



August 11, 2017

**VIA E-FILE**

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

**Re: Petition of Delaware Sewer Company for an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire Delaware Sewer Company; Docket No. I-2016-2526085**

**PENNSYLVANIA-AMERICAN WATER COMPANY PREHEARING MEMORANDUM**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is Pennsylvania-American Water Company's Prehearing Memorandum in the above-referenced proceeding. A copy of this document has been served in accordance with 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 Steven K. Haas  
Per Certificate of Service

**CERTIFICATE OF SERVICE**  
**Docket No. I-2016-2526085**

I hereby certify that I have this day served a true copy of Pennsylvania-American Water Company's 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 E-MAIL AND FIRST CLASS MAIL:**

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DATED: August 11, 2017



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Steven K. Haas**

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Petition of Delaware Sewer Company for an Investigation into :  
Whether the Public Utility Commission Should Order a Capable : Docket No. I-2016-2526085  
Public Utility to Acquire Delaware Sewer Company :

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**PREHEARING CONFERENCE MEMORANDUM  
OF PENNSYLVANIA-AMERICAN  
WATER COMPANY**

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Pennsylvania-American Water Company (“PAWC”), by and through its counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order of the Honorable Administrative Law Judge Steven K. Haas, dated July 31, 2017, hereby files this Prehearing Memorandum in the above-captioned matter, and states as follows:

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On February 6, 2014, Delaware Sewer Company (“DSC”) filed a Petition asking the Pennsylvania Public Utility Commission (“Commission”) to open an investigation, pursuant to Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, into whether the Commission should order a capable public utility to acquire its wastewater system. By Order entered January 28, 2016, the Commission granted that request. *Petition of Delaware Sewer Company for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public*

*Utility to Acquire the Company Pursuant to 66 Pa. C.S. § 529*, Docket No. P-2014-2404341 (Order entered January 28, 2016).

On March 29, 2016, the Office of Consumer Advocate filed a Motion to Join PAWC in the Section 529 investigation proceeding, arguing that PAWC is an indispensable party. PAWC opposed that motion, arguing it was premature at that stage of the proceeding. There was never a formal resolution of the motion.

By Secretarial Letter dated June 7, 2017, PAWC was notified that the Bureau of Investigation and Enforcement had identified it as a proximate public utility providing the same type of service as DSC. The Secretarial Letter established June 30, 2017 as the deadline for filing a petition to intervene or other responsive pleading.

On June 30, 2017, PAWC filed a Petition to Intervene. Also on June 30, 2017, Aqua Pennsylvania Wastewater, Inc. filed a Petition to Intervene.

In addition, on June 30, 2017, PAWC filed a Petition to Amend the Order Entered January 28, 2016 (“Petition”). That Petition argued that the Order should be amended to (i) clarify the scope of the instant proceeding and the potential remedies that can be ordered, and (ii) require that additional notice be published in the Pennsylvania Bulletin to ensure due process. The Bureau of Investigation and Enforcement filed correspondence on July 10, 2017, indicating that it would not be filing a response to the Petition. On that same day, DSC filed an Answer opposing the Petition, arguing that the investigation should not include some of the issues that PAWC seeks to include in the investigation. The OCA also filed an Answer to the Petition on July 10, 2017, arguing that there is no need to amend the Order because all of the issues and potential remedies identified by PAWC are already within the scope of the investigation proceeding.

## **II. COUNSEL**

Counsel for PAWC are:

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## **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.

## **IV. ISSUES**

### **A. Scope of the Investigation**

The investigation must consider whether the Commission should order a capable public utility to acquire DSC. Section 529 states that the Commission may order a capable public utility to acquire a small sewer utility if it determines: (1) the small sewer utility is in violation of statutory or regulatory standards; (2) the small sewer utility has failed to comply with an order of DEP or

the Commission; (3) the small sewer utility cannot be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities; (4) alternatives to acquisition have been considered; (5) the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small sewer utility; and, (6) the rates charged by the acquiring capable public utility to its pre-existing customers will not increase unreasonably because of the acquisition.

In reaching this determination, the Commission is to consider the following factors: (1) the financial, managerial and technical ability of the small sewer utility; (2) the financial, managerial and technical ability of all proximate public utilities providing the same type of service; (3) the expenditures necessary for improvements to make the system compliant with applicable statutory and regulatory standards; (4) the expansion of the service territory of the acquiring capable public utility; (5) the opinion and advice, if any, of DEP as to steps necessary to assure compliance with applicable statutory and regulatory standards; and, (6) any other factors that may be relevant.

The six determinations, and six factors, listed above are only some of the issues to be considered in this investigation. As PAWC argued in its Petition to Amend the Order Entered January 28, 2016 in Docket No. P-2014-2404341, this investigation should include a consideration of the following issues:

- DSC's use of the proceeds of its 2014 rate proceeding (this relates to the financial, managerial and technical ability of the small sewer utility and whether the small sewer utility can be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities); and,

- DSC's possible abandonment of service, together with a payment to customers toward converting to an alternative service (this relates to alternatives to acquisition).

In short, PAWC's position in this proceeding is that a capable public utility should not be ordered to acquire the DSC system. In addition, the expenditures necessary for improvements to make the system compliant with applicable statutory and regulatory standards are so great that alternatives to acquisition would be a more practical and economical approach.

## **B. Potential Remedies**

In its Petition to Amend the Order Entered January 28, 2016, PAWC argued: (1) if all six determinations in Section 529(a) favor a forced acquisition, the ALJ *must* make such a recommendation; (2) if one or more determinations in Section 529(a) do not favor a forced acquisition, the ALJ *cannot* recommend a forced acquisition, *but* the ALJ has broad authority to order an appropriate recommendation. As a result, PAWC respectfully submits that this investigation is not limited to a simple consideration of whether or not to order a capable public utility to acquire DSC. In the event that there are practical, economically feasible alternatives, the ALJ should order those alternatives to be implemented.

In the event that there are no practical, economically feasible alternatives, and the investigation results in a determination that a capable public utility should acquire DSC, PAWC should not be ordered to acquire DSC. There are other capable public utilities and municipal entities that are equally capable of operating the DSC system.

If a capable public utility is required to acquire the DSC system, DSC's certificated service territory should be reduced. Additionally, any forced acquisition should be conditioned, *inter alia*, upon receipt of all other necessary governmental approvals -- including Act 537 approvals and

local land use approvals. The acquiring public utility and its ratepayers should not be forced to assume potential liabilities.

## **V. WITNESSES AND EVIDENCE**

PAWC expects to call the following witnesses and provide their testimony:

### **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 engineering issues and alternatives to acquisition.

### **Mr. John Cox**

Mr. Cox is Manager of Rates and Regulations for American Water Works Service Company. Mr. Cox’s business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Cox’s business phone number is (717) 533-5000. Mr. Cox will address rate issues.

## **VI. DISCOVERY**

There is no statutory or regulatory deadline in this proceeding. Consequently, there is no need for expedited discovery. The Commission’s general rules of practice and procedure should govern discovery in this proceeding.

## **VII. PROTECTIVE ORDER**

PAWC is willing to negotiate a protective order in this proceeding.



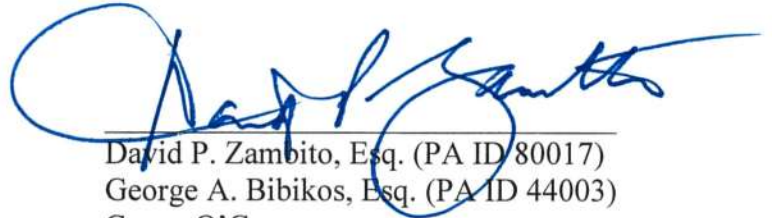
## **VIII. PROCEDURAL SCHEDULE**

Considering that PAWC and DSC disagree as to the scope of this proceeding, *see* PAWC's Petition to Amend the January 28, 2016 Order in P-2014-2404341 and DSC's Answer thereto, PAWC respectfully submits that this proceeding should be stayed until the Commission issues an order addressing PAWC's Petition to Amend the January 28, 2016 Order in P-2014-2404341. In the alternative, PAWC is willing to work with the parties to the instant proceeding to develop a mutually agreeable procedural schedule.

## **IX. SETTLEMENT DISCUSSIONS**

PAWC is open to and available for settlement discussions to resolve this proceeding.

Respectfully submitted,



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Dated: August 11, 2017