.<sup>34</sup> Difficulty is not a reason to allow PAWC to spread these costs across its entire customer base, especially since such studies have been performed in prior proceedings. For example, in *Lancaster* the Commission adopted OCA's proposed methodology to allocate stormwater costs. Although PAWC criticizes the *Lancaster* methodology as being overly simplistic because it relied primarily on a flow analysis, the point is that segregating stormwater costs is possible.<sup>35</sup> Moreover, the methodology used in the 2004 *Lancaster* proceeding is not the only way to segregate such costs because in Lancaster's subsequent 2012 case it used an updated, different allocation methodology.<sup>36</sup> Similarly, in its 2012 Northeast Division base rate proceeding, PAWC conducted a cost of service study that segregated the costs of sanitary sewer and inflow and infiltration flows so PAWC has some experience in separating these costs.<sup>37</sup> PAWC must not be permitted to create artificial barriers by claiming that conducting such a study is too hard or that previous studies have been faulty. These prior studies can serve as a guide, but PAWC has a wealth of industry

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<sup>32</sup> I&E St. No. 1, p. 16.

<sup>33</sup> OCA St. No. 1, pp. 19-20.

<sup>34</sup> PAWC St. No. 4-R, p. 20.

<sup>35</sup> PAWC St. No. 4-R, p. 19.

<sup>36</sup> OCA St. No. 1, p. 12.

<sup>37</sup> Tr. 88.

knowledge and experience to create its own study that is tailored to its needs. Although complex, it is clearly not impossible and must be done to ensure that costs are properly allocated.

PAWC maintains that this transaction cannot proceed to Closing unless it is permitted to recover stormwater service from its water and wastewater customers.<sup>38</sup> I&E urges the Commission to reject this request as the goal of this proceeding is not to approve this transaction at all costs, regardless of the impact that it has on PAWC current customers. I&E's cost of service recommendation is intended to insulate PAWC's current customers from these unprecedented stormwater costs and permit rate recovery from SSA customers or the City as they benefit from stormwater service or would allow the Commission to impute this revenue to PAWC. However, this recommendation is unacceptable to PAWC because it would increase the Variance Adjustment, which as described in detail below, is an adjustment to the purchase price if rates exceed the 1.9% CAGR in the ten years following Closing.<sup>39</sup> The APA as currently structured is not in the public interest and I&E's recommendation to provide a cost of service study so that stormwater costs can be properly allocated was designed to cure this defect. Accordingly, I&E respectfully requests that the Commission deny PAWC's requested preapproval and order PAWC to provide a separate cost of service study.

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<sup>38</sup> PAWC St. No. 4-R, pp. 18, 21.

<sup>39</sup> PAWC St. No. 4-R, p. 21.

## **B. The Variance Adjustment Must Not Be Recovered From PAWC Customers**

### **1. The Variance Adjustment Is Contrary To Sound Ratemaking Principles**

The APA contains many terms that relate to rates; however, the most unusual and complex is the Variance Adjustment as explained in Section 7.07(d). I&E maintains that that Variance Adjustment and any associated costs must be disallowed for future rate recovery. In contrast, PAWC claims that this is not the proper proceeding to determine the ratemaking treatment of the Variance Adjustment and prefers to wait to resolve this issue in a future base rate proceeding.<sup>40</sup> Because this is the first time a provision of this nature has been proposed, it is important to address the ratemaking treatment now so that PAWC is aware of the Commission's stance on this potentially large expense prior to the Closing of this transaction.

It is well settled that public utilities are entitled to recover all reasonable and normal operating and maintenance expenses incurred by providing regulated service.<sup>41</sup> However, to the extent that expenses are not incurred, imprudently incurred, or abnormally overstated during the test year, they should be disallowed and not recoverable through rates. The Variance Adjustment should not be recovered in rates as this term is contrary to sound ratemaking principles.

The Variance Adjustment is a potential adjustment to the \$195 million purchase price ten years following the Closing of this transaction. If, over this ten-year period, there is a positive difference between the annual revenues in the Authority's former

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<sup>40</sup> PAWC St. No. 4-R, p. 13.

<sup>41</sup> *Western Pennsylvania Water Company v. Pennsylvania Public Utility Commission*, 422 A.2d 906 (Pa. Cmwlth. 1980).

service area and a 1.9% compound annual growth rate (CAGR) in annual revenues, PAWC must pay the difference to SSA. Section 7.07(e) of the APA details that SSA can retain the payment or it can request that it be distributed to PAWC's then-current wastewater customers in SSA's former service territory. According to SSA, this adjustment is appropriate because it will mean that the system has proven to be more valuable to PAWC than was expected.<sup>42</sup>

Basing the Variance Adjustment calculation solely on revenue growth is inappropriate. Doing so requires one to look at the revenue side of the ledger but ignore the expense side. This disparity was highlighted by I&E's demonstration that the one-year revenue growth in the water industry was 3.69%, but net income fell by 2.37%.<sup>43</sup> PAWC contends that the water industry growth has no bearing on this wastewater proceeding; however, PAWC's response misses the point that exclusive reliance on revenue growth is not an adequate measure to determine the value of an acquisition. As shown above, revenues can increase while at the same time net income decreases. Under the Variance Adjustment, PAWC would be required to pay SSA for revenues above the 1.9% benchmark despite the fact that its net income may not have increased or may have even decreased.

In this regulated arena, revenue requirement is based on allowing the utility to recover expenses and provide an adequate return on its investment.<sup>44</sup> As I&E witness Gumby testified, "If revenue increases greater than the predicted 1.9% CAGR occur, it

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<sup>42</sup> SSA St. No. 1, p. 7.

<sup>43</sup> I&E St. No. 1, p. 10.

<sup>44</sup> I&E St. No. 1, pp. 11-12.

will be because larger revenue increases were *required* to move toward cost-of-service and avoid subsidization by other PAWC ratepayers.”<sup>45</sup> For example, assume hypothetically that the 1.9% CAGR is exceeded at the end of year ten due in large part to annual union salary increases and a variety of other increased operating expenses.<sup>46</sup> PAWC would be required to pay the difference to SSA even though the CAGR was exceeded to simply recover normal operating costs, not because the system was in any way more valuable than anticipated. Another example is the fact that Section 7.09(a)(vii) of the APA requires PAWC to bring 100 new jobs to SSA’s service territory by the end of 2020.<sup>47</sup> I&E understands that PAWC’s intent is to spread these new positions over its water, wastewater and administrative functions as SSA’s current operations does not require 100 additional employees. However, adding 100 new positions will impact PAWC’s revenue requirement and may require additional rate increases.<sup>48</sup> Increased labor costs could possibly drive the revenue requirement above the 1.9% CAGR and potentially increase the Variance Adjustment, not because the SSA system was unexpectedly profitable but because the Company’s expenses increased and its revenues needed to be increased accordingly.

The Variance Adjustment is unworkable for ratemaking purposes. It is not an asset purchase and is not related to used and useful plant.<sup>49</sup> At best, it could be defined as

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<sup>45</sup> I&E St. No. 1, p. 12.

<sup>46</sup> I&E St. No. 1, p. 12.

<sup>47</sup> I&E St. No. 1, p. 14.

<sup>48</sup> I&E St. No. 1, p. 15.

<sup>49</sup> I&E St. No. 1, p. 13.

an intangible asset, such as Goodwill, which would similarly not be recoverable for ratemaking purposes.<sup>50</sup> I&E witness Gumby testified:

The defined variance adjustment is based exclusively on revenue growth and is measured against a compound annual growth rate that has not been shown to be based on any historical measure or future analysis. As a result, the variance adjustment represents a potential financial liability that is unreasonable and should not be collected from Pennsylvania American Water Company ratepayers.<sup>51</sup>

I&E endeavored to understand how the 1.9% CAGR was developed in order to learn more about this unusual term. Through discovery, I&E sought information and supporting calculations about how the 1.9% CAGR was determined. PAWC merely replied that the 1.9% CAGR was the result of arms-length negotiations.<sup>52</sup> Additionally, when discussing this concept in oral rejoinder, PAWC witness Nevirauskas stated, “The 1.9 percent, it’s important to note that that term was mandated by the seller in the last round of bidding. So that was a term that was set forth by the seller, the company complied with in its final bid.”<sup>53</sup> Neither of these explanations demonstrate that the Variance Adjustment is a reasonable or normal operating expense; rather, the 1.9% CAGR is nothing more than an arbitrary number that was set forth in the bidding process.

Accordingly, I&E urges the ALJs and the Commission to make PAWC aware that cost recovery will not be permitted from its customers before this deal is closed. Doing so now will allow the Company to potentially renegotiate this term or consider whether moving toward Closing is in its financial interest; however, those options will not be

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<sup>50</sup> I&E St. No. 1, pp. 13-14.

<sup>51</sup> Tr. 67.

<sup>52</sup> I&E St. No. 1, p. 9, I&E Exh. No. 1, Sch. 1.

<sup>53</sup> Tr. at 116.

available if the Commission delays resolution of this issue to a future rate case as advocated by PAWC.

## 2. The Variance Adjustment Is Contrary To Pennsylvania Law

Additionally, there are legal concerns surrounding this Variance Adjustment. Specifically, payment of the Variance Adjustment violates two provisions of the Public Utility Code. These provisions include the Code's prohibitions against a utility charging any rate other than that specified in its tariff and its prohibition against a utility establishing unreasonable differences between classes of service.<sup>54</sup>

To illustrate this, the relevant terms of the Variance Adjustment appear below in pertinent part:

Within thirty (30) days of final resolution of the calculation of the Variance Adjustment, Seller shall notify Buyer whether the adjustment to the Purchase Price in the amount of the Variance Adjustment shall be paid directly to Seller or distributed to Buyer's then-current wastewater customers in the Service Area....**If Seller elects distribution of the adjustment of the Purchase Price for the Variance Adjustment to Buyer's then-current wastewater customers in the Service Area, Buyer shall at its sole cost and expense, subject to PaPUC approval and applicable Law, timely implement procedures and protocols reasonably acceptable to Seller and then make a one-time equal, flat-rate distribution to all customers then being served by Buyer in the Service Area their proportionate share of the Variance adjustment as mutually agreed by Buyer and Seller.... In the event the PaPUC fails to allow Buyer to timely implement procedures and protocols and make distributions to customers in the Service Area as aforesaid, Buyer shall pay the Variance Adjustment as an adjustment to the Purchase Price directly to Seller within thirty (30) days of the final resolution of the calculation of the**

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66 Pa. C.S. §§ 1303, 1304.

Variance Adjustment...[and] **Buyer shall also timely pay Seller the reasonable costs of (i) hiring a third-party administer and pay the Variance Adjustment to wastewater customers in the Service Area and (ii) establishing the processes and protocols to make such payment as described herein.**<sup>55</sup>

Taking into account the plain language of Section 7.07(e) of the APA, PAWC has agreed that, if SSA so desires, it will pay the Variance Adjustment directly to ratepayers in the former SSA territory. However, in contemplation of the fact that the Commission may not approve of this term, as an alternative, PAWC has agreed to distribute the Variance Adjustment to the SSA and to pay for a third-party to administer and pay the Variance Adjustment to those customers. I&E submits that both the direct and indirect payment provisions offend the Public Utility Code and should not be approved.

First, Section 1303 of the Code is violated. According to this Section,

[n]o public utility shall, **directly or indirectly**, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto.<sup>56</sup>

Pennsylvania Courts have strictly interpreted Section 1303 as “mean[ing] that public utility tariffs have the force and effect of law, and are binding on the customer as well as the utility.”<sup>57</sup>

If PAWC directly pays the Variance Adjustment to customers in the former SSA territory, the payment would operate as a de facto rate refund to SSA customers. Those

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<sup>55</sup> APA at 58, ¶707(e) (emphasis added).

<sup>56</sup> 66 Pa.C.S. § 1303 (emphasis added).

<sup>57</sup> *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 808 A.2d 1044, 1050 (Pa.Cmwlt. 2002) quoting *Pennsylvania Public Utility Commission*, 663 A.2d 281, 284 (Pa.Cmwlt. 1995).

customers will be paying Commission approved tariff rates for ten years. However, upon receipt of the Variance Adjustment payment, these SSA customers would have ultimately paid less for utility service than prescribed under PAWC's tariff which is prohibited by the Public Utility Code.

The APA appears to have anticipated this legal hurdle because it provides an alternative route for PAWC's distribution to customers in the former SSA territory. As outlined above, if the Commission fails to allow PAWC to directly disburse the payment to former SSA customers, then PAWC agreed to distribute the Variance Adjustment to the SSA and to pay for a third-party to administer the Variance Adjustment to those same customers. Although not a direct disbursement, it still violates Section 1303 which prohibits a public utility from "directly or indirectly, by any device whatsoever" charging a greater or less rate for service than what is specified in its tariff. Paying a third-party is simply an indirect way to carry out the impermissible task, which violates Section 1303. The only difference here is that use of a third party administrator could prove even more costly to ratepayers if they have to shoulder an administrator's costs. Accordingly, the Variance Adjustment provision of the APA violates Section 1303 of the Public Utility Code and it should be rejected.

Payment of the Variance Adjustment also violates Section 1304 of the Public Utility Code, which states as follows:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or

maintain any unreasonable difference as to rates, either as between localities or as between classes of service.<sup>58</sup>

While Section 1304 does not prohibit differences in rates, the Commonwealth Court has held that the utility must show that the differential is justified by the difference in costs required to deliver service to each class.<sup>59</sup>

In this case, there is no nexus of connection between PAWC's distribution of the Variance Adjustment and the cost of serving customers in the former SSA territory. Instead, PAWC's Variance Adjustment payment, whether made directly or indirectly, would be payable to customers solely because of those customers' status as ratepayers in the former SSA territory. This rate refund would operate as an unreasonable advantage to ratepayers in the former SSA territory. Furthermore, because PAWC may plan to fund its Variance Adjustment payment from ratepayers outside of the former SSA territory, the recipients' unreasonable rate advantage may come at the unreasonable disadvantage of other PAWC ratepayers. Accordingly, the Variance Adjustment provision of the APA violates Section 1304 of the Public Utility Code and it should be rejected.

**C. The APA's Ratemaking Terms May Violate The Concepts Of Gradualism And Rate Shock**

The Variance Adjustment is intertwined with numerous ratemaking terms contained in the APA. The APA contains several ratemaking provisions that are designed to limit rate increases in SSA's service territory because PAWC has an incentive to limit rate increases for those customers for the ten years over which the

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<sup>58</sup> 66 Pa.C.S. § 1304.

<sup>59</sup> *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 808 A.2d 1044, 1060 (Pa.Cmwlt. 2002).

Variance Adjustment is calculated. However, once the threat of the Variance Adjustment expires, PAWC is proposing rate increases in years 11 through 13 to catch SSA rates up to Rate Zone 1. PAWC's plan may violate the concepts of gradualism and rate shock. I&E is not recommending any changes to the ratemaking terms contained in the APA; however, in the interest of fairness it is important to put PAWC on notice that it will likely make rate design recommendations in future base rate proceedings that vary from the APA and could significantly increase the Variance Adjustment.

The ratemaking terms contained in the APA are summarized as follows:

- Section 7.07(b) states that PAWC will not implement a rate increase for the SSA customers that would be effective prior to January 1, 2018.
- Section 7.07(c) provides that PAWC will not propose a rate increase for the SSA customers in the first base rate case following Closing.
- Section 7.07(d) explains the Variance Adjustment calculation based on the 1.90% CAGR as previously discussed.
- Under Sections 7.07(h) and (j), if base rates and non-base rates for the SSA customers are lower by customer class than the Average System Rates for PAWC Rate Zone 1 customers, PAWC can seek base rate increases for SSA customers that would be effective for years 11 through 13 following the Closing that would equalize those base rates.

To be clear, the Commission and parties are not bound to the ratemaking provisions outlined above. I&E can recommend and the Commission can approve rate increases that differ from these terms. However, the underlying concern is that departing from these

rate limitations will cause rates to exceed the 1.9% CAGR and increase the Variance Adjustment. I&E does not believe that the threat of the Variance Adjustment should impact or guide the Commission's ratemaking determinations for SSA customers over the next decade nor should its current customers pay the Variance Adjustment for properly designing SSA rates in a way that potentially varies from the APA.

I&E does not oppose PAWC's goal of moving SSA rates into Zone 1; however, the difference lies in how and when that movement occurs. Currently, an average residential monthly bill for an SSA customer using 4,000 gallons per month is \$39.50 in contrast to \$61.97 in PAWC's Rate Zone 1.<sup>60</sup> Despite this already large difference in rates, PAWC has committed to try to limit SSA's rate increases for ten years and then catch SSA customers up to Zone 1 quickly in years 11 through 13 post-Closing. This plan may violate the concept of gradualism and rate shock. It is likely more appropriate to increase SSA rates gradually, starting with the first base rate case filed after Closing, over the entire 13 year period rather than wait until years 11 through 13 as contemplated in the APA.<sup>61</sup>

This is especially true because Zone 1 rates will likely increase at a greater rate than the 1.9% CAGR during this ten year period; therefore, keeping SSA rates increases at or below the 1.9% CAGR may widen the already large gap between Zone 1 and SSA rates and cause the increases in years 11 through 13 to be even larger.<sup>62</sup> As discussed by OSBA witness Kalcic, PAWC is projecting an overall increase in wastewater rates of

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<sup>60</sup> I&E St. No. 2, p. 2, I&E Exh. No. 2, Sch. 1.

<sup>61</sup> I&E St. No. 2, p. 5.

<sup>62</sup> I&E St. No. 2, p. 3.

2.70% in the ten years following Closing, which is higher than the 1.9% CAGR.<sup>63</sup> As a result, if the Company's rate plan is followed, the already significant gap between the average residential bill for SSA customers and PAWC Zone 1 customers might widen during that ten year period. This is contrary to the goal of consolidating rates and is only contemplated because of the Variance Adjustment. OSBA correctly stated that the Variance Adjustment does not facilitate single tariff pricing and characterized it as an implicit penalty for PAWC to move to Zone 1 rates in the ten years following Closing.<sup>64</sup>

While it is not possible to know whether PAWC's rate plan as contemplated in the APA will violate gradualism and rate shock until the base rate cases are filed, I&E believes it is important to put PAWC on notice of its concerns in this proceeding given the potential impact that its rate recommendations may have on the Variance Adjustment.

**D. This Transaction May Not Be Eligible For An Acquisition Adjustment**

The Company has not yet made a claim for an acquisition premium; however, I&E raised this issue to put the Company on notice about potential concerns that may arise should a claim be made in a future base rate proceeding. Flagging this issue prior to Closing appeared to be in PAWC's interest rather than remaining silent.

An acquisition adjustment is the ratemaking treatment of the difference between the purchase price of the acquired system and the value of the depreciated original cost of the system being acquired. A positive acquisition adjustment occurs when the depreciated original cost of the acquired facilities is less than the purchase price for the

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<sup>63</sup> OSBA St. No. 1, p. 5.

<sup>64</sup> OSBA St. No. 1, p. 6.

facilities. Section 1327(a) of the Code establishes nine criteria that must be met before a utility can claim an acquisition adjustment in rate base.<sup>65</sup>

This acquisition may fail to satisfy subsections (a)(2) and (a)(6), which requires that the utility have 3,300 or fewer customer connections or was nonviable and that the actual purchase price is reasonable.<sup>66</sup> SSA has approximately 31,000 customers, far greater than the 3,300 provided for in the Code. Also, the reasonableness of the \$195 million purchase price may be an issue. While the depreciated original cost will not be known until the next base rate proceeding, I&E is concerned that PAWC has overpaid for the system. In order to learn more about how the \$195 million purchase price was determined, I&E asked for an appraised value of SSA's system and PAWC indicated that no such appraisal of assets exists.<sup>67</sup> I&E witness Cline found an article that indicated the fair market value of the SSA plant is \$106.5 million.<sup>68</sup> OCA expressed similar concerns as witness Rubin stated that the net book value of the system is approximately \$74 million and testified that there has been no showing that it is reasonable to acquire these assets at more than twice their book value, especially given the lack of growth opportunities in SSA's service territory.<sup>69</sup> Denial of an acquisition premium based on these criteria is not unprecedented given that the Commission rejected PAWC's acquisition adjustment claim for Citizens Utilities Water Company of Pennsylvania in the

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<sup>65</sup> 66 Pa. C.S. § 1327.

<sup>66</sup> 66 Pa. C.S. § 1327; I&E St. No. 2, pp. 7-8.

<sup>67</sup> I&E St. No. 2, p. 10.

<sup>68</sup> I&E St. No. 2, p. 11. I&E Ex. No. 2, Sch. 4.

<sup>69</sup> OCA St. No. 2, pp. 25-26.

amount of \$44,878,275 in rate base and the associated amortization of \$1,150,725 per year for forty years.<sup>70</sup>

Given that a potential claim for this transaction may be similarly large, I&E thought it best to inform the Company and the Commission of potential issues that may arise should such a claim be made in the future.

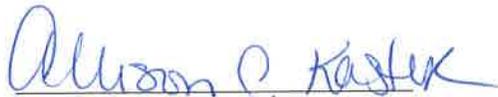
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<sup>70</sup> *Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company*, Docket No. R-00038304, pp. 9-16 (Order entered January 29, 2004 ).

## V. CONCLUSION

The proposed transaction as filed will not affirmatively promote the public interest in a substantial way. Conditions must be imposed prior to granting the requested certificates of public convenience to ensure that the transaction does not harm PAWC's current customers. Accordingly, if the transaction is approved, I&E respectfully requests that the ALJs recommend that the Commission condition its approval on (1) requiring PAWC to provide costs of service studies that separate sanitary sewer and stormwater flows, capital expenses and operating costs in its next base rate proceeding and (2) prohibiting the recovery of the Variance Adjustment from ratepayers.

Respectfully submitted,



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# APPENDIX

## I. PROPOSED FINDINGS OF FACT

1. On March 30, 2016, PAWC and SSA filed an Application for approval of (1) PAWC's acquisition of the assets, properties and rights of the Authority's sewer system and (2) PAWC's right to offer and supply wastewater service in the service areas served by the Authority. The purchase price is approximately \$195 million and PAWC will assume the Authority's obligation to make system improvements estimated to be approximately \$140 million.

2. SSA's system was designed as a combined system to remove both sanitary sewage and stormwater. Of its approximately 275 miles of mains, approximately 172 miles are combined sewer and stormwater mains. SSA St. No. 1, p. 3

3. There are currently no investor owned wastewater utilities under Commission jurisdiction that operate a combined wastewater and stormwater system. OCA St. No. 1, p. 5; OCA St. No. 2, pp. 19, 28.

4. The City of Lancaster- Sewer Fund operates a combined system, but it does not recover stormwater costs from Commission jurisdictional customers. I&E St. No. 2, p. 14; OCA St. No. 2, pp. 19.

5. Because SSA is a combined sewer and stormwater system, PAWC will incur additional costs to operate the stormwater component that would not be present if this was a standalone wastewater system. Such costs include additional plant for stormwater catch basins, overflows for when volumes exceed the capacity of treatment facility, and additional maintenance expenses for cleaning catch basins, repairing mains

and chemical expenses for treating higher volumes during storm events. I&E St. No. 1, p. 13.

6. The City of Lancaster- Sewer Fund developed cost of service methodologies to segregate stormwater costs in its 2004 and 2012 base rate proceedings. OCA St. No. 1, p. 12.

7. In PAWC's 2012 Northeast Division base rate proceeding, PAWC conducted a cost of service study that segregated the costs of sanitary sewer and inflow and infiltration flows. Tr. 88.

8. PAWC's current customers will not benefit from stormwater service provided in SSA's service territory. I&E St. No. 2, p. 15.

9. The Variance Adjustment is a potential adjustment to the \$195 million purchase price ten years following the Closing of this transaction. If, over this ten-year period, there is a positive difference between the annual revenues in the Authority's former service area and a 1.9% compound annual growth rate (CAGR) in annual revenues, PAWC must pay the difference to SSA. APA § 7.07(d).

10. The Variance Adjustment is not an asset purchase and is not related to used and useful plant. I&E St. No. 1, p. 13.

11. The 1.9% CAGR was the result of arms-length negotiations and was mandated by the seller in the last round of bidding. I&E St. No. 1, p. 9, I&E Exh. No. 1, Sch. 1. Tr. at 116.

## II. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this proceeding. 66 Pa.C.S. §§ 1102, 1103.

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa. C.S. § 332(a).

3. To satisfy its burden, the Joint Applicants must demonstrate by a preponderance of the evidence that the proposed transaction complies with Pennsylvania law. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102.

5. To establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

6. The Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

7. The Joint Applicants have not met their burden of proving that the APA is in the public interest; therefore, conditions must be imposed in order to grant the certificate of public convenience. *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

8. The public interest has been defined to include ratepayers, shareholders, and the regulated community. *Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc.*, 1995 Pa. PUC LEXIS 193, 34. *Application Of CMV Sewage Company, Inc. for Approval To Transfer To North Codorus Township Sewer Authority All Assets Used And Useful In The Provision Of Sewage Collection Service In North Codorus Township, York County, Pennsylvania;* and *Application of CMV Sewage Company, Inc. For Approval To Abandon Its Provision Of Sewage Service To The Public In North Codorus Township, York County, Pennsylvania*, Docket No. A-230056F2002 (Order Entered December 23, 2008).

9. The Commission cannot expand the definition of the public interest to accommodate interests that potentially harm the regulated utility or its customers *Application Of CMV Sewage Company, Inc. for Approval To Transfer To North Codorus Township Sewer Authority All Assets Used And Useful In The Provision Of Sewage Collection Service In North Codorus Township, York County, Pennsylvania;* and *Application of CMV Sewage Company, Inc. For Approval To Abandon Its Provision Of Sewage Service To The Public In North Codorus Township, York County, Pennsylvania*, Docket No. A-230056F2002 (Order Entered December 23, 2008).

10. Public utilities are entitled to recover all reasonable and normal operating and maintenance expenses incurred by providing regulated service *Western Pennsylvania Water Company v. Pa. PUC*, 422 A.2d 906 (Pa. Cmwlth. 1980).

11. The Commission has determined that stormwater costs should not be allocated to jurisdictional customers. *Pa. PUC v. City of Lancaster-Sewer Fund*, R-00049862 (Order Entered August 26, 2005).

12. If PAWC directly pays the Variance Adjustment to customers in the former SSA territory, the payment would operate as a de facto rate refund to SSA customers in violation of Section 1303 of the Public Utility Code. 66 Pa. C.S. § 1303.

13. PAWC's commitment to pay a third party administrator to disburse the Variance Adjustment to former SSA customers also violates Section 1303 of the Public Utility Code. 66 Pa. C.S. § 1303.

14. The Variance Adjustment violates Section 1304 of the Public Utility Code, which prohibits a public utility from establishing any unreasonable difference as to rates. 66 Pa. C.S. § 1304.

### III. PROPOSED ORDERING PARAGRAPHS

1. That the 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, at Docket No. A-2016-2537209, does not affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

2. The Joint Application is hereby approved subject to the following conditions that will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way:

- a. PAWC will provide costs of service studies that separate sanitary sewer and stormwater flows, capital expenses and operating costs in its next base rate filing.
- b. The Variance Adjustment will not be recovered from PAWC ratepayers.

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 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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Main Brief** dated July 19, 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):

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